



***CONTINUING CONTRACT FOR
CONSTRUCTION MANAGER AT RISK***

Between

WELLINGTON

And

Wharton-Smith, Inc.

ADDENDA



A GREAT HOMETOWN

Council

Anne Gerwig, Mayor
Tanya Siskind, Vice Mayor
John T. McGovern, Councilman
Michael Drahos, Councilman
Michael J. Napoleone, Councilman

Manager
Jim Barnes

RFQ # 202113

Title: Construction Manager at Risk for Various Utility Water and Wastewater Capital Improvement Projects on a Continuing Contract Basis

Opening Date: March 11, 2021

Addendum Date: March 8, 2021

ADDENDUM NO. ONE

PURPOSE: The purpose of this Addendum/NOTICE is to make changes, additions, deletions, revisions, and clarifications to the (RFQ) Request for Qualifications documents for Construction Manager at Risk for Various Utility Water and Wastewater Capital Improvement Projects on a Continuing Contract Basis. Bidder shall review the Addendum/NOTICE work and requirements in detail and incorporate any effects the Addendum/NOTICE may have in their proposal price.

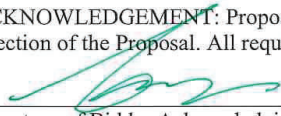
1. Revision: Section 2.8.2 Paragraph 5 of the RFQ documents have been revised to the following:

Once the firms are ranked, the Selection Committee will forward the selection results, along with its recommendations, to the Wellington Council for consideration and approval. Any negotiations shall be conducted by the Village's Director of Purchasing or designee. Any negotiations are subject to Sunshine Law, even if portions of the meetings are exempt and closed. Multiple firms may be selected for contract award, if approved by Village Council.

2. Question: I am trying to determine the rough order of magnitude revenue wise of the contract. In the scope of work section it indicates that the contract duration is for 3 years and 2 options for 1 year extensions, with an estimated value of construction costs not to exceed Four Million Dollars. Please confirm the estimated value of this Four Million Dollars.

Response: Each project will not exceed \$4 Million. It is anticipated that 10-12 projects will be completed each between \$250,000- \$4 Million.

ACKNOWLEDGEMENT: Proposers must acknowledge receipt of any and all Addenda. Failure to do so may result in rejection of the Proposal. All requirements of the proposal documents remain unchanged except as cited herein.


Signature of Bidder Acknowledging Receipt of
Addendum No. (1) One to be attached in front of proposal

12300 Forest Hill Boulevard • Wellington, Florida 33414 • (561) 791-4000 • Fax (561) 791-4045

www.wellingtonfl.gov

CONTINUING CONTRACT FOR CONSTRUCTION MANAGEMENT SERVICES

THIS AGREEMENT is made this ____ day of _____, 2021, by and between VILLAGE OF WELLINGTON (hereinafter referred to as WELLINGTON), Florida and Wharton-Smith, Inc. (hereinafter referred to as Construction Manager), located in Sanford, Florida.

WHEREAS, it is necessary for WELLINGTON to obtain the services of Construction Manager to be responsible for publicly bidding trade contracts, scheduling and coordination of various construction projects in both preconstruction and construction phases, and to be generally responsible for the successful, timely, and economical completion of various construction projects ("Construction Management Services"); and

WHEREAS, in accordance with the provisions of sections 255.103 and 287.055 of the Florida Statutes, Wellington has evaluated and ranked the qualifications of the Construction Manager and desires to enter into a continuing contract for Construction Management Services, as may be assigned and negotiated from time to time; and

WHEREAS, in accordance with section 255.103(4), Florida Statutes, the Construction Management Services under this continuing contract may include new construction, renovations, or remodeling of Village facilities and parks, including fields, in which the estimated construction costs for each project assigned will not exceed four million dollars; and

WHEREAS, Construction Manager acknowledges and agrees that (1) this agreement is non-exclusive; (2) Wellington has or will enter into continuing contracts with other qualified firms; (3) no minimum value is guaranteed by this agreement; and (4) Construction Manager will be required to construct assigned projects based upon a negotiated guaranteed maximum price and pursuant to the terms of the Construction Manager at Risk Agreement ("CMAR Agreement") attached hereto as Exhibit A and made a part hereof; and

WHEREAS, CONSULTANT represents it is capable and prepared to provide the Construction Management Services.

NOW, THEREFORE, in consideration of the promises contained herein, the parties hereto agree as follows:

ARTICLE 1 EFFECTIVE DATE

The effective date of this Agreement shall be _____.

The term of this Agreement shall be for a period of three years beginning on the effective date of the agreement, subject to appropriation of funding, except that it may be terminated as provided herein. Wellington and Construction Manager may agree to renew the agreement for two additional one year terms. In the case where a specific project has begun, and the contract period has expired, the contracted firm will continue with the project until completion. Wellington will extend the contract period to cover the additional time required to complete the project.

ARTICLE 2 SERVICES TO BE PERFORMED BY CONSTRUCTION MANAGER

CONSTRUCTION MANAGER shall perform the Construction Management Services for each project assigned based upon a negotiated guaranteed maximum price and as specifically set forth in the

CMAR Agreement, attached hereto as **Exhibit “A”** and incorporated herein by this reference, and as may be specifically designated and authorized by WELLINGTON (the “Services”).

ARTICLE 3 COMPENSATION

3.1 GENERAL

Compensation for Construction Management Services shall be as set forth in Articles 6 and 7 of the negotiated and executed CMAR Agreement. CONSTRUCTION MANAGER represents and warrants that it shall notify WELLINGTON in writing prior to doing any further work pursuant to this Agreement if it will exceed the contract amount provided for in the CMAR Agreement.

3.2 DELAY

Time and delays in the work shall be governed by Article 13 of the negotiated and executed CMAR Agreement. The CONSTRUCTION MANAGER shall not be entitled to an increase in the guaranteed maximum price or payment from WELLINGTON for any direct, indirect, consequential, impact or other costs, expenses or damages arising because of delay from any circumstances.

ARTICLE 4 INSURANCE

During the performance of the Construction Management Services under this Agreement, and for each project assigned, CONSTRUCTION MANAGER shall comply with all insurance provisions set forth in Paragraph 5.04 of the General Conditions and the Supplementary Conditions of the CMAR Agreement.

For each project assigned under this continuing contract, CONSTRUCTION MANAGER shall furnish WELLINGTON certificates of insurance that include a provision that policy cancellation, non-renewal, or reduction of coverage will not be effective until at least thirty (30) days written notice has been made to WELLINGTON. CONSTRUCTION MANAGER shall include WELLINGTON as an additional insured on the General Liability Insurance policy required by the Agreement.

CONSTRUCTION MANAGER shall not commence work under this Agreement until all insurance required as stated herein and in the CMAR Agreement has been obtained, and such insurance has been approved by WELLINGTON.

ARTICLE 5 STANDARD OF CARE

CONSTRUCTION MANAGER shall exercise the same degree of care, skill, and diligence in the performance of the Services as is ordinarily provided by a comparable professional under similar circumstances, and CONSTRUCTION MANAGER shall, at no additional cost to WELLINGTON, re-perform Construction Management Services that fail to satisfy the foregoing standard of care. CONSTRUCTION MANAGER warrants that all Services shall be performed by skilled and competent personnel to the highest professional standards in the field.

ARTICLE 6 INDEMNIFICATION

6.1 GENERAL

Having considered the risks and potential liabilities that may exist during the performance of the Construction Management Services and in consideration of the promises included herein, WELLINGTON and CONSTRUCTION MANAGER agree to allocate such liabilities in accordance with Article 11 of the CMAR Agreement.

6.2 INDEMNIFICATION

For each project assigned under this continuing contract, CONSTRUCTION MANAGER agrees to indemnify and hold Wellington harmless in accordance with the terms set forth in Article 11 of the CMAR Agreement.

6.3 SURVIVAL

Upon completion of all Construction Management Services for each project assigned under this agreement, or in the event of termination of this Agreement for any reason, the terms and conditions of this Article shall survive such completion or termination.

ARTICLE 7 INDEPENDENT CONTRACTOR

CONSTRUCTION MANAGER undertakes performance of the Construction Management Services as an independent contractor and shall be wholly responsible for the methods of performance, except as may otherwise be set forth under the CMAR Agreement. CONSTRUCTION MANAGER shall work closely with WELLINGTON in performing Services under this Agreement.

ARTICLE 8 COMPLIANCE WITH LAWS

In performance of the Construction Management services, CONSTRUCTION MANAGER will comply with applicable regulatory requirements, including federal, state, special district, and local laws, rules, regulations, orders, codes, criteria, and standards.

ARTICLE 9 FEDERAL AND STATE TAXES

WELLINGTON is exempt from Federal Tax and State Sales and Use Taxes. Upon request, WELLINGTON will provide an exemption certificate to CONSTRUCTION MANAGER. CONSTRUCTION MANAGER shall not be exempted from paying sales tax to its suppliers for materials to fulfill contractual obligations with WELLINGTON, nor shall CONSTRUCTION MANAGER be authorized to use WELLINGTON'S Tax Exemption Number in securing such materials.

ARTICLE 10 AVAILABILITY OF FUNDS

The obligations of WELLINGTON under this Agreement are subject to the availability of funds lawfully appropriated for its purpose by the Council of WELLINGTON. WELLINGTON reserves the right to fiscally fund out at any time without penalty.

ARTICLE 11 WELLINGTON'S RESPONSIBILITIES

WELLINGTON shall be responsible for providing information on hand required by CONSTRUCTION MANAGER, including existing reports, studies, planning information, and other required data that are available in the files of WELLINGTON.

ARTICLE 12 TERMINATION OF AGREEMENT

This Agreement may be terminated by CONSTRUCTION MANAGER upon thirty (30) days' prior written notice to WELLINGTON in the event of substantial failure by WELLINGTON to perform in accordance with the terms of the Agreement through no fault of CONSTRUCTION MANAGER . It

may also be terminated by WELLINGTON, with or without cause, upon thirty (30) days' written notice to CONSTRUCTION MANAGER. For each project assigned under this continuing contract, the termination provisions of Article 15 of the General Conditions of the CMAR Agreement shall apply.

ARTICLE 13 GOVERNING LAW AND VENUE

The laws of the State of Florida shall govern this Agreement. Any and all legal action necessary to enforce this Agreement will be held in Palm Beach County, and the Agreement will be interpreted according to the laws of Florida without regard to choice of law provisions.

ARTICLE 14 NON-DISCRIMINATION

CONSTRUCTION MANAGER warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, gender, age, or national origin.

ARTICLE 15 WAIVER

A waiver by either WELLINGTON or CONSTRUCTION MANAGER of any breach of this Agreement shall not be binding upon the waiving party unless such waiver is in writing. In the event of a written waiver, such a waiver shall not affect the waiving party's rights with respect to any other or further breach. The making or acceptance of a payment by either party with knowledge of the existence of a default or breach shall not operate or be construed to operate as a waiver of any subsequent default or breach.

ARTICLE 16 SEVERABILITY

The invalidity, illegality, or unenforceability of any provision of this Agreement, or the occurrence of any event rendering any portion or provision of this Agreement void, shall in no way affect the validity or enforceability of any other portion or provision of the Agreement. Any void provision shall be deemed severed from the Agreement, and the balance of the Agreement shall be construed and enforced as if the Agreement did not contain the particular portion or provision held to be void. The parties further agree to reform the Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision.

The provisions of this Article shall not prevent the entire Agreement from being void should a provision, which is of the essence of the Agreement, be determined to be void.

ARTICLE 17 ENTIRETY OF AGREEMENT

WELLINGTON and CONSTRUCTION MANAGER agree that this Agreement, including Exhibits, together with any negotiated and executed CMAR Agreement, sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. This Agreement supersedes all prior agreements, contracts, proposals, representations, negotiations, letters, or other communications between WELLINGTON and CONSTRUCTION MANAGER pertaining to the Construction Management Services, whether written or oral. None of the provisions, terms, and conditions contained in this Agreement may be added to, modified, superseded, or otherwise altered, except by written instrument executed by the parties hereto.

ARTICLE 18 MODIFICATION

This Agreement may be modified only by a written amendment executed by both parties.

ARTICLE 19 SUCCESSORS AND ASSIGNS

This Agreement is binding upon the parties hereto and their officers, directors, officials, successors, assigns, and legal representatives. CONSTRUCTION MANAGER shall not assign this Agreement without the express written approval of WELLINGTON via executed amendment.

ARTICLE 20 OWNERSHIP OF DOCUMENTS

Any and all documents, records, disks, or other information shall become the property of WELLINGTON for its use and/or distribution as may be deemed appropriate by WELLINGTON.

ARTICLE 21 ACCESS AND AUDITS

CONSTRUCTION MANAGER shall maintain adequate records to justify all charges and costs incurred in performing the Construction Management Services for at least three (3) years after completion of this Agreement. WELLINGTON shall have access to such books, records, and documents as required in this Article for the purpose of inspection or audit during normal working business hours at CONSTRUCTION MANAGER'S place of business

ARTICLE 22 NOTICE

Any notice, demand, communication, or request required or permitted hereunder shall be in writing and delivered in person or sent by certified mail, postage prepaid as follows:

As To WELLINGTON

Village of Wellington
12300 Forest Hill Blvd.
Wellington, FL 33414

As To CONSTRUCTION MANAGER

Wharton-Smith, Inc.

Notices shall be effective when received at the addresses as specified above. Changes in the respective addresses to which such notice is to be directed may be made from time to time by either party by written notice to the other party. Facsimile transmission is acceptable notice effective when received; however, facsimile transmissions received (i.e., printed) after 6:00 p.m. or on Fridays, weekends or holidays will be deemed received on the next business day. The original of the notice must additionally be mailed as required herein.

Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of CONSTRUCTION MANAGER and WELLINGTON.

ARTICLE 23 CONTRACT ADMINISTRATION

Construction Management Services performed by the CONSTRUCTION MANAGER shall be under the general direction of Jim Barnes who shall act as WELLINGTON's representative during the term of the Agreement.

ARTICLE 24 KEY PERSONNEL

CONSTRUCTION MANAGER shall notify WELLINGTON in the event of key personnel changes that might affect this Agreement. Notification shall be made within ten (10) days of said changes. WELLINGTON has the right to reject proposed changes in key personnel.

ARTICLE 25 CONFIDENTIALITY

No reports, information, computer programs, documentation, and/or data given to or prepared or assembled by CONSTRUCTION MANAGER under this Agreement shall be made available to any individual or organization by CONSTRUCTION MANAGER without prior written approval of WELLINGTON.

ARTICLE 26 CONFLICT OF INTEREST

This Agreement is subject to any and all applicable conflict of interest provisions found in the policies or Code of Ordinances of Wellington, the Palm Beach County Code of Ethics and Ch. 112, Part III, Florida Statutes. The CONSTRUCTION MANAGER's completed Conflict of Interest Statement shall be attached hereto as **Exhibit "B"** and incorporated herein by this reference. During the term of this Agreement and any renewals or extensions thereof, the CONSTRUCTION MANAGER shall continue to disclose to WELLINGTON any possible conflicts of interests. The CONSTRUCTION MANAGER's duty to disclose is of a continuing nature and any conflict of interest shall be immediately brought to the attention of WELLINGTON.

ARTICLE 27 PALM BEACH COUNTY OFFICE OF INSPECTOR GENERAL:

In accordance with Palm Beach County ordinance number 2011-009, the CONSTRUCTION MANAGER understands that any Contract that results from this agreement may be subject to investigation and/or audit by the Palm Beach County Inspector General. The CONSTRUCTION MANAGER has reviewed Palm Beach County ordinance number 2011-009 and is aware of its rights and/or obligations under such ordinance.

ARTICLE 28 PUBLIC ENTITY CRIMES

No individual or company may be a person or affiliate identified on the Department of General Services "Convicted Vendor" list. This list is defined as consisting of persons and affiliates who are disqualified from the public contracting and purchasing process because they have been found guilty of a public entity crime. The CONSTRUCTION MANAGER shall comply with section 287.133, Florida Statutes, as is amended from time to time.

ARTICLE 29 SCRUTINIZED COMPANIES

Pursuant to sections 215.4725 and 287.135 of the Florida Statutes, by entering into this Agreement, CONSTRUCTION MANAGER certifies that it, its affiliates, suppliers, subcontractors, and consultants who will perform or benefit hereunder, are not on the Scrutinized Companies that Boycott Israel List and are not participating in a boycott of Israel. If this Agreement is valued greater than \$1 million, CONSTRUCTION MANAGER further certifies pursuant to sections 215.473 and

287.135, Florida Statutes, that it, its affiliates, suppliers, subcontractors, and consultants who will perform or benefit hereunder, (a) have not been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List; and (b) do not have business operations in Cuba or Syria. Submitting a false certification shall be deemed a material breach of this Agreement. If the Village determines, using credible information available to the public, that CONSTRUCTION MANAGER has submitted a false certification, the Village may terminate this Agreement and pursue the remedies set forth in section 287.135, Florida Statutes, and any other available remedies.

ARTICLE 30 TIME

Time is of the essence in all respects under this Agreement.

ARTICLE 31 PREPARATION OF AGREEMENT

This Agreement shall not be construed more strongly against either party regardless of who was more responsible for its preparation.

ARTICLE 32 PUBLIC RECORDS

IF THE CONSTRUCTION MANAGER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, OR TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS, CHEVELLE ADDIE AT 561-791-4118, CADDIE@WELLINGTONFL.GOV , 12300 FOREST HILL BLVD. WELLINGTON, FL 33414.

ARTICLE 33 INCORPORATION OF RFQ

The terms and conditions and specifications of this Agreement shall include and incorporate the terms, conditions and specifications set forth in Wellington's Request for Qualifications # 202113 and the CONSTRUCTION MANAGER's response to the RFQ, including all documentation required hereunder.

ARTICLE 34 CONFLICT AMONG DOCUMENTS

In the event of any conflict between this continuing contract, including all exhibits, the RFQ, and any negotiated and executed CMAR Agreement, the terms, conditions, and specifications of the negotiated and executed CMAR Agreement control.

ARTICLE 35 COUNTERPARTS

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

ARTICLE 36 E-VERIFY. COMPLIANCE WITH F.S. 448.095

Wellington requires all contractors and subcontractors to register with the U.S. Department of Homeland Security's E-Verify system to verify the work authorization status of their newly hired

employees. All contractors performing work for Wellington are required to provide proof of registration with the E-Verify System and must provide an affidavit stating that each subcontractor it hires does not employ, contract with, or subcontract with an unauthorized alien.

IN WITNESS WHEREOF, WELLINGTON and CONSTRUCTION MANAGER have executed this Agreement as of the day and year first above written.

ATTEST

VILLAGE OF WELLINGTON

By: _____
Chevelle Addie, Wellington Clerk

By: _____
Anne Gerwig, Mayor

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY**

**CONSTRUCTION MANAGER:
WHARTON-SMITH, INC.**

By: _____
Laurie Cohen, Village Attorney

By: _____

Printed Name/Title

(Corporate Seal)



[Department of State](#) / [Division of Corporations](#) / [Search Records](#) / [Search by FEI/EIN Number](#) /

Detail by FEI/EIN Number

Florida Profit Corporation
WHARTON-SMITH, INC.

Filing Information

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Date Filed	04/03/1984
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State	FL
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Event Date Filed	07/06/2020
Event Effective Date	NONE

Principal Address

750 MONROE RD
SANFORD, FL 32771

Changed: 04/25/2006

Mailing Address

750 Monroe Road
Sanford, FL 32771

Changed: 01/02/2020

Registered Agent Name & Address

CORPORATION SERVICE COMPANY
1201 HAYS STREET
TALLAHASSEE, FL 32301-2525

Name Changed: 10/07/2019

Address Changed: 10/07/2019

Officer/Director Detail

Name & Address

Title CD

SMITH, GEORGE E
750 MONROE RD

SANFORD, FL 32771

Title D, Asst. Secretary, EVP

SMITH, TIMOTHY S
750 MONROE RD
SANFORD, FL 32771

Title PDT

DAVOLI, RONALD F
750 MONROE RD
SANFORD, FL 32771

Title Dir. of Operations

Marcell , Kenneth E, III
750 MONROE RD
SANFORD, FL 32771

Title EVP

HEWITT, PATRICK J
750 MONROE RD
SANFORD, FL 32771

Title EVP

Crafton, Darin A
750 Monroe Road
Sanford, FL 32771

Title Dir. of Business Development

O'Donnell, Todd H
750 MONROE RD
SANFORD, FL 32771

Title Dir. of Operations

Williams, Gregory L
750 MONROE RD
SANFORD, FL 32771

Title Director of Operations

Iarossi, Thomas D
750 MONROE RD
SANFORD, FL 32771

Title Director of Operations

McDaniel, Mark

750 Monroe Road
Sanford, FL 32771

Title VPS

POMPEO, STEPHANIE
750 MONROE RD
SANFORD, FL 32771

Annual Reports

Report Year	Filed Date
2020	01/02/2020
2020	01/21/2020
2021	01/06/2021

Document Images

01/06/2021 -- ANNUAL REPORT	View image in PDF format
07/06/2020 -- Amendment	View image in PDF format
01/31/2020 -- Amendment	View image in PDF format
01/21/2020 -- AMENDED ANNUAL REPORT	View image in PDF format
01/02/2020 -- ANNUAL REPORT	View image in PDF format
10/07/2019 -- Reg. Agent Change	View image in PDF format
01/02/2019 -- ANNUAL REPORT	View image in PDF format
01/02/2018 -- ANNUAL REPORT	View image in PDF format
03/30/2017 -- AMENDED ANNUAL REPORT	View image in PDF format
01/03/2017 -- ANNUAL REPORT	View image in PDF format
09/12/2016 -- AMENDED ANNUAL REPORT	View image in PDF format
01/06/2016 -- ANNUAL REPORT	View image in PDF format
06/18/2015 -- AMENDED ANNUAL REPORT	View image in PDF format
05/18/2015 -- Amendment	View image in PDF format
04/07/2015 -- AMENDED ANNUAL REPORT	View image in PDF format
02/04/2015 -- AMENDED ANNUAL REPORT	View image in PDF format
01/05/2015 -- ANNUAL REPORT	View image in PDF format
12/01/2014 -- AMENDED ANNUAL REPORT	View image in PDF format
06/23/2014 -- AMENDED ANNUAL REPORT	View image in PDF format
01/10/2014 -- ANNUAL REPORT	View image in PDF format
04/12/2013 -- AMENDED ANNUAL REPORT	View image in PDF format
01/16/2013 -- ANNUAL REPORT	View image in PDF format
01/10/2012 -- ANNUAL REPORT	View image in PDF format
04/18/2011 -- ANNUAL REPORT	View image in PDF format
01/05/2011 -- ANNUAL REPORT	View image in PDF format
07/08/2010 -- Amendment	View image in PDF format
01/20/2010 -- ANNUAL REPORT	View image in PDF format
01/30/2009 -- ANNUAL REPORT	View image in PDF format
01/23/2008 -- ANNUAL REPORT	View image in PDF format
03/01/2007 -- ANNUAL REPORT	View image in PDF format
04/25/2006 -- ANNUAL REPORT	View image in PDF format
02/17/2006 -- Amendment	View image in PDF format

01/04/2005 -- ANNUAL REPORT	View image in PDF format
04/02/2004 -- ANNUAL REPORT	View image in PDF format
02/17/2003 -- ANNUAL REPORT	View image in PDF format
02/18/2002 -- ANNUAL REPORT	View image in PDF format
10/03/2001 -- Amendment	View image in PDF format
04/19/2001 -- ANNUAL REPORT	View image in PDF format
04/21/2000 -- ANNUAL REPORT	View image in PDF format
04/22/1999 -- ANNUAL REPORT	View image in PDF format
05/13/1998 -- ANNUAL REPORT	View image in PDF format
05/16/1997 -- ANNUAL REPORT	View image in PDF format
05/01/1996 -- ANNUAL REPORT	View image in PDF format
04/07/1995 -- ANNUAL REPORT	View image in PDF format

EXHIBT "A"
CMAR AGREEMENT

CONSTRUCTION MANAGER AT RISK AGREEMENT - SAMPLE

THIS AGREEMENT is dated and will be effective on the _____ day of _____ in the year 202____, by and between the **VILLAGE OF WELLINGTON**, a Florida municipal corporation, through its Village Council, (hereinafter referred to as "Owner" or "Village"), and _____ a Florida _____(hereinafter referred to as "Construction Manager"), having its principal office at _____ for _____ (hereinafter referred to as the "Project") in accordance with the Contract Documents, hereinafter defined. The Village and Construction Manager are sometimes collectively referred to herein as the "Parties" and each, individually, as a "Party."

Owner and Construction Manager, in consideration of the mutual covenants hereinafter set forth, agree as follows:

ARTICLE 1 – RELATIONSHIP OF THE PARTIES & DEFINITIONS

1.1 The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Engineer and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Services and Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

1.2 Definitions.

- 1.1.1 "Engineer" means the Engineer for the Project, _____ and who is to act as expressly provided herein and who shall assume all duties and responsibilities and have the rights and authority assigned to Engineer in the Contract Documents.
- 1.1.2 "Construction Manager" means Construction Manager, and the terms will be used interchangeably;
- 1.1.3 "Construction Team" includes the Owner, Construction Manager, Construction Manager's Subcontractors, Engineer and the Engineer's consultants.
- 1.1.4 "Contract Price" means Guaranteed Maximum Price, and the term shall be used interchangeably;
- 1.1.5 "Owner's Representative" shall be Jim Barnes, or designee who shall have the authority to act on behalf of Owner unless expressly stated otherwise within the Contract Documents;
- 1.1.6 "Services" shall mean the Construction Management, Preconstruction Services and other services provided by Construction Manager or through Construction Manager as set forth in this Agreement;
- 1.1.7 "Subcontractor" means any person who has a written agreement with Construction Manager to perform a portion of the Work or to furnish materials or equipment for incorporation into the Project;

- 1.1.8 “Work” shall mean all materials, supervision, labor, tools and equipment necessary to complete the work described and set forth in the Guaranteed Maximum Price Amendment and pursuant to this Construction Management Agreement

1.3 The Construction Manager will provide all expertise, management, materials, supervision, light, power, transportation, labor, tools and equipment necessary to complete the Work and Services in strict accordance with the Contract Documents as defined in Article 2 of this Agreement, and perform all Work and Services that are reasonably inferable therefrom as being necessary to accomplish the intent of the Contract Documents, and as required by the manufacturer’s specifications and all applicable laws, ordinances and rules and regulations of any governing authority. Construction Manager shall work cooperatively with the Construction Team to further the best interests of the Owner and facilitate the successful completion of the Project.

ARTICLE 2 - CONTRACT DOCUMENTS

2.1 The Contract Documents consist of the following documents which are incorporated by reference:

- 2.1.1** This Agreement;
- 2.1.2** General Conditions attached as **Exhibit “A”** (“General Conditions”);
- 2.1.2** Request for Qualifications attached as **Exhibit “B”**;
- 2.1.3** Construction Manager’s Qualifications attached as **Exhibit “C”**;
- 2.1.4** Construction Manager’s Insurance Certificates attached as **Exhibit “D”**;
- 2.1.5** Performance Bond and Payment Bonds in the forms attached hereto as **Exhibit “E”** which shall be in compliance with Fla. Stat. § 255.05 (plus Power of Attorney Forms as applicable);
- 2.1.6** Notice of Award attached hereto as **Exhibit “F”**;
- 2.1.7** Exhibit “G” is not applicable for this agreement;
- 2.1.8** Geotechnical engineering survey, land surveys, environmental studies of existing facilities, and applicable reports regarding water intrusion and contamination included and attached hereto as part of **Composite Exhibit “H”**.
- 2.1.9** Construction Manager’s Schedule for Preconstruction Services attached as **Exhibit “I”**
- 2.1.10** Warranty Forms attached hereto as **Exhibit “J”**;
- 2.1.11** Form of Certificate of Substantial Completion attached hereto as **Exhibit “K”**;
- 2.1.12** Form of Application for Payment attached hereto as **Exhibit “L”**
- 2.1.13** Form of Affidavit for Final Payment attached hereto as **Exhibit “M”**;
- 2.1.131** Construction Manager’s Preconstruction Services Proposal attached hereto as **Exhibit “N”**;
- 2.1.14** Construction Manager’s Forms and Misc. Requirements attached hereto as **Composite Exhibit “O”**:
 - Exhibit “O1”** Wellington Local preference Policy
 - Exhibit “O2”** Conflict of Interest Statement

Exhibit “O3” Non- Collusion Affidavit

2.1.15 Sales Tax Recovery Program Special Conditions for Owner Furnished Materials and Equipment attached hereto as **Exhibit “P”**;

2.1.16 Sales Tax Exemption Certificate of Entitlement attached hereto as **Exhibit “Q”**;

2.1.17 Upon agreement of the Parties, the Guaranteed Maximum Price Amendment (“GMP Amendment”) to be attached as executed by the parties as **Exhibit “R”** and the Contract Documents shall include all exhibits to the Guaranteed Maximum Price Amendment including, but not limited to the following:

Drawings, plans and specifications listed in the attached List of Drawings attached hereto as **Exhibit “R1”**;

Construction Manager’s Schedule of Values to be attached as **Exhibit “R2”**;

Construction Schedule (sometimes referred to as “Progress Schedule”) to be attached as **Exhibit “R3”**;

Construction Manager’s Allowances to be attached as **Exhibit “R4”**;

Construction Manager’s Assumptions and Clarifications to the GMP, if any, to be attached as **Exhibit “R5”**;

List of extended warranties to be attached as **Exhibit “R6”**;

Construction Manager’s Stipulated General Conditions and General Requirements to be attached as **Exhibit “R7”**;

Submittal Schedule to be attached as **Exhibit “R8”**.

2.1.18 Construction Manager’s Key Employees attached as **Exhibit “S”**.

2.1.19 The following which may be delivered or issued after the Effective Date of the Agreement may not be attached hereto: Notice to Proceed, all written amendments and Change Orders signed by both parties and other documents amending, modifying, or supplementing the Contract Documents pursuant to paragraph 3.04 of the General Conditions, as well as the GMP Amendment and any exhibits attached thereto.

2.2 The Contract Documents listed under Article 2 above are attached to this Agreement (except as expressly noted otherwise above) and include any documents referenced in the Agreement or Contract Documents to be incorporated by reference. The Contract Documents shall be interpreted together and in harmony with one another. In the event of a conflict between or among the Contract Documents, whichever document imposes the greater obligation on Construction Manager shall control. The Construction Manager must call any such conflict or discrepancy to the Village’s attention, in writing or the Construction Manager waives and releases any claims it might have related to such conflict, unless otherwise stated herein. The Construction Manager shall not proceed when in doubt as to any dimension or measurement but shall seek clarification from the Engineer.

ARTICLE 3 – CONSTRUCTION MANAGER RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 3.1 and 3.2 and in the Contract Documents. The Construction Manager's Construction Phase responsibilities are set forth in Section 3.3 and in the Contract Documents. The Owner and Construction Manager may agree in writing, in consultation with the Engineer, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. Construction Manager shall perform its Preconstruction Services in accordance with the Preconstruction Services Schedule attached as **Exhibit "I"** which may be adjusted from time to time by Owner and as set forth below in Section 3.1. The Construction Manager's representative who is authorized to act on behalf of Construction Manager is: _____.

3.1 Preconstruction Phase

3.1.1 The Construction Manager shall assign a Project Manager who shall be the Project Manager during Preconstruction and Construction Phase Services unless otherwise agreed upon in writing.

3.1.2 The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and Project construction budget requirements, each in terms of the other. It is the intent of the Construction Manager at Risk Project Delivery system to engage the Construction Manager as an active participant in the design process working with the Owner and Engineer and Construction Team in maintaining the Project construction budget and scope. The Project construction budget, general scope and Owner's program are set forth in the RFQ attached as **Exhibit "B"**.

3.1.3 Consultation & Review of Design Documents

3.1.3.1 The Construction Manager shall schedule and conduct meetings with the Engineer and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work. The Construction Manager shall advise the Owner and the Engineer on proposed site use and improvements, selection of materials, and building systems and equipment. The Construction Manager shall also provide recommendations consistent with the Project requirements to the Owner and Engineer on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

3.1.3.2 Construction Manager shall review Engineer's designs during their development as to constructability, including without limitation bringing to the Owner's and Engineer's attention any known observations in the design that appear to be ambiguous, confusing, conflicting or erroneous. With respect to each such issue, the Construction Manager shall submit a written report to both the Owner and the Engineer. At a minimum, each such written report shall contain: (1) A description of the constructability issue with background information; (2) A summary of the Construction Manager's in-depth study/research; and, (3) Written recommendations for addressing the issue. Construction Manager shall provide recommendations on relative feasibility of construction methods, compliance with applicable laws, codes, and ordinances, availability of materials and labor, time requirements for procurement, logistical considerations, installation and construction and factors related to cost including, but not limited to, costs of alternative designs or materials, preliminary budgets and possible economies, while maintaining the Owner's design objectives.

3.1.3.3 The Construction Manager shall provide a thorough interdisciplinary coordination review of the Construction Drawings and Specifications submitted for review to the agency having jurisdiction for plan review and building permits, before final contracting with any Subcontractor. Review shall be performed utilizing a structured and industry accepted process. The Construction Manager shall review the final documents to see that all comments have been incorporated. Construction Manager shall not be entitled to any adjustment to the Guaranteed Maximum Price for coordination or errors or omissions in the Construction Drawings and Specifications which should have been identified by Construction Manager during Preconstruction Phase Services in its capacity as an experienced and qualified Construction Manager.

3.1.3.4 The Construction Manager shall review the drawings and specifications as they are being prepared, recommending alternative solutions whenever design details affect costs, construction feasibility or schedules. The Construction Manager shall notify the Owner and Engineer in writing upon observing any

known features in the plans or specifications, which appear to be ambiguous, confusing, conflicting or erroneous or which are not in accordance with applicable laws, codes or ordinances. All ambiguous, confusing, conflicting and/or erroneous features discovered in the plans or specifications by the Construction Manager during the review process shall be deemed to be corrected, and any associated costs shall be included in the Guaranteed Maximum Price (GMP). The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Engineer and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information.

3.1.3.5 It is incumbent upon the Construction Manager to advise the Owner and Engineer of recommended building components and systems before the design professionals have comprehensively documented the materials, systems and equipment within the project.

3.1.4 Scheduling.

3.1.4.1 Preconstruction Services Schedule. Construction Manager has prepared a preliminary Preconstruction Services Schedule which is attached as **Exhibit "I"**. When Project requirements have been sufficiently identified, the Construction Manager shall prepare and periodically update a Preconstruction Services Schedule for the Engineer's review and the Owner's acceptance. The Construction Manager shall obtain the Engineer's approval for the portion of the Preconstruction Services Schedule relating to the performance of the Engineer's services. The Preconstruction Services Schedule shall coordinate and integrate the Construction Manager's services, the Engineer's services, other Owner consultants' services, and the Owner's responsibilities and identify items that could affect the Project's timely completion. The updated Preconstruction Services Schedule shall include the following: dates for delivery of Engineer's deliverables, times for review of such deliverables by Owner and Construction Manager, dates for delivery of Construction Manager's Cost Estimates, date for submission of the Guaranteed Maximum Price proposal and the anticipated date for commencement of the Work, and Substantial Completion of the Work.

3.1.4.2 Construction Schedule/Progress Schedule. Further, along with Construction Manager's cost estimates, Construction Manager shall prepare a Construction Schedule for performance of the Work which shall become more detailed as the Engineer's plans and specifications become more detailed. Such Construction Schedule shall, generally, include times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered well in advance of construction; the occupancy requirements of the Owner, Substantial Completion and Final Completion. As part of the GMP Amendment, Construction Manager shall provide a detailed Construction Schedule meeting all requirements of the Contract Documents including, but not limited to Section 2.07 of the General Conditions, which, upon approval by Owner, shall become the Construction Schedule for the performance of the Work.

3.1.4.3 The Construction Manager agrees that time is of the essence in maintaining the Preconstruction Services Schedule and the Project Schedule. The Construction Manager shall work closely with the Construction Team to provide input and make recommendations, recognizing that cost is one of a number of issues which will influence the selection of building components and systems, that will allow the Project to be timely completed within the Owner's Project construction budget.

3.1.5 Value Engineering.

3.1.5.1 After a complete review of the Schematic Design Phase and at any other time requested by Owner or as otherwise appropriate, evaluate the design and obtain an understanding of the intent of the Owner and Engineer, provide an initial value analysis and offer cost savings suggestions and best value recommendations to the Engineer and Owner. All recommendations shall be in writing and must be fully reviewed with and approved by the Owner and Engineer prior to implementation.

3.1.5.2 Value analysis efforts shall result in a design that is most effective in the first costs as well as long term operational costs relative to issues of energy use and facility maintainability. Value analysis studies shall including life cycle cost analysis as may be required to assist the Construction Team in achieving an appropriate balance between costs, aesthetics and function. Value analysis efforts shall also take into consideration applicable constructability issues. All value analysis studies shall be continuous as the design is being developed and must be provided on a timely basis within the design schedule and Preconstruction Services Schedule.

3.1.6 Cost Estimates

3.1.6.1 Based on the preliminary design and other design criteria prepared by the Engineer, the Construction Manager shall prepare preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume or similar conceptual estimating techniques for the Engineer's review and Owner's approval. If the Engineer or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

3.1.6.2. As the Engineer progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at the intervals set forth below, estimates of the Cost of the Work of increasing detail and refinement and allowing for the further development of the design until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. Such estimates shall be provided for the Engineer's review and the Owner's approval. The Construction Manager shall inform the Owner and Engineer when estimates of the Cost of the Work exceed the latest approved Project construction budget and make recommendations for corrective action. Cost estimates shall be delivered within 30 days of delivery of the following design deliverables:

1. Completion of Schematic Design Documents
2. Completion of 100% Design Development Documents
3. Completion of 90% Construction Documents – GMP Proposal

3.1.6.3 Along with each Cost Estimate, Construction Manager shall also deliver an updated Project Schedule and report setting forth a summary of all of the Construction Manager's Preconstruction Services required by this 3.1 and 3.2 including, but not limited to identification of constructability issues, value-engineering alternatives, recommendations for materials or equipment, identification of any errors, omissions or concerns regarding design documents.

3.1.6.4 All detail supporting the cost estimates shall be provided to Owner and Engineer, including, but not limited to subcontractor and supplier pricing, proposals and quotations. All documents, writings, materials, estimates, pricing, proposals, schedules, reports, and other materials prepared by Construction Manager during Preconstruction Services shall be the property of Owner and shall be delivered to Owner upon request.

3.1.7 Subcontractors and Suppliers. The Construction Manager shall develop bidders' interest in the Project. The Construction Manager shall prepare, for the Engineer's review and the Owner's acceptance, a procurement schedule for items that must be ordered well in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered well in advance of construction. If authorized by Owner in writing, either the Owner or the Construction Manager will procure the items on terms and conditions acceptable to both the Owner and Construction Manager. Provided a GMP Amendment is executed, Construction Manager shall be responsible for all obligations, warranties, and responsibilities with respect to such long items subject to advance procurement.

3.1.8 Notices and Compliance with Laws. The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by Owner.

3.2 Guaranteed Maximum Price Proposal and Contract Time

3.2.1 Within not more than thirty days from the issuance of the 90% Construction Documents by the Engineer, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's review and acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, including an Owner's Contingency, and the Construction Manager's Fee.

3.2.2 To the extent that the Drawings and Specifications are anticipated to require further development by the Engineer, the Construction Manager shall provide in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

3.2.3 The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:

1. A list of the Drawings and Specifications, including all Addenda thereto;
2. A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal;
3. A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, allowances, Owner's Contingency, and the Construction Manager's Fee;
4. The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based;
5. A list of proposed Subcontractors; and
6. A list of proposed Owner Direct Purchases.

3.2.4 The Construction Manager shall meet with the Owner and Engineer to review the Guaranteed Maximum Price proposal. In the event that the Owner and Engineer discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

3.2.5 We accepted by Owner, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based. Further, it shall set forth the Contract Time, and liquidated damages for the construction phase of the Work. A Public Construction Bond and Form of Guarantee on the Owner's standard forms shall be provided by the Construction Manager simultaneously with the GMP Amendment. The GMP Amendment shall also include Construction Manager shall also include the detailed Project schedule for the Work and submittal schedule required by the Contract Documents. However, the Owner has the right to reject any GMP Proposal as originally submitted, or as adjusted. In addition, the Owner has the right to withhold, in its sole discretion, approval of any GMP Amendment.

3.2.6 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the commencement of the Construction Phase, unless the Owner provides prior written authorization for such costs.

3.2.7 The Owner shall authorize the Engineer to provide the revisions to the Drawings and Specifications to incorporate the agreed upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish those revised Drawings and Specifications to the Construction Manager as they are revised. The Construction Manager shall notify the Owner and Engineer of any inconsistencies between the Guaranteed Maximum Price Amendment and the revised Drawings and Specifications.

3.2.8 The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed.

3.2.9 In the event that the GMP Proposal exceeds the Project construction budget, the Owner reserves the right to direct the Construction Manager to (and the Construction Manager shall) work in conjunction with the Engineer to redesign the Project as necessary to maintain the Project Program and meet the Project construction budget. After consultation with the Owner, the Construction Manager shall coordinate and cooperate with the Construction Team to alter and redraft Construction Documents as necessary to accomplish the required reduction in cost. Notwithstanding, Owner shall not be obligated to execute any GMP Amendment at any time in its sole discretion.

3.2.10 There shall be no agreement for Construction Phase Services and for performance of the Work until such time as the GMP Amendment is executed. If a GMP Amendment is not executed for any reason, Construction Manager shall be entitled to payment of its Preconstruction Services Fee earned for Preconstruction Services performed, but in no event shall be entitled to any additional compensation or damages including but not limited to lost profits or fee on Work not performed, GMP Proposal preparation costs, consequential or other damages.

3.3 Construction Phase

3.3.1 The date of commencement of the Work shall mean the date indicated in the GMP Amendment for the commencement of the Construction Phase.

3.3.2 Administration

3.3.2.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. The Construction Manager shall obtain bids from Subcontractors and from suppliers of materials for the Work and shall deliver such bids to the Engineer and Owner with the Construction Manager's recommendation on which subcontractor or supplier to select. The Owner shall raise any objection to any proposed Subcontractor or supplier in writing within ten (10) days of receipt. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection. Subcontractors shall be competitively bid and entered into on a lump-sum price basis. Except as expressly authorized by Owner in writing subcontracts shall not be on a cost plus basis. The Construction Manager shall not allow any Subcontractor to enter the Project site to perform work prior to executing an approved subcontract and delivering to the Owner the insurance certificate(s) required herein and in the subcontract.

3.3.2.2 If the Guaranteed Maximum Price has been established and when a specific bidder (1) is recommended to the Owner by the Construction Manager, (2) is qualified to perform that portion of the Work, and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Contract Time and the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount and time requirement of the subcontract or other agreement actually signed with the person or entity designated by the Owner. If the Construction Manager recommends a specific bidder that may be considered a "related party", then the Construction Manager shall promptly notify the Owner in writing of such relationship and notify the Owner of the specific nature of the contemplated transaction.

3.3.2.3 Construction Manager shall provide copies of fully executed Subcontracts, supply agreements, insurance certificates and, if required, bonds to the Owner, when requested. The Contractor shall proceed to expeditiously complete the S buyout of Subcontracts and supply agreements ("Subcontractor Buyout"). Once the Subcontract Buyout is complete, if the amount of the executed Subcontract, supply, and trade agreements is less than the amounts set forth in the Schedule of Values included as part of the Guaranteed Maximum Price, the difference shall be considered "buyout savings" and shall be transferred to the Owner's Contingency in the Application for Payment following completion of the buyout.

3.3.2.4 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If the Subcontract is awarded on a cost plus fee basis, the Construction Manager shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager and such agreements shall otherwise comply with the Contract Documents.

3.3.2.5 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes to the Owner and Engineer. Construction Manager shall manage, schedule and coordinate the Work, including the Work of the Subcontractors, and coordinate the Work with the activities and responsibilities of the Owner, Engineer and Construction Manager in order to complete the Project in accordance with the Owner's objectives of cost, time and quality. Construction Manager shall supervise the Work of all Subcontractors and suppliers so that the work conforms to the requirements of the plans and specifications.

3.3.2.6 Labor. Construction Manager shall not utilize any labor, materials or means whose employment or utilization during the course of this Agreement may tend to or in any way cause or result in strikes, work stoppages, delays, suspension of Work or similar trouble by workmen employed by its Subcontractors, or by any of the trades working in or about the Project and premises where Work is being performed under this Agreement, or by other contractors or their subcontractors pursuant to other contracts, or on any other project and project site or premises owned or operated by Owner.

3.3.2.7 QA/QC Plan. Within ten (10) days of execution of the Agreement, Construction Manager shall develop and establish, for the Owner's benefit, review and approval, a Quality Assurance/Quality Control Plan (QA/QC Plan) in order that the standards of construction called for in the Contract Documents are met. The QA/QC Plan shall address the processes, procedures and responsibilities for the identification, tracking and resolution of all non-conforming work. Construction Manager shall utilize the QA/QC Plan to monitor the Work and shall deliver to the Owner updates based upon the approved QA/QC Plan. Construction Manager shall develop a checking and testing procedure that will ensure that all systems are adequately tested and balanced before their acceptance. Construction Manager shall coordinate and monitor all testing provided by others as required by all Contract Documents. Construction Manager shall keep an accurate record of all tests, inspections conducted, findings and test reports.

3.3.2.8 Construction Manager's Reports. The Construction Manager shall record the progress of the Project. On a monthly basis as a condition precedent to the Owner's obligation to make payment, the Construction Manager shall submit written progress reports to the Owner and Engineer, showing percentages of completion, detailed and updated Project Schedule, and other information required by the Owner. The Construction Manager shall also keep, and make available to the Owner and Engineer, a daily log containing a record for each day; date; weather conditions and how any weather condition affected progress of the Work; time of commencement of Work for the day; the Work being performed; materials, labor, personnel, equipment and Subcontractors at the Project site(s); visitors to the Project, including representatives of the Owner, regulatory representatives; any special or unusual conditions or occurrences encountered; and the time of termination of Work for the day. All information shall be recorded in the daily log. The daily log shall be kept on the Project(s) site(s) and shall be available at all times for inspection and copying by the Owner. The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Engineer and shall provide this information in its monthly reports to the Owner and Engineer.

3.3.2.9 Superintendence and Supervision. The Construction Manager shall supervise and direct the Work using its best skill and attention. The Construction Manager shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Construction Management Agreement. All Work shall be performed by craftsmen skilled in the trades and application of materials involved. Construction Manager shall employ and maintain on the Project only competent personnel including during the progress of the Work a full-time competent English speaking superintendent and any necessary assistants, all satisfactory to the Owner. The Construction Manager shall employ the Key Employees identified in **Exhibit “S”** who shall not be replaced and who shall remain on the Project until Final Completion unless otherwise approved in writing by Owner. The person identified above in the first paragraph of Article 3 shall be deemed the Construction Manager's authorized representative (“CM’s Authorized Representative”) at the site and shall be authorized to receive and accept any and all communications from the Owner’s Representative. CM’s Authorized Representative shall not be changed except with the written consent of the Owner’s Representative, unless CM’s Authorized Representative proves to be unsatisfactory to the Construction Manager or ceases to be in its employ. CM’s Authorized Representative shall represent the Construction Manager and all direction given to CM’s Authorized Representative shall be as binding as if given to Construction Manager. The Owner shall be provided telephone number(s) for CM’s Authorized Representative.

3.3.2.10 Review the Construction Schedule with the various Subcontractors and review, or expand, the level of detail to incorporate specific Subcontractor’s input consistent with the overall completion requirements. Regularly monitor and update the Project Schedule and various sub-networks as construction progresses. Identify potential variances between scheduled and probable completion dates. Review schedule for Work not started, or incomplete, and make adjustments in the schedule to meet the scheduled completion date. Provide summary reports of each monitoring and document all changes in schedule. Regular schedule updates and reporting shall be included as part of the monthly project report outlined herein.

3.3.2.11 Determine the adequacy of the Subcontractors’ personnel and equipment, and the availability of materials and supplies to meet the schedule. In consultation with the Owner and the Engineer, take necessary corrective actions when requirements of a Trade Contract or a Trade Contract Schedule are not being met.

3.3.2.12 The Construction Manager shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work including, but not limited to the erection of barricades to minimize the risk of injury to persons or property and persons. The Construction Manager shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to (1) all employees on the Work and other persons who may be affected thereby; (2) all the Work and all materials and equipment to be incorporated therein; and (3) other property at the site or adjacent thereto, such as buildings, landscaping, sidewalks, trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction, Specifically and without limitation, Construction Manager shall comply with all OSHA regulations regarding job safety and all applicable laws, ordinances, rules, regulations and orders of any public authority having jurisdiction for the safety of persons or to protect them from damage, injury or loss. Construction Manager shall erect and maintain, as required by existing conditions and performance of the Work, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and businesses.

3.3.2.12.1 All damage or loss to any the Owner's property or the property of any third party, caused in whole or in part by the Construction Manager, any subcontractor, any sub-subcontractor or anyone directly employed by any of them, or by anyone for whose acts any of them may be liable, shall be remedied by the Construction Manager at his sole cost and expense.

3.3.2.13 Construction Manager shall be responsible for providing security acceptable to the Owner, to protect the Project site and materials stored off-site, or on-site, against theft, vandalism, fire and accidents, damage, or injury to person(s) or property, etc., as required by job and location conditions.

3.3.2.14 Construction Manager shall comply with all requirements of federal and state funding agreements which apply to all or a part of the work including preparing such reports and make such certifications and representations as may be required by Owner.

ARTICLE 4 – OWNER’S RESPONSIBILITIES

4.1 The Owner will designate a representative to act in its behalf as set forth in Section 1.1.5 above, unless such Owner’s Representative is changed in writing by the Owner. This representative, or his/her designee will receive progress reports of the Work, serve as liaison with the Construction Manager and the Engineer, receive and process communications and paperwork, and to represent the Owner in the day-to-day conduct of the Project. The Construction Manager will be notified in writing of the representative and of his/her designee or any changes thereto. Only the persons set forth in the Village of Wellington’s Purchasing and Procurement Procedures Manual as adopted by Resolution No. R2014-12 shall be authorized to approve Changes Orders or other modifications to the Contract Time or Contract Price.

4.2 The Owner will review and approve or take other appropriate action on the Construction Manager's preconstruction deliverables in a timely manner

4.3 During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner’s control and relevant to the Construction Manager’s performance of the Work with reasonable promptness after receiving the Construction Manager’s written request for such information or services.

ARTICLE 5 - SCHEDULE

5.1 Preconstruction Phase: The Construction Manager shall perform all Preconstruction Services in a timely and efficient manner in accordance with **Exhibit “I”**.

5.2 Construction Phase: The number of days for performance of the Work under the construction phase of this Agreement shall be established in the Guaranteed Maximum Price Amendment to this Agreement. At the time a Guaranteed Maximum Price (GMP) is established and the GMP Amendment executed, a Project Substantial Completion date and a Project Final Completion date shall also be established in the GMP Amendment. The Construction Manager agrees to complete the construction in accordance with the agreed upon Substantial Completion date and Final Completion Date. The Construction Manager acknowledges that failure to complete the Project within the Contract Time set forth in the approved schedule will result in substantial damages to the Owner. Liquidated Damages as provided for in the GMP Amendment shall be assessed.

ARTICLE 6 - COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

6.1 Compensation

6.1.1 For the Construction Manager’s Preconstruction Phase services described in Sections 3.1 and 3.2 shall not exceed \$_____ without the prior, written approval of Owner (“Preconstruction Services Fee”). Proposal for Preconstruction Services Fee attached hereto as Exhibit “N”.

6.2 Payments

6.2.1 Unless otherwise agreed, payments for Preconstruction Services shall be made monthly in proportion to services performed.

6.2.2 Construction Manager shall submit its Application for Payment to the Owner and Engineer monthly along with a release of lien which form shall conform to the Florida's Construction Lien Law 713.01 et. seq. and/or Fla. Stat. § 255.05, and shall be in such forms as approved by the Owner. Owner shall make payment of amounts authorized by Engineer within twenty (20) days of receipt of the Construction Manager's Application for Payment for Preconstruction Services. No retention shall be held on Preconstruction Phase Services.

ARTICLE 7 - COMPENSATION FOR CONSTRUCTION PHASE SERVICES

7.1 For the Construction Manager's performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager the Contract Price in current funds. The Contract Price is the Cost of the Work as defined in Article 8 plus the Construction Manager's Fee, plus the Owner's Contingency.

7.1.1 The Construction Manager's Fee: _____% of the Cost of the Work defined in Article 8 below. Notwithstanding, Construction Manager's insurance and bond costs shall not be subject to Construction Manager's Fee.

7.1.2 Method of adjustment for Construction Manager's Fee for Changes in the Work: Subject to negotiation, but in no event shall ever exceed the Construction Manager's Fee set forth in 7.1.1.

7.1.3 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work: Subcontractor's overhead and profit on changes in the Work shall be limited to 10% of the Subcontractor's Cost of the Work for the change.

7.1.4 Rental rates for Construction Manager-owned equipment shall not exceed 90% of the standard rate paid at the place of the Project.

7.2 Guaranteed Maximum Price/Contract Price

7.2.1 The Construction Manager guarantees that the Contract Price shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, as it is amended from time to time. To the extent the Cost of the Work exceeds the Guaranteed Maximum Price, the Construction Manager shall bear such costs in excess of the Guaranteed Maximum Price without reimbursement or additional compensation from the Owner. The GMP includes all permits, taxes, licenses, fees, bonds, performance tests, and governmental inspection fees (excluding those imposed by the Village), unless otherwise set forth in this Agreement.

7.2.2 The Guaranteed Maximum Price is subject to additions and deductions by Change Order as provided in the Contract Documents and the Date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

7.2.3 The GMP includes an Owner's Contingency in the amount set forth in the GMP Amendment which shall be available for Owner's use at Owner's sole discretion for any reason including but not limited to costs for Changes in the Project. When Owner directs an Owner's Contingency expenditure, Construction Manager shall reflect the Owner's Contingency amount and transfers through the monthly requisition process. Transfers shall reflect a zero sum adjustment to the GMP, by subtraction from the Owner's Contingency for every addition to line items being increased or creation of new line items. Nothing provided herein shall cause the GMP to be construed as a "line item GMP." The Owner's Contingency shall not be considered a Cost of the Work and Construction Manager shall not be entitled to any Fee on the Owner's Contingency unless and until a particular portion of the Owner's Contingency is authorized by Owner to be transferred pursuant to a Change Order, at which point Construction Manager will be entitled to Fee on the used portion of the Owner's Contingency (except that there shall be no Fee on Construction Manager's insurance and bond costs); however, Construction Manager shall not be entitled to any Fee on any unused portion of the Owner's Contingency. Any unused Owner's Contingency shall inure 100% to the Owner and a deductive Change Order shall be issued reducing the GMP.

7.3 Changes in the Work

7.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. For Preconstruction Services which are beyond the scope set forth in this Agreement, the Construction Manager shall be entitled to an equitable adjustment of its Preconstruction Services Fee.

7.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be made in accordance with Article 10 of the General Conditions and shall be based on the actual Cost of the Work of the Change and subject to Sections 7.1.2 and 7.1.3 above.

7.3.3 The Construction Manager further acknowledges and represents that it has made a thorough and careful examination and inspection of existing conditions on the Project site including, but not limited to, through performance of its Preconstruction Services, inspection and investigation of both surface and subsurface conditions, site logistics, access, traffic and other factors impacting construction, and the Construction Manager expressly acknowledges and agrees that it shall make no claim for additional compensation due to existing site conditions including, but not limited to, rock, surface and subsurface water, existing structures, and deficient soil, provided said conditions could be determined or ascertained from a thorough and careful examination and inspection of the site. Further, as part of Preconstruction Services, Construction Manager has participated in the review, development and revisions of the Plans along with the Construction Team and has had sufficient opportunity to review such plans for coordination and constructability issues. As Construction Manager, Construction Manager has been working extensively with the Owner and Engineer during Preconstruction Phase Services. Construction Manager has participated in value-engineering, reviewed the Plans for conflicts, reviewed all information provided by the Owner regarding the Project, and investigated the Project site. Further, Construction Manager has conducted due diligence investigation of the Project, the site, including investigation of underground and ground conditions, the surrounding areas, logistics for the Work. As such, it is the parties' intention that Construction Manager shall not be entitled to a Change Order or Claim based on conflicts and coordination within/among the Plans, constructability issues, existing conditions of the Project, and other matters which Construction Manager should have anticipated based on its Preconstruction Services.

ARTICLE 8 COST OF THE WORK FOR CONSTRUCTION PHASE

8.1 Costs to Be Reimbursed

8.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in Sections 8.1 through 8.8.

8.1.2 Where any cost is subject to the Owner's prior approval, the Construction Manager shall obtain this approval prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing Guaranteed Maximum Price Amendment.

8.2 Labor Costs, General Conditions & General Requirements

8.2.1. General Conditions Costs. The term General Conditions Costs shall mean the necessary and reasonable final negotiated and pre-approved costs incurred by the Construction Manager for the direct Project personnel used in the Work at the negotiated staff rates in the approved in the Stipulated General Conditions Exhibit to the GMP Amendment (to be attached as **Exhibit "R7"**), which are "all inclusive" and include the salaries, wages of all employees, labor burden ("Labor Burden") which includes but not limited to: employee benefits, profit, overhead, cost of contributions, assessments or taxes incurred during the performance of the Work for such items as unemployment compensation, social security, insurance, medical and health benefits, and pension and retirement contributions of all labor in the employ of Construction Manager (including the Project Executives and Managers, Project superintendent and assistants, foreman, engineers, safety personnel, Project schedulers, timekeepers, clerks, cost accountants, secretaries, laborers and other tradesmen as required to perform the Work) when stationed, whether

permanent or temporary, in the Field office at the site. Employee bonuses and incentive compensation are not a reimbursable Cost of the Work. If any personnel are replaced or if the Construction Manager brings additional personnel to the Project site, the Construction Manager shall get written authorization from the Owner prior to those personnel being charged to the Project. The Construction Manager's General Conditions shall be transparent with Construction Manager providing all information necessary for Owner to verify and audit all General Conditions Costs including, Construction Manager's burden. The Construction Manager's General Conditions Costs shall be a component in the Schedule of Values, and shall be stated as a guaranteed (not to exceed) maximum line item amount for actual general conditions costs through Final Completion. The General Conditions Costs include the following:

8.2.1.1 Actual costs of field Project Site office & Site Office Expenses.

- a. On-site temporary offices/trailers/Storage Units
- b. On-site temporary office furniture, equipment and Supplies.
- c. Job Site Computers with software, Copiers, Fax, Servers, etc.
- d. Job Site Communications (Monthly Cell Phone Expenses or radios, chargers, etc.
- e. Miscellaneous Job Office Supplies, stationery, Postage, overnight mail, etc.
- f. Messenger service
- g. Field Office Maintenance and Cleaning
- h. Parking Logistics & Parking Permits
- i. Drinking Water & Supplies (site and offices)
- j. As-built & Record Document Preparation
- k. Printing Costs and general reproduction costs

8.2.1.2 Temporary Utilities as approved by Owner including but not limited to:

- a. Temporary Power Consumption (Offices & General Site Use)
- b. Temporary Water and Sewer Consumption, including temporary sewer and disposal costs
- c. Temporary Water Hookup including Distribution & Meters
- d. Temporary Electrical Hookup including Distribution & Meters
- e. Temporary Telephone, Internet & Network System Installation and Consumption Fees, Temporary Fire Protection

8.2.1.3 Temporary Site Requirements:

- a. Mobilization & Demobilization
- b. Traffic Control Measures

- c. Barricades & Signage
- d. Site Lighting
- e. Entries and Truck Washes, Street Cleaning
- f. Fencing
- g. Toilets/Sanitary Measures
- h. Jobsite equipment
- i. Dumpsters (site and field offices), Trash Chutes & Rubbish Removal
- j. All costs for cleanup and removal of debris including Final Clean (general site, windows/glass, etc.)
- k. Pest Control Program
- l. Security System/Watchman
- m. Construction Photo Documentation
- n. Project signs including both legal and code required signage and appropriate signage to identify the Project, to be developed by and/or approved by Owner;
- o. Fuel and maintenance for all construction equipment used in connection with the Work (if the rental rates established for any vehicles owned by Construction Manager or a related entity do not include fuel and maintenance costs)
- p. Temporary Fire Protection
- q. Temporary Protection (in-place work/adjacent structures)
- r. Temporary Weather Protection/Enclosures
- s. Small Tools & Consumables

8.2.1.4 All Safety Requirements.

8.2.1.5 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the Project Site office except as expressly authorized by the stipulated General Conditions set forth as an Exhibit to the GMP Amendment.

8.2.2 General Requirements Costs. The term General Requirements Costs shall mean the necessary and reasonable final negotiated and pre-approved in writing costs incurred by the Construction Manager directly as approved in the Stipulated General Conditions Exhibit to the GMP Amendment (to be attached as **Exhibit ("R7")**). The Construction Manager's General Requirements shall be transparent with Construction Manager providing all information necessary for Owner to verify and audit all General Requirements Costs. The Construction Manager's General Requirements Costs shall be a line item(s) component in the Schedule of Values. The Construction Manager's General Requirements Costs are subject to the same submittal, review and approval procedures as any other component of the Cost of The Work. There shall be no overlap between General Requirements and General Conditions costs.

8.3 Subcontract Costs

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts. The Construction Manager shall use reasonable efforts to provide a minimum of three (3) bids/proposals for all Work included in Cost of the Work for the Owner's review and consideration prior to the Construction Manager procuring the Work for same.

8.4 Costs of Materials and Equipment Incorporated in the Completed Construction.

8.4.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction. The Owner must approve all advance payments for Subcontractors deposits and advances for Work deemed "long lead items", or "special order items" or other selected items pertaining to the project Work.

8.4.2 Costs of materials described in the preceding Section 8.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

8.4.3 Costs of replacement material but only where replacement material is necessitated by causes other than the negligence of Construction Manager or their Subcontractors, suppliers or anyone for which they may be responsible.

8.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items.

8.5.1 To the extent not already included in the Construction Manager's General Conditions, costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.

8.5.2 To the extent not already included in the Construction Manager's General Conditions, rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Construction Manager-owned item may not exceed the purchase price of any comparable item. Rates of Construction Manager-owned equipment and quantities of equipment shall be subject to the Owner's prior approval.

8.5.3 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.

8.6 Miscellaneous Costs.

8.6.1 Premiums for that portion of insurance and Construction Manager's bonds (Construction Manager's Payment and Performance Bond) required by the Contract Documents that can be directly attributed to this Contract. Self-insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.

8.6.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Construction Manager is liable.

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

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

8.6.6 Costs for electronic equipment and software, directly related to the Work with the Owner's prior approval.

8.6.7 Deposits lost for causes other than the Construction Manager's or any Subcontractor's, supplier's, or vendor's negligence or failure to fulfill a specific responsibility in the Contract Documents.

8.6.8 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager or Construction Manager and its subcontractors, sub-subcontractors, suppliers or laborers, necessarily and reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior written approval, but which shall not be subject to Construction Manager's Fee.

8.7 Other Costs and Emergencies.

8.7.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.

8.7.2 Costs incurred in taking reasonable action to prevent threatened damage, including hurricane damage, injury or loss in case of an emergency affecting the safety of persons and property.

8.8 Related Party Transactions.

8.8.1 For purposes of Section 8.8, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Construction Manager; any entity in which any stockholder in, or management employee of, the Construction Manager owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Construction Manager. The term "related party" includes any member of the immediate family of any person identified above.

8.8.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods or service from the related party, as a Subcontractor. If the Owner fails to authorize the transaction, the Construction Manager shall procure the Work, equipment, goods or service from some person or entity other than a related party.

8.9 Items that are not Reimbursable Costs of the Work. The cost of the Work shall not include the following items:

8.9.1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the Project Site office except as expressly authorized by the stipulated General Conditions set forth as an Exhibit to the GMP Amendment.

8.9.2 Expenses of the Construction Manager's principal office and offices other than the Project Site.

8.9.3 Home office overhead and general expenses.

8.9.4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work.

8.9.5 Rental costs of machinery and equipment, except as specifically provided in Article 8.

8.9.6 Procurement of capital equipment or other similar products of such nature shall not be construed as part of the Construction Manager's General Requirements; the costs associated with such procurements shall be the sole obligation of the Construction Manager and shall not be included in the Contract Price.

8.9.7 Costs due to the fault or negligence of the 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 non-conforming Work, disposal and replacement of materials and equipment incorrectly ordered or supplied, and making good damage to property not forming part of the Work.

8.9.8 Any cost not specifically and expressly described in Article 1.

8.9.9 Damages assessed in favor of Owner against Construction Manager.

8.9.10 Costs which would cause the Guaranteed Maximum Price to be exceeded.

8.9.11 No costs shall be paid to the Construction Manager for any expense related to correcting defective workmanship or work not in conformance with the plans or specifications.

8.10 Discounts, Rebates and Refunds

8.10.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included them in an Application for Payment and received payment from the Owner; or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

8.10.2 Amounts that accrue to the Owner in accordance with the provisions of Section 8.10.1 shall be credited to the Owner as a deduction from the Cost of the Work.

8.11 Related Party Transactions

8.11.1 For purposes of Section 8.11, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Construction Manager; any entity in which any stockholder in, or management employee of, the Construction Manager owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Construction Manager. The term "related party" includes any member of the immediate family of any person identified above.

8.11.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods or service from the related party, as a Subcontractor. If the Owner fails to authorize the transaction, the Construction Manager shall procure the Work, equipment, goods or service from some person or entity other than a related party.

8.12 Accounting Records

8.12.1 The Construction Manager shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, purchase orders, vouchers, memoranda and other data relating to this Contract. The

Construction Manager shall preserve these records the required retention period of the Florida Public Records Act (Chapter 119, Florida Statutes), if applicable, or if the Florida Public Records Act is not applicable, for a minimum period three years after final payment, or for such longer period as may be required by law. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings.

IF THE CONSTRUCTION MANAGER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, OR TO THE CONSTRUCTION MANAGER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS, CHEVELLE ADDIE AT 561-791-4000, CADDIE@WELLINGTONFL.GOV , 12300 FOREST HILL BLVD. WELLINGTON, FL 33414.

8.12.2 In accordance with Palm Beach County Ordinance Number 2011-009, this Agreement may be subject to investigation and/or audit by the Palm Beach County Inspector General. The Construction Manager has reviewed Palm Beach County Ordinance Number 2011-009 and is aware of its rights and/or obligations under such ordinance.

ARTICLE 9 - PAYMENT

9.1 For Preconstruction Phase Services, Owner shall make payment of the amounts set forth in Article 6, upon submission of an Application for Payment by Construction Manager. Each Application for Payment shall also include a release of lien for Preconstruction Services performed in accordance with Chapter 713, Florida Statutes, along with all of the deliverables set forth in required by Articles 3.1-3.2 above.

9.2 For Construction Phase Services

9.2.1 Construction Manager shall prepare a Schedule of Values allocating the entire Guaranteed Maximum Price to the various portions of the Work which shall be an Exhibit to the GMP Amendment. The Construction Manager shall not imbalance its Schedule of Values nor artificially inflate any element thereof. Any violation of this provision by the Construction Manager shall constitute a material breach of this Construction Management Agreement. The Schedule of Values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Construction Manager's Fee shall be shown as a single separate item. The Schedule of Values shall be used as a basis for the Construction Manager's Applications for Payment. With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Engineer to demonstrate that cash disbursements already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, less that portion of those payments attributable to the Construction Manager's Fee, plus payrolls for the period covered by the present Application for Payment.

9.2.2 Payments shall be made in accordance with the provisions of this Article 9 and Article 14 of the General Conditions. A Payment and Performance Bond in accordance with Section 255.05, Florida Statutes, shall be a precondition for payment of any Construction Phase Services

9.2.3 PROGRESS PAYMENTS. Pursuant to Article 14 of the General Conditions, Owner shall make progress payments on account of the Work performed, including any Unit Price Work,

on the basis of Construction Manager's Applications for Payment as recommended by Engineer, on or about the **10th** day of each month during construction as provided below. Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Construction Manager on account of that portion of the Work for which the Construction Manager has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. **In no event shall Owner be obligated to make payment of amounts for which Construction Manager has not substantiated the actual Cost of the Work as set forth in Article 8.**

9.2.4 Subject to Article 14 of the General Conditions and compliance with the other provisions of this Agreement, the amount of each progress payment shall be computed as follows:

9.2.4.1 The amount of each progress payment shall first include:

- .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.
- .2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 The Construction Manager's Fee computed upon the Cost of the Work described in the preceding Section 9.2.4.1.1 and 9.2.4.1.2 (except as set forth in the following sentence) at the rate stated in Section 7.1.1. There shall be no Construction Manager's Fee charged on Construction Manager's insurance and bond costs.
- .4 Subtract retainage withheld pursuant to Section 9.2.5 and 9.2.6 below.
- .5 Subtract the aggregate of any amounts previously paid by the Owner;
- .6 Subtract the amount, if any, for Work that remains uncorrected and for which the Engineer has previously withheld a Certificate for Payment;
- .7 Subtract amount for which the Construction Manager does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Construction Manager intends to pay;
- .8 Subtract for Work performed or defects discovered since the last payment application, any amount for which the Engineer may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in the Contract Documents; and

- .9 Subtract, the shortfall, if any, indicated by the Construction Manager in the documentation required by this Article and Article 14 of the General Conditions to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation.

9.2.5 Progress payments will be made in an amount equal to the percentage indicated below, but, in each case, less the aggregate of payments previously made and less such amounts as Engineer shall determine, or Owner may withhold, in accordance with Paragraph 14.02 of the General Conditions.

Ninety-five percent (95%) of Work (which percentage shall be determined by Owner) completed and zero percent (0%) of materials and equipment not incorporated in the Work (but delivered, suitably stored and accompanied by documentation satisfactory to Owner as provided in Paragraph 14.02.A of the General Conditions).

9.2.6 Progress payments may be made in an amount equal to ninety-five percent (95%) of the Work completed, but, in each case, less the aggregate of payments previously made and less such amounts as Engineer shall determine, or Owner may withhold, in accordance with Paragraph 14.02 of the General Conditions.

9.2.7 Owner is not obligated to reduce the retainage for any amounts that are the subject of a good faith dispute, the subject of a claim brought pursuant to Section 218.735, Florida Statutes, Section 255.05, Florida Statutes, or for any amounts that are otherwise the subject of a Claim or demand by the Owner against the Construction Manager under this Agreement. The Owner shall promptly make such payment to the Construction Manager unless the Owner has grounds to withhold payment for amounts that are the subject of a good faith dispute, the subject of a Claim pursuant to Section 218.735, Florida Statutes, Section 255.05, Florida Statutes, or are otherwise the subject of a Claim or demand by the Owner against the Construction Manager. If the Owner makes payment of retainage to the Construction Manager, which is attributable to the labor, services, or materials supplied by one or more Subcontractors or suppliers, the Construction Manager shall timely remit payment of such retainage to those Subcontractors and suppliers. Upon Substantial Completion of the Work, and the completion of the punch list, the amount of retainage shall be reduced to the value of 150% of the total cost to complete any disputed items on the punch list, which shall be deducted from any amounts due.

9.2.8 As required by Section 218.735, F.S., within ten working days from receipt of payment from the Owner, the Construction Manager shall pay each Subcontract and supplier out of the amount paid to the Construction Manager on account of such Subcontractor's and supplier's Work, the amount to which said is entitled reflecting the percentage actually retained, if any, from payments to the Construction Manager on account of said Work. The Construction Manager shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to its sub-subcontractors and suppliers in a similar manner.

9.2.9 During the course of the Project the Construction Manager shall, when requested by the Owner, produce all documents reflecting the actual Cost of the Work for audit as a condition of each Progress and Final Payment. Should the audit indicate that the Village has overpaid the Construction Manager, then Construction Manager shall reimburse the Owner within 15 days of the results of the Owner's audit results showing the deficiency.

9.3 FINAL PAYMENT. Upon final completion and acceptance of the Work in accordance with Paragraph 14.07 of the General Conditions, completion of the Owner's Final Payment Audit, and settlement of all Claims, **Owner shall make payment of amounts due Construction Manager.**

9.3.1 Final Payment Audit. Construction Manager shall submit its final accounting of the Cost of the Work and draft final Application for Payment, records and other documents of its Costs of the Work to the Engineer, Owner and its auditors review to verify the Total Cost of the Work and the amount due to Construction Manager. The Owner's auditors will review and report in writing on the Construction Manager's final accounting within 30 days after delivery of the final accounting to the Owner by the Construction Manager. Based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Construction Manager's final accounting, the Owner will notify the Construction Manager of the amounts the Owner's auditors confirm are due Construction Manager. Construction Manager shall prepare a final Application for Payment based on the amounts authorized by the Auditor's report to submit to the Owner and Engineer. The Owner shall make payment to Construction Manager within 25 business days of receipt of the final Application for Payment as provided in this Paragraph and provided the other conditions of this Article and the Contract Documents have been met.

9.3.2 If the Owner's auditors report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall submit its final Application for Payment in the amounts authorized by the Owner's auditors, but Construction Manager shall be entitled to request mediation of the disputed amount. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Auditors Report. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager.

ARTICLE 10 – CONSTRUCTION MANAGER'S REPRESENTATIONS

10.1 In order to induce Owner to enter into this Agreement, Construction Manager makes the following representations:

10.1.1 Construction Manager has familiarized itself with the nature and extent of the Contract Documents, Work, Site, locality, and all local conditions, Laws, and Regulations that in any manner may affect the cost, progress, performance, or furnishing of the Work.

10.1.2 Construction Manager has obtained and carefully studied (or assumes responsibility for obtaining and carefully studying) all such examinations, investigations, explorations, tests, reports and studies which pertain to the subsurface conditions at or contiguous to the Site or otherwise may affect the cost, progress, performance or furnishing of the Work as Construction Manager considers necessary for the performance or furnishing of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of paragraph 4.03 of the General Conditions; and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or will be required by Construction Manager for such purposes.

10.1.3 Construction Manager has obtained and carefully studied (or assumes responsibility for obtaining and carefully studying) all examinations, investigations, explorations, tests, reports and studies which pertain to the physical conditions at or contiguous to the Site or otherwise may affect the cost, progress, performance or furnishing of the Work as Construction Manager considers necessary for the performance or furnishing of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or will be required by Construction Manager for such purposes.

10.1.4 Construction Manager has given Owner written notice of all conflicts, errors or discrepancies that he has discovered in the Contract Documents and the written resolution thereof by Owner is acceptable to Construction Manager.

10.1.5 Construction Manager represents that it is a properly qualified and licensed general contractor in good standing with the State of Florida and is a Florida _____ in good standing, organized and existing under the laws of the State of Florida. Construction Manager further represents that it is well qualified and able to perform the Work; it has a sufficient number of qualified personnel to assure timely performance of the Work; that it has the proper tools and equipment to perform the Work and is financially capable of performing the Work and all the requirements stated within the Contract Documents.

10.1.6 Contactor represents that all Work will be of first quality, free from faults and defects and in conformance with the Contract Documents. All Work not so conforming to these standards may be considered defective. The Construction Manager shall supervise and direct the Work using its best skill and attention. All Work shall be performed by craftsmen skilled in the trades and application of materials involved. The Construction Manager shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work and shall comply with all OSHA regulations regarding job safety and all applicable laws, ordinances, rules, regulations and orders of any public authority having jurisdiction for the safety of persons or property.

ARTICLE 11 - INDEMNIFICATION

11.1 Subject to Paragraph 6.20 of the General Conditions, to the fullest extent permitted by the law, Construction Manager shall indemnify and hold harmless the Owner, and its council members, officers, directors, agents, members and employees and Engineer and its officers, directors, agents, members and employees ("Indemnified Parties"), from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees at the trial and appellate level, but only to the extent caused by the negligence, recklessness, wrongly or intentionally wrongful conduct, act or omission of the Construction Manager and other persons employed or utilized by Construction Manager, any of Construction Manager's Subcontractors, agents or others for whom the Construction Manager is responsible, arising from this Agreement or its performance. The Owner's contributory negligence shall only reduce, but not prevent, the Construction Manager's obligation to indemnify provided herein. Nothing in the Contract Documents shall be construed or interpreted as consent by the Owner to be sued, nor as a waiver of sovereign immunity beyond the waiver or limits provided in §768.28, Florida Statutes.

11.2 In any and all claims against Indemnified Parties by any employee (or the survivor or personal representative of such employee) of Construction Manager, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 11.1 shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Construction Manager or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

11.3 The parties intend for this indemnification provision to be enforceable pursuant to Sections 725.06 and 725.08, Florida Statutes and as such, hereto acknowledge and agree that to the extent that any portion of this indemnification provision is deemed void or unenforceable in any action or proceeding, then such portion is considered severable and will not affect the remaining portions of this provision. The Construction Manager shall indemnify and hold harmless all of the Indemnified Parties from and against any costs and expenses (including reasonable attorneys' fees) incurred by any of the Indemnitees in enforcing any of the Construction Manager's indemnity and hold-harmless obligations under this Contract. This indemnification provision does not extend to provide indemnification to the Indemnified Parties for their own negligence and therefore, the parties agree that the indemnification obligations should be construed in accordance with Sections 725.06 and 725.08, Florida Statutes.

11.4 The indemnity provisions of this Article 11 shall survive termination and completion of the Agreement.

ARTICLE 12 – SUBCONTRACTS

Construction Manager hereby assigns to Owner, upon termination of the Construction Manager, all its Construction Management Agreement rights with respect to subcontractors and material and equipment suppliers that provided work, materials and equipment to this Project in accordance with the Contract Documents, including but not limited to all Construction Manager's rights to make claims regarding quality of the work, merchantability of the materials and equipment, feasibility and fitness for the particular purpose of materials, equipment and workmanship described in this Construction Management Agreement. It is further agreed that all sub-contracts and material and equipment purchase agreements entered into by Construction Manager or its subcontractors or material suppliers, shall contain a provision or shall incorporate this Article by reference to allow the Owner to bring a claim directly against any subcontractor of Construction Manager and its surety for breach of contract, warranty rights, quality of workmanship, merchantability of equipment, feasibility and fitness for the particular purpose of materials and equipment and workmanship, and create third party beneficiary rights of Owner in said agreements, or such sub-contracts shall incorporate this Article by reference. It is further agreed and understood that such assignment(s) and third party beneficiary rights are part of the consideration to Owner for entering into this Construction Management Agreement with Construction Manager and may not be withdrawn, and subcontractor or equipment and material suppliers shall be notified of the Owner's rights. The Owner shall be furnished with a copy of all subcontracts and purchase agreements upon the Owner's request. The Construction Manager shall ensure that all subcontractors shall purchase and maintain insurance in the amounts and coverages set forth in the Contract Documents for claims under Worker's Compensation acts and other employee benefit acts, from claims for damages because of bodily injury, including death, and from claims for damages to the Owner's property which may arise out of or result from the subcontractors' operations under this Construction Management Agreement, unless a lesser limit is expressly agreed in writing by the Owner. Construction Manager hereby agrees that Construction Manager shall be responsible for, and shall indemnify Owner against, all losses, costs, claims, and damages resulting from the Construction Manager's failure to require its subcontractors to obtain such insurance. The Owner shall be named as an additional insured in all policies required to be maintained under this Article with the exception of the Worker's compensation insurance, and the subcontractors' Certificates of Insurance shall be provided to the Owner. Additionally, nothing contained in this Construction Management Agreement shall constitute an assignment of Construction Manager's rights against Owner or create any third party beneficiary rights in any subcontractors or material and equipment suppliers of Construction Manager. The purpose of this provision is to allow the Owner, in addition to Construction Manager, to make claims for damages or indemnification against any subcontractors or material and equipment suppliers that may be ultimately responsible for defects or deficiencies in the Work or materials and equipment.

ARTICLE 13 – TIME & DELAYS

Any changes in the Work, changes in the Contract Price and/or Contract Time shall be executed via written Change Order pursuant to Articles 10 and 12 of the General Conditions. Further, if the Construction Manager is delayed at any time in the progress of the Work, any approved changes in the Contract Time shall similarly be executed via written Change Order pursuant to Article 12 of the General Conditions. All requests by the Construction Manager for extensions of the Contract Time, other than those associated with changes in the Work, must be submitted in writing to Owner's Representative within the time period specified in Article 12 of the General Conditions. Failure to so request an extension of the Contract Time will constitute a waiver of any right for an extension of the Contract Time.

ARTICLE 14 – BONDS AND INSURANCE

Upon execution of the GMP Amendment, the Construction Manager shall furnish performance and payment bonds pursuant to Article 5 of the General Conditions for the full amount of the Guaranteed Maximum Price. The Construction Manager shall also, as a condition of this Agreement and to payment under this Agreement for

Construction Phase Services, purchase and maintain the insurance coverage and policy limits as delineated within Paragraph 5.04 of the General Conditions and the Supplementary Conditions.

ARTICLE 15 – SALES TAX INFORMATION

The Owner Sales Tax Recovery Program Special Conditions are incorporated herein by reference. To be entitled to purchase materials tax exempt for a public works project, the Owner is required to issue a Certificate of Entitlement to each vendor and to the Construction Manager to affirm that the tangible personal property purchased from that vendor will go into or become a part of a public work. The Owner's purchase order for tangible personal property to be incorporated into the public works project must be attached to the Certificate of Entitlement. The Owner must issue a separate Certificate of Entitlement for each purchase order. The Owner's form Certificate of Entitlement is attached hereto as **Exhibit "Q"**. By executing each Certificate of Entitlement, the Owner affirms that the purchase of the tangible personal property contained in the attached Purchase Order meets the applicable exemption requirements contained in Section 212.08(6), Florida Statutes, and Rule 12A-1.094, F.A.C.

ARTICLE 16 - PROJECT SIGNAGE

Construction Manager shall furnish and erect **one** Owner standard sign at the Project site as directed by the Owner. Construction Manager may install signage at the Project site subject to approval by the Owner.

ARTICLE 17 – CONFLICT OF INTEREST

This Agreement is subject to any and all applicable conflict of interest provisions found in the policies or Code of Ordinances of the Village of Wellington, the Palm Beach County Code of Ethics and Ch. 112, Part III, Florida Statutes. The Construction Manager's completed Conflict of Interest Statement shall be attached hereto and incorporated herein as **Exhibit "O3"**. During the term of this Agreement and any renewals or extensions thereof, the Construction Manager shall continue to disclose to Owner any possible conflicts of interests. The Construction Manager's duty to disclose is of a continuing nature and any conflict of interest shall be immediately brought to the attention of Owner.

ARTICLE 18 – TRANSFER OF LIEN

In the event any liens should be filed against the Site by any lienors, in connection with labor or services performed, Construction Manager shall indemnify and hold the Owner harmless against all such liens and suits or other proceedings pertaining thereto including any and all costs and attorneys' fees, at both the trial and appellate level. If any such liens are filed then Construction Manager must forthwith within twenty (20) days of notice of the lien, transfer such lien to security in accordance with Florida Statutes. Should Construction Manager fail to transfer such lien, the Owner may, at its option, do so and deduct the amount expended, including all costs and attorney's fees incurred from any payment then due Construction Manager.

ARTICLE 19 – DISPUTE RESOLUTION

19.1 If the parties mutually agree, any disputes not resolved as provided in the General Conditions, may be referred to mediation. However, mediation shall not be a condition precedent to litigation of any disputes. All costs of mediation shall be shared equally by the parties. Venue for litigation concerning this Agreement or the

Contract Documents shall be in Palm Beach County, Florida. In the event of litigation to settle disputes arising out of this Agreement or the Project, the prevailing party shall be entitled to recover against the other party its cost and expenses, including reasonable attorney's fees, which shall include any fees and costs attributable to appellate proceedings arising on and of such litigation.

19.2 Waiver of Trial By Jury. IN THE EVENT OF LITIGATION, BOTH PARTIES HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY RIGHT EITHER PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY ACTION, PROCEEDING, CLAIM, OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THE CONTRACT, OR BREACH THEREOF, OR IN CONNECTION WITH WORK OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN), OR ANY ACTIONS OR INACTIONS OF EITHER PARTY.

ARTICLE 20 – MISCELLANEOUS

20.1 Terms used in this Agreement, which are defined in Article 1 of the General Conditions, will have the meanings indicated in the General Conditions unless a specific definition has been set forth in the Agreement.

20.2 Public Entity Crime Statement. Construction Manager acknowledges the existence of Section 287.133(2)(a), Florida Statutes ("Public Entity Crimes Act"), which provides, in part, that 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 Owner, may not submit a bid on a contract with Owner for the construction or repair of a public building or public work, may not submit bids on leases of real property to Village, may not be awarded or perform work as a Construction Manager, supplier, Subcontractor, or Consultant under a contract with Village, and may not transact business with Owner in excess of the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO for a period of thirty-six (36) months from the date of being placed on the convicted vendor list. Violation of this Section by Construction Manager shall result in termination of this Agreement by Owner without penalty.

20.3 Truth-In-Negotiation Certificate. Signature of this Agreement by Construction Manager shall act as the execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation of this Agreement are accurate, complete, and current at the time of contracting. The original Contract Price and any additions thereto shall be adjusted to exclude any significant sums, by which Owner determines the Contract Price was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such contract adjustments shall be made within one (1) year following the end of this Agreement.

20.4 In accordance with Palm Beach County Ordinance Number 2011-009, this Agreement may be subject to investigation and/or audit by the Palm Beach County Inspector General. The Construction Manager has reviewed Palm Beach County Ordinance Number 2011-009 and is aware of its rights and/or obligations under such ordinance.

20.5 Village of Wellington's Purchasing and Procurement Procedures Manual. Construction Manager shall comply with all Construction Manager requirements of the Village of Wellington's Purchasing and Procurement Procedures Manual as adopted by Resolution No. R2014-12.

20.6 Local Preference. Except where prohibited by federal or state law, other funding source restrictions, or as otherwise excluded by the Village of Wellington's Local Preference Policy, if Construction Manager represented itself as a Palm Beach County Local Business or Western Communities Local Business in accordance with the Village of Wellington's Local Preference Policy, Construction Manager shall be obligated to maintain such status in accordance with eligibility requirements of Village of Wellington's Local Preference Policy through final completion of the Project. In the event Construction Manager qualified for Local Preference by subcontractor participation, the Construction Manager shall maintain the local subcontractor(s) identified in its response to the

Owner's Invitation to Bid and shall not replace same without the prior written consent of the Owner. In the event Construction Manager needs to replace a local subcontractor, said subcontractor shall be replaced with another subcontractor, which meets the eligibility requirements of the Village of Wellington's Local Preference Policy, unless expressly agreed in writing by the Owner.

20.7 Code of Ethics & Conduct. If Construction Manager violates or is a party to a violation of the Florida Statutes Chapter 112 or the Palm Beach Code of Ethics (Sec. 2-441 et. seq), Construction Manager may be in material breach of this Agreement and may be disqualified from bidding on any future bids for work of goods with the Owner.

20.8 Non-Collusion. This Agreement is made without collusion or fraud. No premiums, rebates, or gratuities are permitted with, prior to, or after any delivery of material or provisions of services. Any violation of this provision may result in termination of this Agreement, return of materials or discontinuation of services, and the possible removal of Construction Manager for bidder lists.

20.9 Drug-Free Workplace. Execution of this Agreement by Construction Manager shall serve as Construction Manager's certification that it either has or that it will establish a drug-free workplace consistent with Chapter 112.0455, Florida Statutes.

20.11 As part of the Village's National Pollutant Discharge Elimination System (NPDES) requirements, Construction Manager may be required to achieve training which may include but not be limited to a live presentation and/or video presentation. Construction Manager is responsible for all costs associated with the training.

20.12 Traffic Control and Maintenance. To the extent applicable, the Contract Price includes all traffic control and traffic control costs related to the Work. The Maintenance of Traffic Plan and all traffic warning and control devices shall conform to the applicable provisions of the latest editions of the national "Manual On Uniform Traffic Control Devices" (MUTCD), and the 600 series of the Florida Department of Transportation's "Roadway and Traffic Design Standards". The MOT Plan shall be prepared by a Florida MOT Certified Technician if FDOT standard details are used. If FDOT standard details are not used, a Professional Engineer licensed in Florida shall prepare the MOT Plan. MOT Plans shall be submitted to appropriate agencies for approval. Costs of compliance with this Paragraph are included as part of the Contract Price.

20.13 Existing Structures & Utilities. All known utilities have been shown on the Plans and Drawings or otherwise provided in the Contract Documents according to the best information available. It is the Construction Manager's responsibility to contact all owners of structures or utilities above ground, on the surface, or below the ground, within the Project area so that said owners may stake, otherwise make, or protect their facilities. When structures and utilities have been properly shown or marked and are disturbed or damaged in the execution of the Work, they must be repaired immediately at Construction Manager's sole cost and expense in conformance with best standard practice and the approval of the owner of the damaged utility or structure. In the case of structures and utilities which have not been properly shown or located as outlined above and are disturbed or damaged in the prosecution of the Work, Construction Manager shall take whatever steps are necessary for safety and notify the affected utility owner and avoid any actions which might cause further damage to the structure or utility. Should the Work require repairs, changes, or modifications of the Owner's utilities as well as other utilities, it is the responsibility of the Construction Manager to provide for the maintenance of continuous water, sewage, electric, telephone and other utility services to all present customers of such utilities, unless approval in writing is secured from the applicable utility company or Owner for interruption of such service.

20.14 Testing. All tests and analyses, which are called for in the Specifications and/or Drawings to be performed by an Independent Testing Laboratory or otherwise, will be at the Construction Manager's expense unless otherwise specified, provided the tests and analyses determine that the material(s) and/or Work meets the requirements

as specified. All such tests that pass or fail to meet the Project requirements are to be paid by the Construction Manager.

20.15 Storage Site. The Construction Manager shall furnish, at its expense, properly zoned area suitable for field offices, material storage and equipment service and storage, as applicable for the Project. The Construction Manager shall maintain these areas in a clean, orderly condition so as not to cause of nuisance in the area and shall restore the storage areas to its original or better condition.

20.16 The undersigned Construction Manager does hereby confirm to the Owner and Engineer that the Construction Manager has reviewed the provisions of Chapter 556, Florida Statutes, and has provided to "Sunshine State One-Call of Florida, Inc." the information required under F.S. 556.105 before the commencement of any excavation or demolition required for the Work.

20.17 Compliance with Laws. The Construction Manager shall give all notices, and warrants and represents that the Work will comply with all federal, state and local laws, ordinances, rules, regulations, and orders of any public authority having jurisdiction over the Work. Construction Manager shall comply with all ordinances, laws and rules of the State of Florida, Village of Wellington and Palm Beach County applicable to the Work. Construction Manager shall be liable for any deviation from any laws, ordinances, rules, regulations, and orders of any public authority even if in strict compliance with the Contract Documents. Construction Manager shall bear sole responsibility for and bear all costs necessary to insure full compliance with the representations contained herein, including, but not limited to any attorney's fees or other expenses incurred by Owner in responding to any complaints, citations, court orders, administrative orders or similar governmental edicts or process. The provisions of this paragraph shall survive the termination of this Agreement.

20.18 The Construction Manager acknowledges that the Florida Doctrine of Sovereign Immunity bars all claims by Construction Manager against the Owner other than Claims arising out of this Agreement. Specifically, except as provided in Section 768.28, Florida Statutes, the Construction Manager acknowledges that it cannot and will not assert any claims against the Owner, unless the claim is based upon a breach by the Owner of this Agreement.

20.19 The Construction Manager affirms that the provisions of the Contract Documents regarding notice to Claims, and the requirement for a written Change Order cannot be waived and further, without timely notice of a Claim or a written Change Order as required in the Contract Documents,, the Construction Manager shall not be entitled to additional compensation or an extension of the Contract Time. Such Claims for additional compensation or extensions of the Contract Time are waived if the Construction Manager has not given all required notices and obtained a written a Change Order when required.

20.20 No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitation monies that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

20.21 Owner and Construction Manager each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect of all covenants, agreements and obligations contained on the Contract Documents.

20.22 Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Construction Manager, who agree that the Contract Documents shall be reformed to replace such stricken provision

or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

20.23 The failure of either party hereto to insist, in any one or more instances, upon the performance of any of the terms, covenants or conditions of this Agreement, or to exercise any right herein, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right as respects further performance.

20.24 This Agreement may not be amended or modified except by an instrument in writing signed by the party against whom enforcement of such amendment or modification is sought.

20.25 This Agreement may be executed in any number of counterparts with the same effect as if all parties hereto had signed the same document. All such counterparts shall be construed together and shall constitute one instrument.

20.26 Scrutinized Companies - Pursuant to sections 215.4725 and 287.135 of the Florida Statutes, by entering into this Agreement, CONSTRUCTION MANAGER certifies that it, its affiliates, suppliers, subcontractors, and consultants who will perform or benefit hereunder, are not on the Scrutinized Companies that Boycott Israel List and are not participating in a boycott of Israel. If this Agreement is valued greater than \$1 million, CONSTRUCTION MANAGER further certifies pursuant to sections 215.473 and 287.135, Florida Statutes, that it, its affiliates, suppliers, subcontractors, and consultants who will perform or benefit hereunder, (a) have not been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List; and (b) do not have business operations in Cuba or Syria. Submitting a false certification shall be deemed a material breach of this Agreement. If the Village determines, using credible information available to the public, that CONSTRUCTION MANAGER has submitted a false certification, the Village may terminate this Agreement and pursue the remedies set forth in section 287.135, Florida Statutes, and any other available remedies.

20.27 Compliance With F.S. 448.095 - Wellington requires all contractors and subcontractors to register with the U.S. Department of Homeland Security's E-Verify system to verify the work authorization status of their newly hired employees. All contractors performing work for Wellington are required to provide proof of registration with the E-Verify System and must provide an affidavit stating that each subcontractor it hires does not employ, contract with, or subcontract with an unauthorized alien.

ARTICLE 21 – NOTICE

Whenever either party desires to give notice unto the other, it must be given by written notice, sent by certified United States mail, with return receipt requested, addressed to the party for whom it is intended, at the place last specified; and the place for giving of notice shall remain such until it shall have been changed by written notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective places for giving of notice, to-wit:

For Owner:
Village Clerk
Village of Wellington
12300 Forest Hill Boulevard

For Construction Manager

Wellington, FL 33414

License No. _____

SAMPLE

IN WITNESS WHEREOF, Owner and Construction Manager have signed this Agreement. One counterpart each has been delivered to Owner, Construction Manager, and the Engineer. All portions of the Contract Documents have been signed or identified by Owner and Construction Manager or by the Engineer on their behalf.

OWNER: **Village of Wellington**

CONSTRUCTION MANAGER_____

By _____
Anne Gerwig, Mayor

By _____
Printed Name/Title_____

Attest: _____
Chevelle Addie, Wellington's Clerk

Attest: _____
Print Name_____

(SEAL)

(CORPORATE SEAL)

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

Laurie Cohen, Attorney for Wellington

EXHIBIT “A”

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION MANAGEMENT CONTRACT TABLE OF CONTENTS

Article 1 – Definitions and Terminology

1.01	Defined Terms
1.02	Terminology

Article 2 – Preliminary Matters

2.01	Delivery of Bonds and Evidence of Insurance
2.02	Copies of Documents
2.03	Starting the Work
2.04	[Paragraph Intentionally Deleted]
2.05	Before Starting Construction
2.06	Preconstruction Conference; Designation of Authorized Representatives
2.07	Initial Acceptance of Schedules

Article 3 – Contract Documents: Intent, Amending, Reuse

3.01	Intent
3.02	Reference Standards
3.03	Reporting and Resolving Discrepancies
3.04	Amending and Supplementing Contract Documents
3.05	Reuse of Documents & Electronic Data

Article 4 – Availability of Lands; Subsurface and Physical Conditions; Hazardous Environmental Conditions; Reference Points

4.01	Availability of Lands
4.02	Subsurface and Physical Conditions
4.03	Differing Subsurface or Physical Conditions
4.04	Underground Facilities
4.05	Reference Points
4.06	Hazardous Environmental Condition at Site

Article 5 – Bonds and Insurance

5.01	Performance, Payment and Other Bonds
5.02	Licensed Sureties and Insurers
5.03	Certificates of Insurance
5.04	Construction Manager’s Insurance
5.05	Limits of Liability insurance.
5.06	Subcontractor Insurance
5.07	Acceptance of Bonds and Insurance; Option to Replace
5.08	Partial Utilization; Acknowledgement of Property Insurer

Article 6 – Construction Manager’s Responsibilities

6.01	Supervision and Superintendence
6.02	Labor; Working Hours
6.03	Services, Materials and Equipment
6.04	Progress Schedule
6.05	Substitutes and “Or-Equals”
6.06	Concerning Subcontractors, Suppliers and Others
6.07	Patent Fees and Royalties
6.08	Intentionally Deleted.....
6.09	Laws and Regulations
6.10	Taxes
6.11	Use of Site and Other Areas
6.12	Record Documents
6.13	Safety and Protection
6.14	Safety Representative
6.15	Hazard Communication Programs
6.16	Emergencies
6.17	Shop Drawings and Samples
6.18	Continuing the Work
6.19	Construction Manager’s General Warranty and Guarantee
6.20	Delegation of Professional Design Services.....

Article 7 – Other Work at the Site

7.01	Related Work at Site
7.02	Coordination
7.03	Legal Relationships

Article 8 – Owner’s Responsibilities

8.01	Communications to Construction Manager
8.02	Replacement of Engineer
8.03	Furnish Data
8.04	Limitations of Owner’s Responsibility
8.05	Evidence of Financial Arrangements
8.06	Compliance with Safety Program

Article 9 – Engineer’s Status During Construction

9.01	Owner’s Representative
9.02	Visits to Site
9.03	Project Representative
9.04	Authorized Variations in the Work
9.05	Rejecting Defective Work
9.06	Shop Drawings, Change Orders and Payments
9.07	Determinations for Unit Price Work
9.08	Decisions on Requirements of Contract Documents and Acceptability of Work
9.09	Limitations on Engineer’s Authority and Responsibilities
9.10	Compliance with Safety Program

Article 10 – Changes in the Work; Claims

10.01	Authorized Changes in the Work
10.02	Unauthorized Changes in the Work

10.03	Execution of Change Orders & Construction Change Directives
10.04	Notification to Surety
10.05	Claims

Article 11 – Allowances; Unit Price Work

11.01	Allowances
11.02	Contingency
11.03	Unit Price Work

Article 12 – Change of Contract Price; Change of Contract Time

12.01	Change of Contract Price
12.02	Change in Contract Time
12.03	Delays

Article 13 – Tests and Inspections; Correction, Removal or Acceptance of Defective Work

13.01	Notice of Defects
13.02	Access to Work
13.03	Tests and Inspections
13.04	Uncovering Work
13.05	Owner May Stop Work
13.06	Correction or Removal of Defective Work
13.07	Correction Period
13.08	Acceptance of Defective Work
13.09	Owner May Correct Defective or Non-Conforming Work

Article 14 – Payments to Construction Manager and Completion

14.01	Schedule of Values
14.02	Progress Payments
14.03	Construction Manager's Warranty of Title
14.04	Substantial Completion
14.05	Partial Utilization
14.06	Final Inspection
14.07	Final Payment
14.08	Final Completion Delayed
14.09	Waiver of Claims

Article 15 – Suspension of Work and Termination

15.01	Owner May Suspend Work
15.02	Owner May Terminate For Cause
15.03	Owner May Terminate For Convenience
15.04	Construction Manager May Stop Work or Terminate

Article 16 – Intentionally Deleted

Article 17 - Miscellaneous

\

17.01	Giving Notice
17.02	Computation of Times

17.03	Cumulative Remedies
17.04	Survival of Obligations
17.05	Controlling Law
17.06	Headings

ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

1.01 Defined Terms

Wherever used in the Contract Documents and printed with initial capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.

1. *Addenda*—Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.
2. *Agreement*—The written instrument which is evidence of the agreement between Owner and Construction Manager covering the Work.
3. *Application for Payment*—The form acceptable to Engineer which is to be used by Construction Manager during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
4. *Change Order*—A document possibly prepared by Engineer which is signed by Construction Manager and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Agreement.
5. *Claim*—A demand or assertion by Owner or Construction Manager seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.
6. *Contract*—The entire and integrated written agreement between the Owner and Construction Manager concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.
7. *Contract Documents*—Those items so designated in the Agreement. Approved Shop Drawings and other Construction Manager submittals are not Contract Documents.

8. *Contract Price*—The moneys payable by Owner to Construction Manager for completion of the Work and Construction Phase Services in accordance with the Contract Documents as stated in the Agreement.
9. *Contract Time(s)*—The number of day(s) or the date(s) stated in the Agreement to: (i) achieve Milestones, if any; (ii) achieve Substantial Completion; and (iii) complete the Work so that it is ready for final payment as evidenced by Engineer's written recommendation of final payment.
10. *Drawings*—The Drawings are listed in Exhibit B to the Agreement. Shop Drawings and other Construction Manager submittals are not Drawings as so defined.
11. *Effective Date of the Agreement*—The date indicated in the Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.
12. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.
13. *Hazardous Environmental Condition*—The presence at the Site of Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Material in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto.
14. *Hazardous Waste*—The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.
15. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
16. *Liens*—Charges, security interests, or encumbrances upon Project funds, real property, or personal property.
17. *Milestone*—A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.
18. *Notice of Award*—The written notice by Owner to the Successful Bidder stating that upon timely compliance by the Successful Bidder with the conditions precedent listed therein, Owner will sign and deliver the Agreement.
19. *Notice to Proceed*—A written notice given by Owner to Construction Manager fixing the date on which the Contract Times will commence to run and on which Construction Manager shall start to perform the Work under the Contract Documents. A separate Notice to Proceed will be issued for: (1) Preconstruction Services; and (2) Commencement of the Work and Construction Phase Services following execution of the GMP Amendment.
20. *PCBs*—Polychlorinated biphenyls.
21. *Petroleum*—Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.
22. *Progress Schedule*—A schedule, prepared and maintained by Construction Manager, describing the sequence and duration of the activities comprising the Construction Manager's plan to accomplish the Work within the Contract Times.
23. *Project*—The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.

24. *Project Manual*—The bound documentary information prepared for bidding and constructing the Work. A listing of the contents of the Project Manual, which may be bound in one or more volumes, is contained in the table(s) of contents. In no event shall the Project Manual be deemed part of the Contract Documents.
25. *Radioactive Material*—Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.
26. *Resident Project Representative*—The authorized representative of Engineer who may be assigned to the Site or any part thereof.
27. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.
28. *Schedule of Submittals or Submittal Schedule*—A schedule, prepared and maintained by Construction Manager, of required submittals and the time requirements to support scheduled performance of related construction activities.
29. *Schedule of Values*—A schedule, prepared and maintained by Construction Manager, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Construction Manager's Applications for Payment.
30. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Construction Manager and submitted by Construction Manager to illustrate some portion of the Work.
31. *Site*—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for the use of Construction Manager.
32. *Specifications*—That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable thereto.
33. *Subcontractor*—An individual or entity having a direct contract with Construction Manager or with any other Subcontractor for the performance of a part of the Work at the Site.
34. *Substantial Completion*—Substantial Completion is defined as the time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended and all necessary governmental approvals required for the Owner to utilize the Project for the purposes intended have been obtained. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof. The date is defined in the Contract Documents.
35. *Underground Facilities*—All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.
36. *Unit Price Work*—Work to be paid for on the basis of unit prices.
37. *Construction Change Directive*—A written statement to Construction Manager issued on or after the Effective Date of the Agreement and signed by Owner and recommended by Engineer ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies or may be utilized in the absence of complete agreement on the

terms of a Change Order. A Construction Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change ordered or documented by a Construction Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times. Construction Manager shall be obligated to proceed with all Construction Change Directives pending resolution of a Change Order, if applicable.

1.02 Terminology

A. *Intent of Certain Terms or Adjectives:*

1. The Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of Paragraph 9.09 of the General Conditions or any other provision of the Contract Documents.

B. *Day:*

1. The word “day” means a calendar day..

C. *Furnish, Install, Perform, Provide:*

1. The word “furnish,” when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.
2. The word “install,” when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.
3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.
4. When “furnish,” “install,” “perform,” or “provide” is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of Construction Manager, “provide” is implied.

- D. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2 – PRELIMINARY MATTERS

2.01 Delivery of Bonds and Evidence of Insurance

A. When Construction Manager delivers the executed counterparts of the Agreement to Owner, Construction Manager shall also deliver to Owner the required payment and performance bonds in the form attached as **Exhibit “E”** to the Agreement.

B. *Evidence of Insurance:* Before any Work at the Site is started, Construction Manager shall deliver to the Owner, with copies to each additional insured, certificates of insurance (and other evidence of insurance which the Owner or any additional insured may reasonably request) which Construction Manager is required to purchase and maintain in accordance with the Contract Documents.

2.02 Copies of Documents

A. Upon written request, Owner shall furnish to Construction Manager up to two printed hard copies of the Contract Documents. Additional copies of the Contract Documents will be furnished upon request at the cost of reproduction.

2.03 Starting the Work

A. Construction Manager shall start to perform the Work on the Date of Commencement. No Work shall be done at the Site prior to the Date of Commencement, unless expressly authorized by Owner in writing.

2.04. Intentionally Deleted.

2.05 Before Starting Construction

A. *Construction Schedules:* As part of the GMP Proposal, Agreement, Construction Manager shall submit to Engineer for timely review:

1. a construction schedule, otherwise referred to herein as a Progress Schedule, indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents which upon approval by Owner and Engineer shall be attached to the Agreement upon execution of the GMP Amendment as **Exhibit “R3”**. The Construction Manager’s Schedule for performance of Preconstruction Services is attached as **Exhibit “I”**; and
 2. a Schedule of Submittals to be attached as Exhibit “R8” upon execution of the GMP Amendment;
 3. a Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work which shall be attached upon execution of the GMP Amendment as **Exhibit “R2”**.
- and

2.06 Preconstruction Conference; Designation of Authorized Representatives

A. Before any Preconstruction Services and before any Work at the Site is started, a conference attended by Owner, Construction Manager, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in Paragraph 2.05.A, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.

B. If not already done so, at this conference Owner and Construction Manager each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit instructions, receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

2.07 Initial Acceptance of Schedules

- A. At least 10 days before submission of the first Application for Payment for the Work a conference attended by Construction Manager, Engineer, and others as appropriate will be held to review for acceptability to Engineer as provided below the schedules submitted in accordance with Paragraph 2.05.A. Construction Manager shall have an additional 10 days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Construction Manager until acceptable schedules are submitted to Engineer. The Progress Schedule (also referred to as "Construction Schedule") shall be in a detailed precedence style critical path management ("CPM") format satisfactory to the Owner and Engineer that shall also: (i) provide a graphic representation of all activities and events that will occur during performance of the Work; (ii) identify each phase of construction and occupancy; and (iii) set forth dates that are critical in ensuring the timely and orderly completion of the Work in accordance with the requirements of the Contract Documents (hereinafter referred to as "Milestone Dates"). The Construction Manager shall monitor the progress of the Work for conformance with the requirements of the Progress Schedule and shall promptly advise the Owner of any delays or potential delays. The accepted Progress Schedule shall be updated to reflect actual conditions and as requested by the Owner. In the event any progress report or schedule update indicates any delays, the Construction Manager shall propose an affirmative plan to correct the delay. Any overtime and/or additional labor to correct the delay shall be at the Construction Manager's sole expense if the delay is caused in whole or in part by the Construction Manager, its Subcontractors, or anyone for whom the Construction Manager is responsible. In no event shall any progress report constitute an adjustment in the Contract Time, Milestone Dates, or the Contract Price unless any such adjustment is agreed to by the Owner and authorized pursuant to written Change Order. Construction Manager shall maintain such Progress Schedule on a current basis in accordance with the provisions of this paragraph and shall keep proper records to substantiate actual activity, duration and completion dates.
- B. In the event the Owner determines that the performance of the Work, as of a Milestone Date, has not progressed or reached the level of completion required by the Contract Documents or if the Owner determines that Substantial Completion may be delayed, and provided that the delay was not due to an act or omission caused solely by the Owner, the Owner shall have the right to order the Construction Manager to take corrective measures, at Construction Manager's sole cost and expense, necessary to expedite the progress of construction, including without limitation: (i) working additional shifts or overtime in conformity with schedules recognizing the requirements of the Owner; (ii) supplying, additional manpower equipment and facilities; and (iii) other similar measures (hereinafter referred to collectively as "Remedial Measures"). Such Remedial Measures shall continue until the progress of the Work complies with the stage of completion required by the Contract Documents. If Construction Manager fails to undertake such Remedial Measures, then after seven (7) days written notice, Owner may undertake such Remedial Measures at Construction Manager's expense which Owner may, at its election, subtract from amounts due Construction Manager.
- C. A Schedule of Submittals shall be included as part of the GMP Amendment. Construction Manager shall have an additional 10 days to make corrections and adjustments and to complete and resubmit the Schedule of Submittals. No progress payment shall be made to Construction Manager until acceptable schedules are submitted to Engineer. Construction Manager shall maintain and update the Schedule of Submittals as needed and/or required under the Contract Documents.
- D. A Schedule of Values shall be included as part of the GMP Amendment. Construction Manager shall have an additional 10 days to make corrections and adjustments and to complete and resubmit the Schedule of Values. No progress payment shall be made to Construction Manager until acceptable schedules are submitted to Engineer. Construction Manager shall maintain and update the Schedule of Values as needed and/or required under the Contract Documents.

ARTICLE 3 – CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.01 Intent

- A. The Contract Documents are complementary; what is required by one is as binding as if required by all.
- B. It is the intent of the Contract Documents to describe a functionally complete project (or part thereof) to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that reasonably may be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the indicated result will be provided whether or not specifically called for, at no additional cost to Owner.
- C. Clarifications and interpretations of the Contract Documents shall be issued by Engineer as provided in Article 9 of the General Conditions.

3.02 Reference Standards

- A. Standards, Specifications, Codes, Laws, and Regulations
 - 1. Reference to standards, specifications, manuals, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Laws or Regulations in effect as of the Effective Date of the Agreement, except as may be otherwise specifically stated in the Contract Documents.
 - 2. No provision of any such standard, specification, manual, or code, or any instruction of a Supplier, shall release the Construction Manager or any of their subcontractors, consultants, agents, or employees of their duties or responsibilities set forth in the Contract Documents. No such provision or instruction shall be effective to assign to Owner, Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

3.03 Reporting and Resolving Discrepancies in Contract Documents

A. *Reporting Discrepancies:*

- 1. *Construction Manager's Review of Contract Documents:* As Construction Manager, Construction Manager has been working extensively with the Owner and Engineer during Preconstruction Services. Construction Manager has participated in value-engineering, reviewed the Plans for conflicts, reviewed all information provided by the Owner regarding the Project and investigated the Project site. Further, Construction Manager has conducted due diligence investigation of the Project, the site, including investigation of underground and ground conditions, the surrounding areas, logistics for the Work. As such, it is the parties intention that Construction Manager shall not be entitled to a Change Order or Claim based on conflicts and coordination within/among the Plans, existing conditions of the Project, (except as provided in the Contract Documents, and other matters which Construction Manager should have anticipated based on its role as Preconstruction Manager. Before undertaking each part of the Work, Construction Manager shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. Construction Manager shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy which Construction Manager discovers, or has actual knowledge of, and shall obtain a written interpretation or clarification from Engineer before proceeding with any Work affected thereby. Failure to report any such conflict, error, ambiguity, or discrepancy to the Engineer shall result in a waiver of all Claims related thereto. Construction Manager shall not be entitled to any Change Order where such conflict, error, ambiguity, or discrepancy should have been identified during Preconstruction Services.

2. *Construction Manager's Review of Contract Documents During Performance of Work:* If, during the performance of the Work, Construction Manager discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) any standard, specification, manual, or code, or (c) any instruction of any Supplier, then Construction Manager shall promptly report it to Engineer in writing. Construction Manager shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 6.16.A) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in Paragraph 3.04. Construction Manager shall not be entitled to any Change Order where such conflict, error, ambiguity, or discrepancy should have been identified during Preconstruction Services.

B. *Resolving Discrepancies:*

1. The Contract Documents shall be interpreted together and in harmony with one another. In the event of a conflict between or among the Contract Documents or between or among the Contract Documents and any Laws or Regulations, whichever imposes the greater obligation on Construction Manager or contains the more stringent requirement on the Construction Manager shall control.

3.04 Amending and Supplementing Contract Documents

- A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof by either a Change Order or a Construction Change Directive.
- B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, so long as there is no impact to the Contract Time or Contract Price, by issuance of a Field Order.

3.05 Reuse of Documents & Electronic Data

- A. Unless otherwise stated in the Contract Documents if there is a discrepancy between the electronic files of drawings and the hard copies of drawings, the hard copies govern.
- B. When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the data's creator.
- C. Before Owner and Construction Manager transmit documents or data, either personally or electronically, they shall endeavor to establish necessary safeguard protocols governing such transmissions, unless otherwise already provided in the Contract Documents.
- D. Notwithstanding the foregoing, the Owner shall be deemed the author and owner of the Drawings, Specifications, documents and data, including, without limitation, design documents and data prepared on behalf of Owner and provided by Owner to Construction Manager whether in hard copy or electronic format. As a result, Owner will retain all common law, statutory and other reserved rights, including any and all intellectual property rights. The Construction Manager, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim any rights in such documents or data and may not use said documents and data on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner. The Construction Manager, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the documents and data provided to them solely and exclusively for execution of the Work. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Owner's reserved rights

- E. The prohibitions of Paragraph 3.05 D will survive final payment, or termination of the Contract. Construction Manager shall indemnify and hold harmless the Owner and Engineer from any claims, liabilities and damages including but not limited to reasonable attorney's fees and costs due to any unauthorized use of Drawings, Specifications or documents by Construction Manager, any Subcontractor, Supplier or any person or entity for which they are responsible. Nothing herein shall preclude Construction Manager from retaining copies of the Contract Documents for record purposes.

ARTICLE 4 – AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS; REFERENCE POINTS

4.01 Availability of Lands

- A. Owner shall furnish the Site. Owner shall notify Construction Manager of any encumbrances or restrictions not of general application but which specifically related to use of the Site of which the Owner is aware and with which Construction Manager must comply in performing the Work. Owner will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities.
- B. Construction Manager shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

4.02 Subsurface and Physical Conditions

- A. Reports and drawings were provided to Construction Manager as part of the Request for Proposal/Invitation to Bid and are attached as part of **Composite Exhibit "H"**.
- B. *Limited Reliance by Construction Manager Authorized:* Construction Manager may not rely upon the accuracy of the reports and drawings in **Composite Exhibit "H"**. Construction Manager shall independently confirm that, in the Construction Manager's professional judgment, the information is reliable and accurate. Construction Manager shall have full responsibility with respect to subsurface and physical conditions at or contiguous to the Site, subject to Paragraph 4.03 below and Paragraph 7.3.3 of the Agreement. Construction Manager may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:
1. the completeness of such reports and drawings for Construction Manager's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Construction Manager, and safety precautions and programs incident thereto; or
 2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
 3. any Construction Manager interpretation of or conclusion drawn from any data, interpretations, opinions, or information.

4.03 Differing Subsurface or Physical Conditions

- A. If Construction Manager believes that any subsurface or physical condition that is uncovered or revealed either:
1. is of such a nature as to establish that any information on which Construction Manager is entitled to rely as provided in Paragraph 4.02 is materially inaccurate; or

2. differs materially from that shown or indicated in the Contract Documents; or
3. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents; and
4. is of such a nature as to require a change in the Contract Documents;

then Construction Manager shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.16.A), notify Owner and Engineer in writing about such condition.

B. *Engineer's Review:* After receipt of written notice as required by Paragraph 4.03.A, Engineer will promptly review the pertinent condition, determine the necessity of Owner's obtaining additional exploration or tests with respect thereto, and advise Owner in writing (with a copy to Construction Manager) of Engineer's findings and conclusions.

C. *Possible Price and Times Adjustments:*

1. Construction Manager may make a Claim for an equitable adjustment to the Contract Price or the Contract Times, or both, to the extent that the existence of such differing subsurface or physical condition causes an increase or decrease in Construction Manager's cost of, or time required for, performance of the Work; subject, however, to the following:
 - a. such condition must meet the requirements described in Paragraph 4.03.A;
 - b. a Claim is not precluded pursuant to Paragraph 4.02B;
 - c. the Engineer's findings and conclusions support such an adjustment to the Contract Price and/or Contract Time;
 - d. said conditions could not be determined or ascertained from a thorough and careful examination and inspection of the site and documents; and
 - d. with respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraphs 9.07 and 11.03.
2. Construction Manager shall not be entitled to any adjustment in the Contract Price or Contract Times if:
 - a. Construction Manager knew of or Construction Manager, as an experienced and knowledgeable contractor, should have known of the existence of such conditions at the time Construction Manager made a final commitment to Owner with respect to Contract Price and Contract Times at the time of execution of the GMP Amendment; or
 - b. the existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas required by the Contract Documents; or
 - c. Construction Manager failed to give the written notice as required by Paragraph 4.03.A.
3. If Owner and Construction Manager are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, a Claim may be made therefor as provided in Paragraph 10.05. However, neither Owner nor Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors shall be

liable to Construction Manager for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, Engineers, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Construction Manager on or in connection with any other project or anticipated project or lost profits on this Project.

4.04 Underground Facilities

A. *Shown or Indicated:* The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the Site is based on information and data furnished to Owner or Engineer by the owners of such Underground Facilities, including Owner, or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:

1. Owner and Engineer shall not be responsible for the accuracy or completeness of any such information or data provided by others; and
2. the cost of all of the following will be included in the Contract Price, and Construction Manager shall have full responsibility for:
 - a. reviewing and checking all such information and data;
 - b. locating all Underground Facilities shown or indicated in the Contract Documents;
 - c. coordination of the Work with the owners of such Underground Facilities, including Owner, during construction; and
 - d. the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.

B. *Not Shown or Indicated:*

1. If an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated, or not shown or indicated with reasonable accuracy in the Contract Documents, Construction Manager shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.16.A), identify the owner of such Underground Facility and give written notice to that owner and to Owner and Engineer. Engineer will promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the existence or location of the Underground Facility. During such time, Construction Manager shall be responsible for the safety and protection of such Underground Facility.
2. If Engineer concludes that a change in the Contract Documents is required, a Construction Change Directive or a Change Order will be issued to reflect and document such consequences. An equitable adjustment shall be made in the Contract Price or Contract Times, or both, to the extent that they are attributable to the existence or location of any Underground Facility that was not shown or indicated or not shown or indicated with reasonable accuracy in the Contract Documents and that Construction Manager did not know of and could not reasonably have been expected to be aware of or to have anticipated. If Owner and Construction Manager are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment in Contract Price or Contract Times, Owner or Construction Manager may make a Claim therefor as provided in Paragraph 10.05.

4.05 Reference Points

A. Owner shall provide engineering surveys to establish reference points for construction which in Engineer's judgment are necessary to enable Construction Manager to proceed with the Work. Construction Manager shall be responsible for laying out the Work, shall protect and preserve the established reference points and

property monuments, and shall make no changes or relocations without the prior written approval of Owner. Construction Manager shall report to Engineer whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

4.06 Hazardous Environmental Condition at Site

- A. Reports and drawings of Hazardous Environmental Conditions known to the Owner that have been identified at the Site are attached as part of **Composite Exhibit “H”**.
- B. *Limited Reliance by Construction Manager:* Construction Manager may not rely upon the accuracy of the reports and drawings in **Composite Exhibit “H”**. Construction Manager shall independently confirm that, in the Construction Manager’s professional judgment, the information is reliable and accurate. Construction Manager may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:
 - 1. the completeness of such reports and drawings for Construction Manager’s purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Construction Manager and safety precautions and programs incident thereto; or
 - 2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or
 - 3. any Construction Manager interpretation of or conclusion drawn from any data, interpretations, opinions or information.
- C. Construction Manager shall not be responsible for any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in Drawings or Specifications, identified in the Contract Documents to be within the scope of the Work, or which should have been reasonably known to the Construction Manager. Construction Manager shall be responsible for a Hazardous Environmental Condition created with any materials brought to the Site by Construction Manager, Subcontractors, Suppliers, or anyone else for whom Construction Manager is responsible.
- D. If Construction Manager encounters a Hazardous Environmental Condition or if Construction Manager or anyone for whom Construction Manager is responsible creates a Hazardous Environmental Condition, Construction Manager shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 6.16.A); and (iii) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any.
- E. Construction Manager shall not be required to resume Work in connection with such condition or in any affected area until after Owner has obtained any required permits related thereto and delivered written notice to Construction Manager: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or (ii) specifying any special conditions under which such Work may be resumed safely. If Owner and Construction Manager cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Construction Manager, either party may make a Claim therefor as provided in Paragraph 10.05.
- F. If after receipt of such written notice Construction Manager does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work. If Owner and Construction Manager cannot agree as to entitlement to or on the amount or extent, if

any, of an adjustment in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim therefor as provided in Paragraph 10.05. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 7 and the Contract Price shall be reduced by deductive Change Order for the costs incurred by Owner to perform the deleted portion of the Work with Owner's own forces or by others.

- G. To the fullest extent permitted by Laws and Regulations, Construction Manager shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, Engineers, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition created by Construction Manager or by anyone for whom Construction Manager is responsible. Nothing in this Paragraph 4.06.G shall obligate Construction Manager to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- H. The provisions of Paragraphs 4.02, 4.03, and 4.04 do not apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

ARTICLE 5 – BONDS AND INSURANCE

5.01 Performance, Payment, and Other Bonds

- A. Construction Manager shall furnish performance and payment bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all of Construction Manager's obligations under the Contract Documents and in the forms attached to the Agreement all in accordance with applicable Florida law. These bonds shall remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 13.07, whichever is later, except as provided otherwise by Laws or Regulations or by the Contract Documents. Construction Manager shall also furnish such other bonds as are required by the Contract Documents. Construction Manager's performance bond shall not contain any limitation or exclusion for Construction Manager's warranty obligations.
- B. All bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All bonds signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed each bond.
- C. If the surety on any bond furnished by Construction Manager is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of Paragraph 5.01.B, Construction Manager shall promptly notify Owner and Engineer and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the requirements of Paragraphs 5.01.B and 5.02.

5.02 Licensed Sureties and Insurers

- A. All bonds and insurance required by the Contract Documents to be purchased and maintained by Owner or Construction Manager shall be obtained from surety or insurance companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds or insurance policies for the limits and coverages so required. Such surety and insurance companies shall also meet such additional requirements and qualifications as may be provided in the Supplementary Conditions.

5.03 Certificates of Insurance

- A. The Owner and Engineer shall be named as an additional insured in all policies required to be maintained under the Contract Documents, with the exception of the Worker's Compensation insurance, unless otherwise specified herein. As a condition precedent to entitlement to any progress payment or final payment under the Agreement, Construction Manager must maintain the required insurance coverage under the Contract Documents at least until final payment unless otherwise specified within the Contract Documents.

Construction Manager shall deliver to Owner, with copies to each additional insured and loss payee identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Owner or any other additional insured) which Construction Manager is required to purchase and maintain.

- C. Failure of Owner to demand such certificates or other evidence of Construction Manager's full compliance with these insurance requirements or failure of Owner to identify a deficiency in compliance from the evidence provided shall not be construed as a waiver of Construction Manager's obligation to maintain such insurance.
- D. The insurance and insurance limits required herein shall not be deemed as a limitation on Construction Manager's liability under the indemnities granted to Owner in the Contract Documents.

5.04 Construction Manager's Insurance

- A. Construction Manager shall purchase and maintain such insurance as is appropriate for the Work being performed and as will provide protection from claims set forth below which may arise out of or result from Construction Manager's performance of the Work and Construction Manager's other obligations under the Contract Documents, whether it is to be performed by Construction Manager, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable:

1. claims under workers' compensation, disability benefits, and other similar employee benefit acts;
2. claims for damages because of bodily injury, occupational sickness or disease, or death of Construction Manager's employees;
3. claims for damages because of bodily injury, sickness or disease, or death of any person other than Construction Manager's employees;
4. claims for damages insured by reasonably available personal injury liability coverage which are sustained:
 - a. by any person as a result of an offense directly or indirectly related to the employment of such person by Construction Manager, or
 - b. by any other person for any other reason;
5. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; and
6. claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.

- B. The policies of insurance required by this Paragraph 5.04 shall:

1. with respect to insurance required by Paragraphs 5.04.A.3 through 5.04.A.6 inclusive, be written on an a Project specific occurrence basis with limits as outlined in these General Conditions, the Supplementary Conditions or as required by Laws or Regulations, whichever is greater. Such policies shall include as additional insureds (subject to any customary exclusion regarding professional liability) Owner and Engineer, and any other individuals or entities identified in the Supplementary Conditions, all of whom shall be listed as additional insureds, and include coverage for the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of all such additional insureds, and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby. Construction Manager shall deliver endorsements showing such additional insured coverage using the ISO form CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Engineer and the Engineer's consultants, CG 20 32 07 04.
2. include at least the specific coverages and be written for not less than the limits of liability provided in the Supplementary Conditions or required by Laws or Regulations, whichever is greater;
3. include contractual liability insurance covering Construction Manager's indemnity obligations under Paragraphs 6.11 and 6.20;
4. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Construction Manager and to each other additional insured identified in the Supplementary Conditions to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the Construction Manager pursuant to Paragraph 5.03 will so provide);
5. remain in effect at least until final payment and at all times thereafter when Construction Manager may be correcting, removing, or replacing defective Work in accordance with Paragraph 13.07; and
6. include completed operations coverage with respect to insurance required by Paragraphs 5.04.A.3 through 5.04.A.6 inclusive:
 - a. Not applicable for this agreement
 - b. Construction Manager shall furnish Owner and each other additional insured identified in the Supplementary Conditions, to whom a certificate of insurance has been issued, evidence satisfactory to Owner and any such additional insured of continuation of such insurance at final payment and each year thereafter.
7. For Worker's Compensation insurance to apply for all employees in compliance with the "Workers' Compensation Law" of the State of Florida and all applicable federal laws. In addition, the policy(ies) must include Employer's Liability with limits as provided in the Supplementary Conditions.
8. Business Automobile Liability coverage, required by 5.04A.6, must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability Policy, without restrictive endorsements, as filed by the Insurance Services Office and must include:

Owned vehicles.
Non-owned and hired vehicles.
9. The policies of Construction Manager shall contain an endorsement whereby the insurance carriers agree that its insurance is primary and not contributory with or in excess of any coverage which the Owner has purchased. The Construction Manager shall be responsible for all deductibles under the insurance policies. The Construction Manager shall be responsible for all loss or damage to the Work, including the Construction Manager's materials delivered to Site for incorporation therein

and all property issued to the Construction Manager by the Owner for use or incorporation in the Work, except for Owner Direct Purchase which shall be governed by **Exhibit "P"**. The Construction Manager shall waive all rights against the Owner for recovery of damages to the extent that these damages are covered by insurance maintained pursuant to the above requirements, and the Construction Manager shall provide all waivers of subrogation in the endorsements and forms required by the Owner.

C. Property Insurance - Builder's Risk

1. The Construction Manager shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk, "all-risk" or equivalent policy form in the amount of the initial Contract Price, plus the value of subsequent modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the Site on a replacement cost basis without optional deductibles. The builder's risk property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed and materials or equipment supplied by others. Such property insurance shall be maintained until final acceptance of the Project by all governing authorities have jurisdiction over the Work and until no person or entity other than the Owner has an insurable interest in the property required by this Section to be covered. This insurance shall include interests of the Owner, Construction Manager, and all Subcontractors and suppliers in the Project. The Construction Manager shall disclose to the Owner the amount of any deductible. The Construction Manager shall be solely responsible for any deductibles under the builders risk insurance for losses which are caused in whole or in part by Construction Manager's act, error or omission. Owner and Contractor shall be named as insureds and beneficiaries under the builder's risk insurance. The naming of the Owner as an additional insured and beneficiary under the builder's risk policy shall not limit, alter, modify or amend the Construction Manager's obligations to the Owner under the Contract Documents. The Construction Manager waives and shall require its subcontractors and their respective insurers to waive all rights against the Owner for recovery of damages to the extent that these damages are covered by insurance maintained in accordance with this Agreement and the Construction Manager shall provide all waivers of subrogation in the endorsements and forms required by the Owner from Construction Manager and subcontractors.
2. Any plant, materials, equipment, tools or fixtures forming a part of the capital assets of the Construction Manager or belonging to any of its agents or employees shall not be covered by the builder's risk insurance maintained by Construction Manager.
3. Upon request, the Construction Manager shall provide the Owner with a copy of the property insurance policy or policies required. Unless otherwise agreed to in writing by Owner, the Owner shall adjust and settle the loss with the insurer with proceeds made payable to the Owner as fiduciary for the insureds, as their interests may appear. The Owner shall pay the Construction Manager its just share of insurance proceeds received by the Owner, and by appropriate agreements the Construction Manager shall make payments to its consultants and Subcontractors in similar manner. To the extent authorized by the policy and with the Owner's written approval, the Construction Manager may make a claim directly on the property policy. However, adjustment and settlement of such claim shall be subject to Owner's written approval.

D. Construction Manager shall procure Professional Liability insurance covering performance of the professional services.

E. Notwithstanding the availability of any insurance, the Construction Manager shall bear the risk of loss for its acts, errors or omissions pursuant to this Agreement. The Construction Manager bears all liability and risk of loss, for losses and damages arising from any acts, errors, omissions, or negligence on the part of the Construction Manager and its Subcontractors, including without limitation damages for defective and nonconforming work, and the Construction Manager and all applicable Subcontractors shall bear the risk and

pay for such losses regardless of whether the Construction Manager should be covered for such losses by any insurance required by this Article, except for Owner Direct Purchases governed by **Exhibit "P"**. Owner shall bear the risk of loss for Owner Direct Purchases.

5.05 Limits of Liability Insurance. The limits of liability for the insurance required by paragraph 5.04 of the General Conditions shall provide coverage for not less than the following amounts or greater where required by Laws and Regulations:

Worker's Compensation, etc., under paragraphs 5.04.A.1 and A.2 of the General Conditions:

- | | | |
|-----|--|--------------------|
| (1) | State: | Statutory |
| (2) | Applicable Federal (e.g. Longshoreman's and Harbour Workers' Compensation, Maritime, Jones Act, etc.): | Statutory |
| (3) | Employer's Liability: | <u>\$1,000,000</u> |

The coverage and the limits of liability for employer's liability are modified to read as follows:

\$1,000,000 each accident
\$1,000,000 disease policy limit
\$1,000,000 disease each employee

Also, the following wording is added governing employer's liability for contractors that are not incorporated or lease employees: If the Construction Manager is not an incorporated entity (i.e. sole proprietor/partnership), or Leases Employees (under the alternate employer laws of the State of Florida), the Owner shall require a minimum premium policy meeting the aforementioned requirements even though not required by the Worker's Compensation Laws of the State of Florida. Unless and until Owner provides the Owner with proof of exemption and such forms and proof that the Owner deems appropriate.

Comprehensive General Liability (under paragraphs 5.04.A.3 through A.6 of the General Conditions):

- (1) Including coverage for Premises/Operations Liability on an occurrence basis, Contractual Liability, Independent Contractors, Products/Completed Operations Liability on an occurrence basis, and Personal Injury Coverage with the employee exclusion deleted. The Owner will not accept exclusion for explosion, collapse, or underground in the policy.

Acceptable minimum per project limits are: \$2,000,000 general aggregate

\$2,000,000 products and completed operations aggregate
\$1,000,000 personal injury and advertising injury
\$1,000,000 each occurrence

- (2) Personal Injury

\$1,000,000 Annual Aggregate

- (3) Comprehensive Automobile Liability shall include coverage for owned vehicles, non-owned vehicles, and hired vehicles. Acceptable minimum limits are \$1,000,000 combined single limit for bodily injury and property damage.
- (4) Professional Liability insurance coverage with a minimum limit of \$1,000,000.00 per claim and a maximum deductible of \$25,000.00.
- (5) Follow form umbrella liability with limits of not less than Five Million Dollars (\$5,000,000.00) naming Owner and Engineer as an additional insured.

- 5.06 Subcontractor Insurance. All Subcontractors and suppliers shall be obligated to carry insurance commensurate with that required to be carried by Construction Manager and with limits of not less than the following unless otherwise agreed in written by Owner:
1. Commercial General Liability limits of not less than One Million Dollars (\$1,000,000.00) per Occurrence and Two Million Dollars (\$2,000,000.00) in the aggregate;
 2. Worker's compensation and Employer's Liability in accordance with all statutory requirements and with limits not less than those required by Construction Manager;
 3. Business Automobile Liability with minimum limits of One Million Dollars (\$1,000,000.00) per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability; and
 4. Umbrella Liability with limits of not less than Two Million Dollars (\$2,000,000.00).
 5. Any Subcontractors performing design services shall be required to carry professional liability insurance with limits acceptable to Owner.

Subcontractors and suppliers shall name the Owner and Engineer as an additional insured on all policies including completed operations coverage using the ISO form CG 20 10 07 04, CG 20 37 07 04.

5.07 Acceptance of Bonds and Insurance; Option to Replace

- A. Owner shall review the coverage afforded by or other provisions of the insurance required to be purchased or maintained by Construction Manager after delivery of insurance certificates to Owner in accordance with Paragraph 2.01B of the General Conditions. Construction Manager shall furnish to the Owner such additional information in respect to insurance provided by Construction Manager as the Owner may reasonably request. Review of Insurance Policies or Insurance Certificates by the Owner shall not relieve or decrease the liability of the Construction Manager hereunder. In case of a breach by Construction Manager of any insurance provision stated in the Contract Documents, the Owner at its option may take out and maintain, at the expense of the Construction Manager, such insurance as the Owner may deem proper and Owner may deduct the cost of such insurance from any monies which may be due or become due the Construction Manager under this Contract. All the policies of insurance (or the certificates or other evidence thereof) required to be purchased and maintained by Construction Manager shall contain the name of the Project.

5.08 Partial Utilization, Acknowledgment of Property Insurer

- A. If Owner finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in Paragraph 14.05, no such use or occupancy shall commence before the insurers providing the property insurance pursuant to Paragraph 5.04 have acknowledged notice thereof and in writing effected any changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy.

ARTICLE 6 – CONSTRUCTION MANAGER'S RESPONSIBILITIES

6.01 Supervision

- A. In addition to those responsibilities set forth in the Agreement, Construction Manager shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such

skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Construction Manager shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction.. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Construction Manager shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Construction Manager determines that such means, methods, techniques, sequences or procedures may not be safe, the Construction Manager shall give timely written notice to the Owner and Engineer and shall not proceed with that portion of the Work without further written instructions from the Engineer. If the Construction Manager is then instructed in writing by the Owner and Engineer to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Construction Manager, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures.

- B. Construction Manager shall be responsible to see that the completed Work complies accurately with the Contract Documents.
- C. At all times during the progress of the Work, Construction Manager shall assign a competent resident superintendent who shall not be replaced without written notice to Owner and Engineer except under extraordinary circumstances. Unless another person is specified in the Agreement, the superintendent will be Construction Manager's representative at the Site and shall have the authority to act on behalf of the Construction Manager. All communications given to or received from the superintendent shall be binding on Construction Manager.

6.02 Labor: Working Hours

- A. Construction Manager shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Construction Manager shall at all times maintain good discipline and order at the Site.
- B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed Monday through Friday, 7 a.m. till 6 p.m., excluding holidays, and shall comply with the Village of Wellington's Noise Ordinance. Construction Manager will not permit overtime work or the performance of Work on a Sunday without Owner's written consent (which will not be unreasonably withheld) given after prior written notice to Engineer.

6.03 Services, Materials, and Equipment

- A. Unless otherwise specified in the Contract Documents, Construction Manager shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start-up, and completion of the Work.
- B. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications shall expressly run to the benefit of Owner. If required by Engineer, Construction Manager shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.
- C. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions and warranties of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

6.04 Progress Schedule

A. Construction Manager shall adhere to the Schedule established in accordance with Paragraphs 2.05 and 2.07 as it may be adjusted from time to time as provided below.

1. Construction Manager shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.07) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times. Such adjustments will comply generally to the Progress Schedule then in effect and additionally will comply with any provisions of the General Requirements applicable thereto;
2. Proposed adjustments in the Progress Schedule that will change the Contract Times shall be submitted in accordance with the requirements of Article 12. Adjustments in Contract Times may only be made by a Change Order.

6.05 Substitutes and "Or-Equals"

A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the specification or description is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or-equal" item or no substitution is permitted, other items of material or equipment or material or equipment of other Suppliers may be submitted to Engineer for review under the circumstances described below.

1. *"Or-Equal" Items:* If in Engineer's sole discretion an item of material or equipment proposed by Construction Manager is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by Engineer as an "or-equal" item if:
 - a. in the exercise of reasonable judgment Engineer determines that:
 - 1) it is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;
 - 2) it will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole; and
 - 3) it has a proven record of performance and availability of responsive service.
 - b. Construction Manager certifies that, if approved and incorporated into the Work:
 - 1) there will be no increase in cost to the Owner or increase in Contract Times; and
 - 2) it will conform substantially to the detailed requirements of the item named in the Contract Documents.
2. *Substitute Items:*
 - a. If in Engineer's sole discretion an item of material or equipment proposed by Construction Manager does not qualify as an "or-equal" item under Paragraph 6.05.A.1, it will be considered a proposed substitute item.
 - b. Construction Manager shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute therefor. Requests for review of proposed substitute items of material or equipment will not be accepted by Engineer from anyone other than Construction Manager.

- c. The requirements for review by Engineer will be as set forth in Paragraph 6.05.A.2.d, as supplemented by the General Requirements, and as Engineer may decide is appropriate under the circumstances.
- d. Construction Manager shall make written application to Engineer for review of a proposed substitute item of material or equipment that Construction Manager seeks to furnish or use. The application:
 - 1) shall certify that the proposed substitute item will:
 - a) perform adequately the functions and achieve the results called for by the general design,
 - b) be similar in substance to that specified, and
 - c) be suited to the same use as that specified;
 - 2) will state:
 - a) the extent, if any, to which the use of the proposed substitute item will prejudice Construction Manager's achievement of Substantial Completion on time,
 - b) whether use of the proposed substitute item 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 other work on the Project) to adapt the design to the proposed substitute item, and
 - c) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty;
 - 3) will identify:
 - a) all variations of the proposed substitute item from that specified, and
 - b) available engineering, sales, maintenance, repair, and replacement services; and
 - 4) shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including costs of redesign and claims of other contractors affected by any resulting change.

B. *Substitute Construction Methods or Procedures:* If a specific means, method, technique, sequence, or procedure of construction is expressly required by the Contract Documents, Construction Manager may furnish or utilize a substitute means, method, technique, sequence, or procedure of construction approved in writing by Engineer. Construction Manager shall submit sufficient information to allow Engineer, in Engineer's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The requirements for review by Engineer will be similar to those provided in Paragraph 6.05.A.2.

C. *Engineer's Evaluation:* Engineer will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to Paragraphs 6.05.A and 6.05.B. Engineer may require Construction Manager to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No "or equal" or substitute will be ordered, installed or utilized until Engineer's review is complete, which

will be evidenced by a Change Order. Engineer will advise Construction Manager in writing of any negative determination.

- D. *Special Guarantee:* Owner may require Construction Manager to furnish at Construction Manager's expense a special performance guarantee or other surety with respect to any substitute.
- E. *Engineer's Cost Reimbursement:* Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Construction Manager pursuant to Paragraphs 6.05.A.2 and 6.05.B. Whether or not Engineer approves a substitute so proposed or submitted by Construction Manager, Construction Manager shall reimburse Owner for the reasonable charges of Engineer for evaluating each such proposed substitute. Construction Manager shall also reimburse Owner for the reasonable charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.
- F. *Construction Manager's Expense:* Construction Manager shall provide all data in support of any proposed substitute or "or-equal" at Construction Manager's expense.

6.06 Concerning Subcontractors, Suppliers, and Others

- A. Construction Manager shall not employ any Subcontractor, Supplier, or other individual or entity (including those acceptable to Owner as indicated in Paragraph 6.06.B), whether initially or as a replacement, against whom Owner may have reasonable objection. Construction Manager shall not be required to employ any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against whom Construction Manager has reasonable objection.
- B. If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers, or other individuals or entities to be submitted to Owner in advance for acceptance by Owner by a specified date prior to the Effective Date of the Agreement, and if Construction Manager has submitted a list thereof in accordance with the Supplementary Conditions, Owner's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the Bidding Documents or the Contract Documents) of any such Subcontractor, Supplier, or other individual or entity so identified may be revoked on the basis of reasonable objection after due investigation. Construction Manager shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity, and the Contract Price will be adjusted by the difference in the cost occasioned by such replacement, and an appropriate Change Order will be issued. No acceptance by Owner of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of any right of Owner or Engineer to reject defective Work.
- C. Construction Manager shall be fully responsible to Owner for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Construction Manager is responsible for Construction Manager's own acts and omissions. Nothing in the Contract Documents:
 - 1. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner or Engineer and any such Subcontractor, Supplier or other individual or entity; nor
 - 2. shall create any obligation on the part of Owner or Engineer to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.
- D. Owner or Engineer may furnish to any such Subcontractor, Supplier, or other individual or entity, to the extent practicable, evidence of amounts paid to Construction Manager in accordance with Construction Manager's Application for Payment.

- E. Construction Manager shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with Construction Manager.
- F. Construction Manager shall require all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work to communicate with Engineer through Construction Manager.
- G. The divisions and sections of the Specifications and the identifications of any Drawings shall not control Construction Manager in dividing the Work among Subcontractors or Suppliers or delineating the work to be performed by any specific trade.
- H. All Work performed for Construction Manager by a Subcontractor or Supplier will be pursuant to an appropriate agreement between Construction Manager and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer. The agreement(s) between the Construction Manager and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against Owner, Construction Manager, Engineer, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, Construction Manager will obtain the same. It is further agreed that all subcontracts and material and equipment purchase contracts entered into by Construction Manager or its subcontractors or material suppliers, shall contain a provision stating that the Owner may bring Claim(s) directly against any subcontractor of Construction Manager for breach of Contract, warranty rights, quality of workmanship, and create third party beneficiary rights of Owner in said agreements. Additionally, nothing contained in this Contract shall constitute an assignment of Construction Manager's rights against the Owner or create any third party beneficiary rights in any subcontractors or material and equipment suppliers of Construction Manager. The purpose of this provision is to allow the Village, in addition to Construction Manager, to make claim for damage or indemnification directly against any subcontractors or material and equipment suppliers that may be ultimately responsible for defects or deficiencies in the Work or materials and equipment. Further, to the extent requested by Owner, Construction Manager shall deliver copies of all Subcontract and Supplier agreements, purchase orders and invoices to Owner.

6.07 Patent Fees and Royalties

- A. Construction Manager shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if, to the actual knowledge of Owner or Engineer, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by Owner in the Contract Documents.
- B. [Paragraph intentionally left blank.]
- C. To the fullest extent permitted by Laws and Regulations, Construction Manager shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, Engineers, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents. Nothing herein shall be construed or interpreted as consent by the Owner to be sued, nor as a waiver of sovereign immunity beyond the waiver and limits provided in §768.28, Florida Statutes.

6.08

A. Intentionally Deleted.

6.09 Laws and Regulations

- A. Construction Manager shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Engineer shall be responsible for monitoring Construction Manager's compliance with any Laws or Regulations.
- B. If Construction Manager performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, Construction Manager shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, Engineers, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work. However, it shall not be Construction Manager's primary responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve Construction Manager of Construction Manager's obligations under Paragraph 3.03.
- C. Changes in Laws or Regulations not known as of the Effective Date of the Agreement having an effect on the cost or time of performance of the Work may be the subject of an adjustment in Contract Price or Contract Times. If Owner and Construction Manager are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

6.10 Taxes

- A. Construction Manager shall pay all sales, consumer, use, and other similar taxes required to be paid by Construction Manager in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work. Sales Tax shall be paid in accordance with the Sales Tax Recovery Program Special Conditions when applicable, as determined by the Owner and/or Engineer.

6.11 Use of Site and Other Areas

A. *Limitation on Use of Site and Other Areas:*

1. Construction Manager shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. Construction Manager shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.
2. Should any claim be made by any such owner or occupant because of the performance of the Work, Construction Manager shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.
3. To the fullest extent permitted by Laws and Regulations, Construction Manager shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, Engineers, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused by or based upon Construction Manager's performance of the Work. Nothing herein shall be

construed or interpreted as consent by the Owner to be sued, nor as a waiver of sovereign immunity beyond the waiver or limits provided in §768.28, Florida Statutes.

- B. *Removal of Debris During Performance of the Work:* During the progress of the Work, Construction Manager shall keep the Site and other areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations. C. Prior to Substantial Completion of the Work, Construction Manager shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work Construction Manager shall remove from the Site all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents. If Construction Manager fails to keep the Site and other areas clean on a daily basis and/or as a condition to Substantial Completion, Owner shall have the right to deduct costs incurred by Owner to keep the Site and other areas clean and free from accumulations of waste.
- D. *Loading Structures:* Construction Manager shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Construction Manager subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

6.12 Record Documents

- A. Construction Manager shall maintain in a safe place at the Site one record copy of all Drawings, Specifications, Addenda, Change Orders, Construction Change Directives, Field Orders, and written interpretations and clarifications in good order and annotated to show changes made during construction. These record documents together with all approved Samples and a counterpart of all approved Shop Drawings will be available to Engineer for reference. Upon completion of the Work, these record documents, Samples, and Shop Drawings will be delivered to Engineer for Owner.

6.13 Safety and Protection

- A. Construction Manager shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations. Construction Manager shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:
1. all persons on the Site or who may be affected by the Work;
 2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
 3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- B. Construction Manager shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Construction Manager shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.
- C. Construction Manager shall comply with the applicable requirements of Owner's safety programs, if any. The Supplementary Conditions identify any Owner's safety programs that are applicable to the Work.

- D. Construction Manager shall inform Owner and Engineer of the specific requirements of Construction Manager's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.
- E. All damage, injury, or loss to any property including but not limited to property referred to in Paragraph 6.13.A.2 or 6.13.A.3 caused, directly or indirectly, in whole or in part, by Construction Manager, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Construction Manager at no additional cost to the Owner or Engineer.
- F. Construction Manager's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and Engineer has issued a notice to Owner and Construction Manager in accordance with Paragraph 14.07.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).
- G. Construction Manager shall comply with the Trench Safety Standards provided by OSHA's Excavation Safety Standards, 29 CFR §1926.650 Subpart P and Fla. Stat. §553.60-§553.64 (1990) (inclusive).

6.14 Safety Representative

- A. Construction Manager shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

6.15 Hazard Communication Programs

- A. Construction Manager shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available at the Site in accordance with Laws or Regulations.

6.16 Emergencies

- A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Construction Manager is obligated to act to prevent threatened damage, injury, or loss. Construction Manager shall give Engineer prompt written notice if Construction Manager believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If Engineer determines that a change in the Contract Documents is required because of the action taken by Construction Manager in response to such an emergency, a Construction Change Directive or Change Order will be issued.

6.17 Shop Drawings and Samples

- A. Construction Manager shall submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals (as required by Paragraph 2.07). Each submittal will be identified as Engineer may require.

1. *Shop Drawings:*

- a. Submit number of copies specified in the General Requirements.
- b. Data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Construction Manager proposes to provide and to enable Engineer to review the information for the limited purposes required by Paragraph 6.17.D.

2. *Samples:*
 - a. Submit number of Samples specified in the Specifications.
 - b. Clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the submittal for the limited purposes required by Paragraph 6.17.D.
- B. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Construction Manager.
- C. *Submittal Procedures:*
 1. Before submitting each Shop Drawing or Sample, Construction Manager shall have:
 - a. reviewed and coordinated each Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;
 - b. determined and verified all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;
 - c. determined and verified the suitability of all materials offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and
 - d. determined and verified all information relative to Construction Manager's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto.
 2. Each submittal shall bear a stamp or specific written certification that Construction Manager has satisfied Construction Manager's obligations under the Contract Documents with respect to Construction Manager's review and approval of that submittal.
 3. With each submittal, Construction Manager shall give Engineer specific written notice of any variations that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be both a written communication separate from the Shop Drawings or Sample submittal; and, in addition, by a specific notation made on each Shop Drawing or Sample submitted to Engineer for review and approval of each such variation.
- D. *Engineer's Review:*
 1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the Schedule of Submittals acceptable to Engineer. Engineer's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
 2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.

3. Engineer's review and approval shall not relieve Construction Manager from responsibility for any variation from the requirements of the Contract Documents unless Construction Manager has complied with the requirements of Paragraph 6.17.C.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer's review and approval shall not relieve Construction Manager from responsibility for complying with the requirements of Paragraph 6.17.C.1.

E. *Resubmittal Procedures:*

1. Construction Manager shall make corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and approval. Construction Manager shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous submittals.

6.18 Continuing the Work

- A. Construction Manager shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by Paragraph 15.04 or as Owner and Construction Manager may otherwise agree in writing.

6.19 Construction Manager's General Warranty and Guarantee

- A. Construction Manager warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Construction Manager warrants to Owner that all materials and equipment furnished for the Project will be new unless otherwise specified and that all Work for the Project, will be of first quality, free from faults and defects, fully functional, and in conformance with the Contract Documents. The Work shall 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's warranty and the warranty of all Subcontractors and suppliers shall be for a period of one (1) year from final payment or longer, as may be stated in an Extended Warranties. All Work for the Project not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Construction Manager shall, within three (3) working days of written notice from Village, correct any Work that fails to conform to the requirements of the Contract Documents and unconditionally guarantees and warrants that it shall correct at its sole cost and expense any defects due to faulty materials, equipment and/or workmanship which appear within a period of one (1) year from the date of final payment or such longer time required by the Contract Documents for particular items (the "Extended Warranties"). The Construction Manager shall bear all costs of correcting such defective work. Construction Manager and Subcontractor warranties expressly also include all statutory warranties, all of which are specifically and expressly incorporated herein by reference. The Construction Manager shall also provide warranties from manufacturers for the specified items and systems within the Contract Documents (the "Manufacturers' Warranties" and Warranty Forms shall be attached as **Exhibit "R6"** to this Agreement and may include Extended Warranties. Notwithstanding anything set forth in the Manufacturers' Warranties to the contrary, those items specifically covered by the Manufacturers' Warranties and any disclaimers and limitations on liability shall in no way be deemed to limit Construction Manager's warranties and liability herein and are in addition to and not in lieu of the Construction Manager's warranties. These obligations shall survive termination of this Agreement. If Construction Manager should default in the performance of any of its warranty obligations, it shall be responsible for all damages, fees or costs incurred by the Owner in enforcing the warranty provisions of this Article, including, but not limited to, all attorney's fees, engineering and consulting fees or other expenses incurred. Without limiting the generality of the foregoing, if any warranty repairs are not performed within the specified time, emergency repairs performed by others shall not void the warranty and the Construction Manager shall reimburse the Owner for all costs incurred in connection with the performance of such repairs. This warranty is in addition to and not in lieu of any other warranties, express or implied, which may be provided by Laws and Regulations.

- B. Construction Manager's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute acceptance of Work that is not in accordance with the Contract Documents or a release of Construction Manager's obligation to perform the Work in accordance with the Contract Documents:
1. observations by Engineer;
 2. recommendation by Engineer or payment by Owner of any progress or final payment;
 3. the issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;
 4. use or occupancy of the Work or any part thereof by Owner;
 5. any acceptance by Owner or any failure to do so;
 6. any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by Engineer;
 7. any inspection, test, or approval by others; or
 8. any correction of defective Work by Owner.

6.20 Delegation of Professional Design Services

- A. Construction Manager will not be required to provide professional Engineerural or engineering design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Construction Manager's responsibilities for construction means, methods, techniques, sequences and procedures. Construction Manager shall not be required to provide professional services in violation of applicable law.
- B. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of Construction Manager by the Contract Documents, Construction Manager shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Engineer.
- C. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided Owner and Engineer have specified to Construction Manager all performance and design criteria that such services must satisfy.
- D. Pursuant to this Paragraph 6.20, Engineer's review and approval of design calculations and design drawings will be only for the limited purpose of checking for conformance with performance and design criteria given and the design concept expressed in the Contract Documents. Engineer's review and approval of Shop Drawings and other submittals (except design calculations and design drawings) will be only for the purpose stated in Paragraph 6.17.D.1.
- E. Construction Manager shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

ARTICLE 7 – OTHER WORK AT THE SITE

7.01 Related Work at Site

- A. Owner may perform other work related to the Project at the Site with Owner's employees, or through other direct contracts therefor, or have other work performed by utility owners. If such other work is not noted in the Contract Documents, then:
1. written notice thereof will be given to Construction Manager prior to starting any such other work; and
 2. if Owner and Construction Manager are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times that should be allowed as a result of such other work, a Claim may be made therefor as provided in Paragraph 10.05.
- B. Construction Manager shall afford each other contractor who is a party to such a direct contract, each utility owner, and Owner, if Owner is performing other work with Owner's employees, proper and safe access to the Site, provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work, and properly coordinate the Work with theirs. Construction Manager shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Construction Manager shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Construction Manager may cut or alter others' work with the written consent of Engineer and the others whose work will be affected. The duties and responsibilities of Construction Manager under this Paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of Construction Manager in said direct contracts between Owner and such utility owners and other contractors.
- C. If the proper execution or results of any part of Construction Manager's Work depends upon work performed by others under this Article 7, Construction Manager shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Construction Manager's Work. Construction Manager's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Construction Manager's Work except for latent defects and deficiencies in such other work.

7.02 Coordination

- A. If Owner intends to contract with others for the performance of other work on the Project at the Site, the following will be set forth in Supplementary Conditions:
1. the individual or entity who will have authority and responsibility for coordination of the activities among the various contractors will be identified;
 2. the specific matters to be covered by such authority and responsibility will be itemized; and
 3. the extent of such authority and responsibilities will be provided.
- B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination.

7.03 Legal Relationships

- A. Paragraphs 7.01.A and 7.02 are not applicable for utilities not under the control of Owner.
- B. Each other direct contract of Owner under Paragraph 7.01.A shall provide that the other contractor is liable to Owner and Construction Manager for the reasonable direct delay and disruption costs incurred by Construction Manager as a result of the other contractor's wrongful actions or inactions.

- C. Construction Manager shall be liable to Owner and any other contractor under direct contract to Owner for the reasonable direct delay and disruption costs incurred by such other contractor as a result of Construction Manager's wrongful action or inactions.

ARTICLE 8 – OWNER'S RESPONSIBILITIES

8.01 Communications to Construction Manager

- A. Owner shall use its best efforts to issue all communications to Construction Manager through Engineer, unless otherwise provided in the Contract Documents. Likewise, Construction Manager shall communicate with Owner through Engineer and must take the necessary steps to ensure that all Subcontractors, sub-subcontractors and other personnel working on Construction Manager's behalf issue all communications directed to Owner through Engineer.

8.02 Replacement of Engineer

- A. In case of termination of the employment of Engineer, Owner shall appoint an engineer to whom Construction Manager makes no reasonable objection, whose status under the Contract Documents shall be that of the former Engineer.

8.03 Furnish Data

- A. Owner shall promptly furnish the data required of Owner under the Contract Documents, including, without limitation, (i) geotechnical engineering survey; (ii) other applicable land surveys; (iii) environmental studies of existing facilities; and (iv) all applicable reports regarding water intrusion and contamination, all of which are attached as **Composite Exhibit "T"**. Unless otherwise provided for under the Contract Documents, the Owner shall provide said information in a timely manner and Construction Manager shall not rely on such information without independently confirming that, in the Construction Manager's professional judgment, the information is reliable and accurate.

8.04 Limitations on Owner's Responsibilities

- A. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Construction Manager's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Construction Manager to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be responsible for Construction Manager's failure to perform the Work in accordance with the Contract Documents.

8.05 Evidence of Financial Arrangements

- A. Upon written request of Construction Manager, Owner shall furnish Construction Manager reasonable evidence that financial arrangements have been made to satisfy Owner's obligations under the Contract Documents.

8.06 Compliance with Safety Program

- A. While at the Site, Owner's employees and representatives shall comply with the specific applicable requirements of Construction Manager's safety programs of which Owner has been informed in writing in accordance with the Contract Documents.

ARTICLE 9 – ENGINEER'S STATUS DURING CONSTRUCTION

9.01 Not used.

9.02 Visits to Site

- A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of Construction Manager's executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will advise the Owner of any defective or non-conforming Work.
- B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 9.09. Particularly, but without limitation, during or as a result of Engineer's visits or observations of Construction Manager's Work, Engineer will not supervise, direct, control, or have authority over or be responsible for Construction Manager's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Construction Manager to comply with Laws and Regulations applicable to the performance of the Work.

9.03 Project Representative

- A. If Owner and Engineer agree, Engineer will furnish a Resident Project Representative to assist Engineer in providing more extensive observation of the Work. The duties, responsibilities and limitations of authority of any such Resident Project Representative and assistants will be as provided in the LISTING OF THE DUTIES, RESPONSIBILITIES AND LIMITATIONS OF AUTHORITY OF THE RESIDENT PROJECT REPRESENTATIVE (the "Listing") which will be distributed to Construction Manager and, as provided in Paragraph 9.09. If any conflicts exist between the Listing and Paragraph 9.09, the terms and conditions of the Listing shall govern. If Owner designates another representative or agent to represent Owner at the Site who is not Engineer's consultant, agent or employee, the responsibilities and authority and limitations thereon of such other individual or entity will be as presented at the Pre-Construction Meeting.

9.04 Authorized Variations in Work

- A. Engineer may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. These may be accomplished by a Field Order and will be binding on Owner and also on Construction Manager, who shall perform the Work involved promptly. If Owner or Construction Manager believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, or both, Construction Manager shall so notify Owner in writing within five (5) business days of receipt of the Field Order, and if the parties are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

9.05 Rejecting Defective Work

- A. Engineer will have authority to reject Work which Engineer believes to be defective, or that Engineer believes will not produce a completed Project that conforms to the Contract Documents or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Engineer will also have authority to require special inspection or testing of the Work as provided in Paragraph 13.04, whether or not the Work is fabricated, installed, or completed. Owner shall also have the same rights as Engineer to reject Work which it believes to be defective, which it believes will not produce a completed Project that conforms to the Contract Documents, or which it believes that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.

9.06 Shop Drawings, Change Orders and Payments

- A. In connection with Engineer's authority, and limitations thereof, as to Shop Drawings and Samples, see Paragraph 6.17.
- B. In connection with Engineer's authority, and limitations thereof, as to design calculations and design drawings submitted in response to a delegation of professional design services, if any, see Paragraph 6.21.
- C. In connection with Engineer's authority as to Change Orders, see Articles 10, 11, and 12.
- D. In connection with Engineer's authority as to Applications for Payment, see Article 14.

9.07 Determinations for Unit Price Work

- A. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Construction Manager. Engineer will review with Construction Manager the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Engineer's written decision thereon will be final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Owner and Construction Manager, subject to the provisions of Paragraph 10.05.

9.08 Decisions on Requirements of Contract Documents and Acceptability of Work

- A. Engineer will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. All matters in question and other matters between Owner and Construction Manager arising prior to the date final payment is due relating to the acceptability of the Work, and the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work, will be referred initially to Engineer in writing within 14 days of the event giving rise to the question.
- B. In no event, shall Construction Manager cease performance of the Work as the result of referring a matter to the Engineer regarding or relating to the acceptability of the Work and/or the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work.
- C. Engineer will, with reasonable promptness, render a written decision on the issue referred. If Owner or Construction Manager believes that any such decision entitles them to an adjustment in the Contract Price or Contract Times or both, a Claim may be made under Paragraph 10.05.
- D. Engineer's written decision on the issue referred will be neither final nor binding on Owner and Construction Manager, and is subject to the provisions of Paragraph 10.05.
- E. When functioning as interpreter and judge under this Paragraph 9.08, Engineer will not show partiality to Owner or Construction Manager and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity.

9.09 Limitations on Engineer's Authority and Responsibilities

- A. Neither Engineer's authority or responsibility under this Article 9 or under any other provision of the Contract Documents nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Construction Manager, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.
- B. Engineer will not supervise, direct, control, or have authority over or be responsible for Construction Manager's means, methods, techniques, sequences, or procedures of construction, or the safety precautions

and programs incident thereto, or for any failure of Construction Manager to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Construction Manager's failure to perform the Work in accordance with the Contract Documents.

- C. Engineer will not be responsible for the acts or omissions of Construction Manager or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.
- D. Engineer's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Paragraph 14.07.A will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals that the results certified indicate compliance with, the Contract Documents.
- E. The limitations upon authority and responsibility set forth in this Paragraph 9.09 shall also apply to the Resident Project Representative, if any, and assistants, if any.

9.10 Compliance with Safety Program

- A. While at the Site, Engineer's employees and representatives shall comply with the specific applicable requirements of Construction Manager's safety programs of which Engineer has been informed pursuant to Paragraph 6.13.D.

ARTICLE 10 – CHANGES IN THE WORK; CLAIMS

10.01 Authorized Changes in the Work

- A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work by a Change Order, or a Construction Change Directive. Upon receipt of any such document, Construction Manager shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).
- B. If Owner and Construction Manager are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a Construction Change Directive, a Claim may be made therefor as provided in Paragraph 10.05, but Construction Manager shall be required to perform the Work and Owner shall be required to continue to make undisputed payments under the Contract Documents.
- C. Any changes in the Work or any adjustment in the Contract Price or the Contract Time shall only be made upon written Change Order or Construction Change Directive as provided herein. If Construction Manager proceeds with such work without obtaining a written Change Order or Construction Change Directive, it shall be assumed that Construction Manager has performed such work at no additional charge. The requirement for writing under this Article cannot be waived.

10.02 Unauthorized Changes in the Work

- A. Construction Manager shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents as amended, modified, or supplemented as provided in Paragraph 3.04, authorized by written Change Order or Construction Change Directive, except in the case of an emergency as provided in Paragraph 6.16 or in the case of uncovering Work as provided in Paragraph 13.04.D.

10.03 Execution of Change Orders & Construction Change Directives

- A. A Change Order shall be based upon agreement between the Owner and Construction Manager and approved by Engineer, based on auditable documentation of the costs incurred, if any, and shall be executed upon any of the following:
1. changes in the Work which are: (i) ordered by Owner pursuant to Paragraph 10.01.A, (ii) required because of acceptance of defective Work under Paragraph 13.08.A or Owner's correction of defective Work under Paragraph 13.09, or (iii) agreed to by the parties;
 2. changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Construction Change Directive; and
 3. changes in the Contract Price or Contract Times which embody the substance of any written decision rendered by Engineer pursuant to Paragraph 10.05 if agreed to by the parties.
- B. Among other circumstances, a Construction Change Directive may be issued where the Construction Manager believes it is entitled to a Change Order or otherwise to an increase in the Contract Price or Contract Time, but the Owner does not agree or if the parties cannot agree on the amount or duration of any change to the Contract Price or Contract Time. In such event, the Construction Manager is obligated to perform the Work described in the Construction Change Directive in accordance with this Paragraph. Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Construction Manager shall proceed promptly, unless otherwise provided in the Change Order or Construction Change Directive. A Construction Change Directive is a written order signed by the Owner directing a change in the Work prior to agreement on adjustment, if any, in the Contract Price or Contract Time, or both. The Owner 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. If the Construction Change Directive provides for an adjustment to the Contract Price, the adjustment shall be based on one of the following methods:
 - a. Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
 - b. Unit prices stated in the Contract Documents or subsequently agreed upon;
 - c. Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
 - d. As provided in Article 11.
 3. Upon receipt of a Construction Change Directive, the Construction Manager shall promptly proceed with the change in the Work involved and advise the Owner and Engineer of the Construction Manager's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Price or Contract Time. Disagreement as to the adjustment to the Contract Price or Contract Time shall not excuse Construction Manager from its prompt performance of the Work described in the Construction Change Directive.
 4. A Construction Change Directive signed by the Construction Manager indicates the Construction Manager's agreement therewith, including adjustment in Contract Price and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.
 5. Deductions of Work ("Deductive Change Orders"). The Owner reserves the right to remove any items from the scope of Work in the Contract Documents by Deductive Change Order. Such deduction shall be determined by the Engineer using the Construction Manager's Schedule of Values. The deductions, if any, shall not be considered a cardinal change to the Agreement. The parties hereto recognize that the Owner has

materially relied on this provision in entering into contract with Construction Manager. Such value deduction shall be conclusive as it relates to utilizing the Construction Manager's Schedule of Values.

10.04 Notification to Surety

- A. Any bonds issued in connection with the Work shall contain a provision that surety waives notices of any changes to the Contract Documents. However, to the extent any notice of any changes to the Contract Documents requires notice to any surety, the giving of any such notice will be Construction Manager's responsibility. The amount of each applicable bond shall automatically be adjusted to reflect the effect of any such change.

10.05 Claims

- A. *Engineer's Decision Required:* All Claims, except those waived pursuant to Paragraph 14.09 of the General Conditions, shall be referred to the Engineer for decision. A decision by Engineer shall be required as a condition precedent to any exercise by Owner or Construction Manager of any rights or remedies either may otherwise have under the Contract Documents or by Laws and Regulations in respect of such Claims, unless Engineer fails to render a decision in the time periods required by the Contract Documents.
- B. *Notice:* Construction Manager shall deliver written notice stating the general nature of each Claim to Engineer and Owner promptly (but in no event later than 14 days) after the start of the event giving rise thereto. The responsibility to substantiate a Claim shall rest with the party making the Claim. Construction Manager shall deliver written notice of the amount or extent of the Claim, with supporting data shall be delivered to the Engineer and Owner 30 days after the start of such event (unless Engineer allows additional time for claimant to submit additional or more accurate data in support of such Claim). A Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of Paragraph 12.01.B. A Claim for an adjustment in Contract Times shall be prepared in accordance with the provisions of Paragraph 12.02.B. Each Claim shall be accompanied by claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant believes it is entitled as a result of said event. The opposing party shall submit any response to Engineer and the claimant within 30 days after receipt of the claimant's last submittal (unless Engineer allows additional time).
- C. *Engineer's Action:* Engineer will review each Claim and, within 14 days after receipt of the last submittal of the claimant or the last submittal of the opposing party if any, take one of the following actions in writing:
1. deny the Claim in whole or in part;
 2. approve the Claim; or
 3. notify the parties that the Engineer is unable to resolve the Claim if, in the Engineer's sole discretion, it would be inappropriate for the Engineer to do so. For purposes of further resolution of the Claim, such notice shall be deemed a denial.
- D. In the event that Engineer does not take action on a Claim within said 14 days, the Claim shall be deemed denied.
- E. Engineer's written decision shall not be binding on the parties unless expressly agreed to by the parties.
- F. No Claim for an adjustment in Contract Price or Contract Times will be valid if not submitted in accordance with this Paragraph 10.05.

ARTICLE 11 –ALLOWANCES & UNIT PRICE WORK

11.01 Allowances

- A. It is understood that Construction Manager has included in the Contract Price all allowances so named in the Contract Documents as part of **Exhibit "R4"** and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to Owner and Engineer. Unless otherwise provided in the Contract Documents:
1. allowances shall cover the cost to the Construction Manager of materials and equipment delivered at the Site and all required taxes, less applicable trade discounts;
 2. Construction Manager's costs for unloading and handling at the Site, labor, installation costs, overhead, profit, general conditions, insurance, bonds and other expenses contemplated for stated allowance amounts shall be included in the Contract Price but not in the allowances; and
 3. whenever costs for the actual allowance item (materials and equipment) are more than or less than allowances, the Contract Price shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under this Paragraph and (2) changes in Construction Manager's costs.

Construction Manager shall notify Owner to make selection of materials and equipment under an allowance in sufficient time to avoid delay in the Work.

11.02 Contingency Allowance

- A. Any contingency listed in the Schedule of Values (the "Contingency") may only be utilized by the Owner, in its sole discretion, for any purpose, including, but not limited to covering unanticipated costs in the Work. The Construction Manager shall not be entitled to use the Contingency without the prior written approval of Owner, which may be withheld in its sole discretion. In no event shall the Contingency be used for the Construction Manager's gross negligence; for costs reasonably recoverable from insurance, subcontractors, supplier or sureties; for funding punch list work; for funding the coordination of subcontractors and other entities; for resolving conflicts in the field; for funding costs incurred as a result of a default on the part of Construction Manager unless Owner approves in writing, or for any other direct costs of performance not approved in writing by Owner. Any Contingency that is not used (the "Contingency Savings") will accrue 100% to the Owner and shall result in a credit to Owner and result in a reduction towards the outstanding balance of the Contract Price.

11.03 Unit Price Work

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Contract Documents.
- B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by Construction Manager will be made by Engineer subject to the provisions of Paragraph 9.07.
- C. Each unit price will be deemed to include an amount considered by Construction Manager to be adequate to cover Construction Manager's overhead and profit for each separately identified item.
- D. Construction Manager may not make a Claim in accordance with paragraph 10.05 for additional expenses incurred as a result of a difference between final quantity of any item(s) of Unit Price Work and the estimated quantity of such item(s) in the Contract Documents. Owner may make a claim for an adjustment in the Contract Price in accordance with paragraph 10.05 if the Owner believes that Owner is entitled to a decrease in Contract Price and the parties are unable to agree as to the amount of such decrease.

ARTICLE 12 – CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES

12.01 Change of Contract Price

- A. The Contract Price may only be changed by a Change Order. Any Claim for an adjustment in the Contract Price shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.

12.02 Change of Contract Times

- A. The Contract Times may only be changed by a Change Order. Any Claim for an adjustment in the Contract Times shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.

12.03 Delays

- A. If Construction Manager is delayed in the performance or progress of the Work by fire, flood, epidemic, abnormal weather conditions, acts of God, acts or failures to act of utility owners not under the control of Owner, or other causes not the fault of and beyond control of Construction Manager, then Construction Manager shall be entitled to an equitable adjustment in Contract Time, if such delay results in an impact to the critical path of the schedule as determined by Engineer. Such an adjustment in the Contract Time shall be Construction Manager's sole and exclusive remedy for the delays described in this Paragraph 12.03. Claims for abnormal weather conditions shall be documented by data substantiating the weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction. No extension of the Contract Time shall be granted for delays resulting from normal weather conditions prevailing in the area as defined by the average of the last five (5) years of weather recorded by the Owner. The parties agree that time is of the essence in the performance of this Agreement.
- B. Owner, Engineer, and their officers, directors, members, partners, employees, agents, consultants, or subcontractors shall not be liable to Construction Manager for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, Engineers, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Construction Manager on or in connection with any other project or anticipated project.
- C. Construction Manager shall not be entitled to an adjustment in Contract Price or Contract Time for delays within the control of Construction Manager, any Subcontractor, Supplier or any other person or entity for which Construction Manager is responsible.
- D. NO CLAIM FOR DAMAGES OR ANY CLAIM OTHER THAN FOR AN EXTENSION OF TIME SHALL BE MADE OR ASSERTED AGAINST OWNER BY REASON OF ANY DELAYS. Construction Manager shall not be entitled to an increase in the Contract Price or payment or compensation of any kind from Owner for direct, indirect, consequential, impact or other costs, expenses, or damages, including, but not limited to, costs of acceleration or inefficiency, arising because of delay, disruption, interference, or hindrance be reasonable or unreasonable, foreseeable, or avoidable or unavoidable. Construction Manager shall be entitled only to extensions of the Contract Time as the sole and exclusive remedy for such resulting delays, in accordance with and to the extent specifically provided herein.

ARTICLE 13 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

13.01 Notice of Defects

- A. Notice of all defective Work of which Owner has actual knowledge will be given to Construction Manager. Defective Work may be rejected, corrected, or accepted as provided in this Article 13.

13.02 Access to Work

- A. Owner, Engineer, their consultants and other representatives and personnel of Owner, independent testing laboratories, and governmental agencies with jurisdictional interests over the Work and Site will have access to the Site and the Work at reasonable times for their observation, inspection, and testing. Construction Manager shall provide them proper and safe conditions for such access and advise them of Construction Manager's safety procedures and programs so that they may comply therewith as applicable.

13.03 Tests and Inspections

- A. Construction Manager shall give no less than forty-eight hours' notice to Engineer and Owner for all required inspections, tests, or approvals, except as otherwise provided, and shall cooperate with inspection and testing personnel to facilitate required inspections, tests or approvals.
- B. Owner shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents except:
 - 1. for inspections, tests, or approvals covered by Paragraphs 13.03.C and 13.03.D below;
 - 2. that costs incurred in connection with tests or inspections conducted pursuant to Paragraph 13.04.B shall be paid as provided in Paragraph 13.04.C; and
 - 3. for inspection, tests, or approvals due to defective or non-conforming Work, or as otherwise specifically provided in the Contract Documents.
- C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Construction Manager shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.
- D. Construction Manager shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work; or acceptance of materials, mix designs, or equipment submitted for approval prior to Construction Manager's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to Owner and Engineer.
- E. Construction Manager shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of the Effective Date of the Agreement. Owner shall pay all charges of utility owners for connections for providing permanent service to the Work.

13.04 Uncovering Work

- A. If any Work (or the work of others) that is to be inspected, tested, or approved pursuant to Paragraph 13.03 above, is covered by Construction Manager without written concurrence of Engineer, Construction Manager shall, if requested by Engineer, uncover such Work for observation. Uncovering Work shall be at Construction Manager's expense unless Construction Manager has given Engineer timely notice of Construction Manager's intention to cover the same and Engineer has not acted with reasonable promptness in response to such notice.
- B. If any Work is covered contrary to the written request of Engineer, it must, if requested by Engineer, be uncovered for Engineer's observation and replaced at Construction Manager's expense.
- C. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, Construction Manager, at Engineer's request, shall uncover, expose, or otherwise make

available for observation, inspection, or testing as Engineer may require, that portion of the Work in question, furnishing all necessary labor, material, and equipment.

- D. If it is found that the uncovered Work is defective, Construction Manager shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, Engineers, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05.
- E. If the uncovered Work is not found to be defective, Construction Manager shall be allowed an increase in the Contract Price or an extension of the Contract Times, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, Construction Manager may make a Claim therefor as provided in Paragraph 10.05.

13.05 Owner May Stop the Work

- A. If the Work is defective, or Construction Manager fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, Owner may order Construction Manager to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop the Work shall not give rise to any duty on the part of Owner to exercise this right for the benefit of Construction Manager, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them. Notwithstanding the foregoing, any stoppage ordered in the Work by Owner, shall not result in a Claim for an increase in the Contract Price or Contract Time by Construction Manager.

13.06 Correction or Removal of Defective Work

- A. Within three (3) days after receipt of written notice from the Engineer, Construction Manager shall correct all defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by Engineer, remove it from the Project and replace it with Work that is not defective. Construction Manager shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of Engineer, engineers, Engineers, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or removal (including but not limited to all costs of repair or replacement of work of others).
- B. When correcting defective Work under the terms of this Paragraph 13.06 or Paragraph 13.07, Construction Manager shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.

13.07 Correction Period

- A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents) or by any specific provision of the Contract Documents, any Work is found to be defective, or if the repair of any damages to the land or areas made available for Construction Manager's use by Owner or permitted by Laws and Regulations as contemplated in Paragraph 6.11.A is found to be defective, Construction Manager shall promptly, without cost to Owner and in accordance with Owner's written instructions:
 - 1. repair such defective land or areas; or
 - 2. correct such defective Work; or

3. if the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and
 4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting therefrom.
- B. If Construction Manager does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, Engineers, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by Construction Manager.
- C. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this Paragraph 13.07, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed, or for the remaining period of time of any applicable special guarantee by the Contract Documents, whichever is longer.
- D. Construction Manager's obligations under this Paragraph 13.07 are in addition to any other obligation or warranty. The provisions of this Paragraph 13.07 shall not be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

13.08 Acceptance of Defective Work

- A. If, instead of requiring correction or removal and replacement of defective Work, Owner (and, prior to Engineer's recommendation of final payment) prefers to accept it, Owner may do so. Construction Manager shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, Engineers, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) attributable to Owner's evaluation of and determination to accept such defective Work (such costs to be approved by Engineer as to reasonableness) and for the diminished value of the Work to the extent not otherwise paid by Construction Manager pursuant to this sentence. If any such acceptance occurs prior to Engineer's recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and Owner shall be entitled to an appropriate decrease in the Contract Price, reflecting the diminished value of Work so accepted. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05. If the acceptance occurs after such recommendation, an appropriate amount will be paid by Construction Manager to Owner.

13.09 Owner May Correct Defective or Non-conforming Work

- A. If Construction Manager fails within three (3) days after written notice from Engineer to correct defective or non-conforming Work, or to remove and replace rejected Work as required by Engineer in accordance with Paragraph 13.06.A, or if Construction Manager fails to perform the Work in accordance with the Contract Documents, or if Construction Manager fails to comply with any other provision of the Contract Documents, Owner may, after seven days written notice to Construction Manager, correct, or remedy any such deficiency.
- B. In exercising the rights and remedies under this Paragraph 13.09, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Construction Manager from all or part of the Site, take possession of all or 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 Site, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Construction Manager but which are stored elsewhere. Construction Manager shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and

Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this Paragraph.

- C. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, Engineers, attorneys, and other professionals and all court or arbitration or other dispute resolution costs and all costs for acceleration, additional forces or overtime) incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 13.09 will be charged against Construction Manager, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and Owner shall be entitled to an appropriate decrease in the Contract Price. Further, Owner's exercise of its rights under this Article shall not be construed to be a waiver of liquidated damages for delay and shall be in addition to any other or further remedies available Owner under the Contract Documents.
- D. Construction Manager shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 13.09.

ARTICLE 14 – PAYMENTS TO CONTRACTOR AND COMPLETION

14.01 Schedule of Values

- A. The Schedule of Values established pursuant to Paragraph 2.05.A of the General Conditions will serve as the basis for progress payments for stipulated General Conditions and General Requirements only during Construction Services, and based upon the actual Cost of the Work for all other costs as supported by receipted invoices, subcontractor applications for payments, invoices and other documentation requested by Owner to support amounts requisitioned..
- B. The Schedule of Values shall not be used for payment of Preconstruction Services which shall be paid in accordance with the Agreement.

14.02 Progress Payments

A. *Applications for Payments:*

- 1. At least 20 days before the date established in the Agreement for each progress payment to be paid by Owner (but not more often than once a month), Construction Manager shall submit to Engineer and Owner for review an Application for Payment on AIA forms G702 and G703 and filled out and signed by Construction Manager based on the completion and progress of the, and for Unit Price Work, based on the number of units completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. For the Unit Price Work, Construction Manager shall not be entitled to payment for the performance of any quantities of the Unit Price Work unless prior to performing same the quantities are verified and approved, in writing, by the Engineer. If the Construction Manager proceeds with any Unit Price Work without obtaining the prior written approval of the Engineer, the Construction Manager shall not be entitled to payment for the performance of such Unit Price Work. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that Owner has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner. Notwithstanding the foregoing, each Application for Payment shall show a complete breakdown of the Project components, the quantities completed and the amounts due, together with such data substantiating the Construction Manager's right to payment and such supporting evidence which may be requested by the Engineer or Owner including, but not limited to: (a) all Subcontractor requisitions, receipted invoices, delivery invoices; (b) where

required by any manufacturers for extended warranties, inspection certificates or other acceptable documentation confirming the acceptable completion of any and all required inspections for the Work performed for which payment is being made; (c) all monthly reports required by any federal, state or local requirements including, but not limited to Davis-Bacon; and (d) any other documentation requested by Owner to support the amounts for the Cost of the Work or other amounts requisitioned.

2. In addition, as a further condition to payment of each progress payment, Construction Manager shall: (i) submit partial release of lien from Construction Manager for the current Application for Payment, submit partial releases of lien from all laborers, material suppliers and Subcontractors through the date of the last payment made, and such other evidence that the Owner may reasonably require substantiating that all Work which is the subject of each such Application for Payment has been performed. The releases of lien form shall conform to the Florida's Construction Lien Law 713.01 et. seq. and/or Fla. Stat. § 255.05, and shall be in such forms as approved by the Owner. An updated Progress schedule shall be submitted at least monthly to the Owner and Engineer. Submission of the updated Progress schedule shall not serve as notice of delays and shall not be construed as Owner's consent to extensions of the Contract Time. Each Application for Payment shall be submitted in triplicate to the Engineer for approval.
3. Beginning with the second Application for Payment, each Application of Payment shall include an affidavit of Construction Manager stating that all previous progress payments received on account of the Work have been applied on account to discharge Construction Manager's legitimate obligations associated with prior Applications for Payment. Commencing with the second Application for Payment, each Application for Payment shall also include unconditional partial releases of lien from all laborers, material suppliers and Subcontractors covering the prior progress payment to Construction Manager.
4. The amount of retainage with respect to progress payments will be as stipulated in the Agreement and shall be in accordance with Florida law.

B. *Review of Applications:*

1. Engineer will, within 10 days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application for Payment to Owner or return the Application for Payment to Construction Manager indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Construction Manager may make the necessary corrections and resubmit the Application for Payment.
2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations of the executed Work as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:
 - a. the Work has progressed to the point indicated in the most recent Progress Schedule;
 - b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 9.07, and any other qualifications stated in the recommendation); and
 - c. the conditions precedent to Construction Manager's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.

3. By recommending any such payment, Engineer will not thereby be deemed to have represented that:
 - a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract Documents; or
 - b. there may not be other matters or issues between the parties that might entitle Construction Manager to be paid additionally by Owner or entitle Owner to withhold payment to Construction Manager.
4. Neither Engineer's review of Construction Manager's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:
 - a. to supervise, direct, or control the Work, or
 - b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or
 - c. for Construction Manager's failure to comply with Laws and Regulations applicable to Construction Manager's performance of the Work, or
 - d. to make any examination to ascertain how or for what purposes Construction Manager has used the moneys paid on account of the Contract Price, or
 - e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.
5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 14.02.B.2. Engineer may also refuse to recommend any such payment or, because of subsequently discovered evidence or the results of subsequent inspections or tests, revise or revoke any such payment recommendation previously made, to such extent as may be necessary in Engineer's opinion to protect Owner from loss because:
 - a. the Work is defective, or completed Work has been damaged, requiring correction or replacement;
 - b. the Contract Price has been reduced by Change Orders;
 - c. Owner has been required to correct defective Work or complete Work of Construction Manager;
 - d. Engineer has actual knowledge of the occurrence of any of the events enumerated in Paragraph 15.02.A;
 - e. Claims filed or reasonable evidence indicating probable filing of claims by other parties against Construction Manager;
 - f. Failure of Construction Manager to make payments properly to Subcontractors or suppliers or for material or labor;
 - g. Damage to the work of another Construction Manager, Subcontractor, supplier, materialmen, party, or person not remedied;

- h. Liquidated damages pursuant to Article 4.2 of the Agreement; and
- i. Any other breach of the Agreement by Construction Manager.

C. *Payment Becomes Due:*

1. Ten days after presentation of the Application for Payment to Owner with Engineer's recommendation or no later than the 10th day of the following month, the amount recommended will (subject to the provisions of Paragraph 14.02.D) become due, and when due will be paid by Owner to Construction Manager.
2. When the Construction Manager herein receives payment from the Owner for labor, services or materials furnished by subcontractor and suppliers hired by the Construction Manager, the Construction Manager shall remit payment due those parties within ten (10) days after receipt of payment from the Owner, unless otherwise provided for by Florida Law. Further, when a subcontractor receives payment from the Construction Manager for labor, services, or materials furnished by subcontractors and suppliers hired by the subcontractor, the subcontractor shall remit payment due to those subcontractors and suppliers within 7 days after the subcontractor's receipt of payment.
3. The receipt of each progress payment by Construction Manager, a subcontractor or material supplier shall constitute a waiver of claims by that payee, except for those expressly made in writing by that payee as disputed and unsettled at the time of the subject progress payment.

D. *Reduction in Payment:*

1. Owner may refuse to make payment of the full or any amount recommended by Engineer because:
 - a. claims have been made against Owner on account of Construction Manager's performance or furnishing of the Work;
 - b. Liens have been filed in connection with the Work, except where Construction Manager has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens;
 - c. there are other items entitling Owner to a set-off against the amount recommended; or
 - d. For any of the reasons which the Engineer may withhold or reduce certification of payment pursuant to Article 14.02(B)(5) or Owner has actual knowledge of the occurrence of any of the events enumerated in Paragraphs 14.02.B.5.a through 14.02.B.5.c or Paragraph 15.02.A.
2. If Owner refuses to make payment of the full or any amount recommended by Engineer, Owner will give Construction Manager written notice within three (3) days of receipt of Engineer's certification (with a copy to Engineer) stating the reasons for such action and promptly pay Construction Manager any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Construction Manager the amount so withheld, or any adjustment thereto agreed to by Owner and Construction Manager, when Construction Manager remedies the reasons for such action. Any amount withheld by Owner shall not give rise to a reason or justification for Construction Manager to stop performing the Work, provided Owner complies with the notice requirement stated herein and pays any undisputed amounts.
3. The Owner may, but shall not be obligated to, upon the issuance of a notice of non-payment by a Subcontractor, supplier or materialmen, or any other lienor, or claimant as defined by §255.05, Florida Statutes, make all or any portion of any progress payment by check payable jointly to the

order of Construction Manager and any lienor giving timely notice, or may make such payment directly to such lienor and deduct said sum from the balance then due Construction Manager. However, such payment, if made, shall not create any third party beneficiary or other rights in such lienor or claimant. In making such payments to lienors or claimant, the Owner shall require such lienor or claimant to execute the applicable release of lien or the Waiver of Right to Claim Against Bond form in accordance with §255.05, Florida Statutes.

14.03 Construction Manager's Warranty of Title

- A. Construction Manager warrants and guarantees that title to all Work, materials, and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to Owner no later than the time of payment free and clear of all Liens.

14.04 Substantial Completion

- A. Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or use the Work or a portion thereof for its intended use and that the following minimum requirements are met:
1. The Work is complete, ready for occupancy, and all persons or entities having jurisdiction over the Project have issued the appropriate permits, authorizations, and temporary certificates of occupancy for the Project, and the Work has passed all necessary inspections;
 2. The exterior elements, such as Site cleanup and restoration (including without limitation removal of all excess materials, rock, sand, paving, debris, supplies, equipment, temporary structures, and trailers), paving, parking, landscaping and exterior building finishes, the interior spaces and finishes of the Work and all mechanical, electrical, plumbing and technical systems required by the Contract Documents, fire and life safety systems, are complete and fully operational and are ready for occupancy, the Construction Manager has submitted the Construction Manager's punch list with respect to such items and they have been inspected and approved by the Engineer and Owner as to scope, number, and content;
 3. All warranties required by the Contract Documents have been delivered to Owner;
 4. All equipment manuals and operational videos have been delivered to Owner and training by Construction Manager of Owner's staff is complete; and
 5. The Engineer has issued the Certificate of Substantial Completion, which shall be signed by the Engineer and the Engineer/Designer, if any.
- B. When Construction Manager considers the entire Work ready for its intended use and all other requirements of Article 14.04A. have been satisfied, Construction Manager shall notify Owner and Engineer in writing that the entire Work is substantially complete (except for items specifically listed by Construction Manager as incomplete) and request that Engineer issue a certificate of Substantial Completion. The Owner may, at its sole discretion, accept portions of the Project separately, in which event the applicable parts of this Article 14.04A. shall apply to such portions of the Project;
- C. Promptly after Construction Manager's notification, Owner, Construction Manager, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Construction Manager in writing giving the reasons therefor.
- D. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. Owner shall have seven days after receipt of the tentative certificate during which to make written objection to Engineer as to any provisions of the certificate or attached list. If, after considering such objections, Engineer concludes that the Work is not substantially complete, Engineer will, within 14 days after submission of the tentative certificate to Owner, notify Construction Manager in writing, stating the reasons therefor. If, after consideration of Owner's objections, Engineer considers the Work substantially complete, Engineer will,

within said 14 days, execute and deliver to Owner and Construction Manager a definitive certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as Engineer believes justified after consideration of any objections from Owner. Failure to include an item on such list does not alter the responsibility of the Construction Manager to complete all Work in accordance with the Contract Documents. Construction Manager must complete all punch list items to the satisfaction of the Owner prior to Final Payment.

- E. At the time of delivery of the tentative certificate of Substantial Completion, Engineer will deliver to Owner and Construction Manager a written recommendation as to division of responsibilities pending final payment between Owner and Construction Manager with respect to security, operation, safety, and protection of the Work, maintenance, heat, utilities, insurance, and warranties and guarantees. Unless Owner and Construction Manager agree otherwise in writing and so inform Engineer in writing prior to Engineer's issuing the definitive certificate of Substantial Completion, Engineer's aforesaid recommendation will be binding on Owner and Construction Manager until final payment.
- F. Owner shall have the right to exclude Construction Manager from the Site after the date of Substantial Completion subject to allowing Construction Manager reasonable access to remove its property and complete or correct items on the tentative list.
- G. Final Punch List. In accordance with Section 218.70, Florida Statutes, following Substantial Completion, the Owner, Construction Manager and Engineer shall work together to supplement and finalize a list of items required to be completed for final completion of the Project within the following time frames:
 - 1. For construction projects having an estimated cost of less than \$10 million, within 30 calendar days after reaching Substantial Completion of the Work; or
 - 2. For construction projects having an estimated cost of \$10 million or more, within 30 calendar days, or, if extended by contract, up to 60 calendar days after reaching Substantial Completion of the Work.

Within five days after the punch list has been developed, Construction Manager shall deliver a copy of the list to Owner and Engineer. The failure to include any corrective work or pending items not yet completed on the final punch list or any punch list does not alter the responsibility of the Construction Manager to complete all of the Work in accordance with the Contract Documents. Construction Manager shall complete the final punch list items within the time periods specified above. Upon completion of all items on the final punch list, the Construction Manager may submit a payment request for all remaining retainage withheld by the Owner. If a good faith dispute exists as to whether one or more items identified on the list have been completed pursuant to the Contract, the Owner may continue to withhold up to 150 percent of the total costs to complete such items.

14.05 Partial Utilization

- A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Construction Manager agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with Construction Manager's performance of the remainder of the Work, subject to the following conditions:
 - 1. Owner at any time may request Construction Manager in writing to permit Owner to use or occupy any such part of the Work which Owner believes to be ready for its intended use and substantially complete. If and when Construction Manager agrees that such part of the Work is substantially complete, Construction Manager, Owner, and Engineer will follow the procedures of Paragraph 14.04. for that part of the Work.
 - 2. With Owner's approval, Construction Manager at any time may notify Owner and Engineer in writing that Construction Manager considers any such part of the Work ready for its intended use

and substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work. However, in no event shall Owner or Engineer be obligated to deem a portion of the Work substantially complete or otherwise partially accept the Work. Owner may seek partial occupancy or use whether or not the portion is substantially complete, provided the Owner and Construction Manager have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for completion or correction of the Work and commencement of warranties required by the Contract Documents.

3. Within a reasonable time after either such request, Owner, Construction Manager, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Construction Manager in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 14.04 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.
4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 5.10 regarding property insurance.

14.06 Final Inspection

- A. Upon written notice from Construction Manager that the entire Work or an agreed portion thereof is complete, Engineer will promptly make a final inspection with Owner and Construction Manager and will notify Construction Manager in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. Construction Manager shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

14.07 Final Payment

A. *Application for Payment:*

1. After Construction Manager has, in the opinion of Engineer, satisfactorily completed all corrections identified in the final punch list and during the final inspection has delivered, in accordance with the Contract Documents, all maintenance and operating instructions not previously delivered, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, marked-up record documents (as provided in Paragraph 6.12), and other documents, Construction Manager may make application for final payment following the procedure for progress payments.
2. The final Application for Payment shall be accompanied (except as previously delivered) by:
 - a. all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by Paragraph 5.04.B.6;
 - b. consent of the surety, if any, to final payment;
 - c. a list of all Claims against Owner that Construction Manager believes are unsettled;
 - d. complete and legally effective final releases or waivers (satisfactory to Owner) of all Lien rights arising out of or Liens filed in connection with the Work;
 - e. an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied;

- f. the final certificate of occupancy and all final governmental and utility authority permits have been issued;
 - g. Construction Manager has delivered to Owner all previously undelivered manufacturer and Subcontractor guarantees and warranties, and/or instruction manuals for appliances and equipment;
 - h. Construction Manager has delivered to Owner and Engineer all shop drawings, revised plans and final, complete and coordinated "as built" drawings in CAD and hard copy for the Work [including, without limitation, structural drawings, mechanical drawings (e.g., plumbing, air conditioning, fire sprinkler, etc.) and electrical drawings] detailing all changes or deviations from the original design;
 - i. Construction Manager has fully cleaned and restored the Site with respect to all of the final punch list work;
 - j. all temporary utilities are disconnected; and
 - k. Construction Manager has complied with all other requirements of the Contract Documents and all requirements of Owner.
3. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Construction Manager may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien.

B. *Engineer's Review of Application and Acceptance:*

- 1. If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Construction Manager's other obligations under the Contract Documents have been fulfilled, Engineer will, within ten days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of payment and present the Application for Payment to Owner for payment. At the same time Engineer will also give written notice to Owner and Construction Manager that the Work is acceptable subject to the provisions of Paragraph 14.09. Otherwise, Engineer will return the Application for Payment to Construction Manager, indicating in writing the reasons for refusing to recommend final payment, in which case Construction Manager shall make the necessary corrections and resubmit the Application for Payment.
- 2. Owner may withhold final payment to such extent as may be necessary on account of:
 - a. Defective Work not remedied;
 - b. Claims filed or reasonable evidence indicating probable filing of claims by other parties against Construction Manager;
 - c. Failure of Construction Manager to make payments properly to Subcontractors or suppliers or for material or labor;
 - d. Damage to another contractor, subcontractor, supplier, materialmen, party, or person not remedied;
 - e. Liquidated damages;
 - f. As-built drawings not being in current and acceptable state; and/or

g. Any other breach of this Agreement by Construction Manager.

3. When the above grounds are removed or resolved or Construction Manager provides a surety bond or a consent of surety satisfactory to Owner, which will protect Owner in the amount withheld, payment may be made in whole or in part, as applicable.

C. *Payment Becomes Due:*

1. Thirty days after the presentation to Owner of the Application for Payment and accompanying documentation, the amount recommended by Engineer, less any sum Owner is entitled to set off against Engineer's recommendation, including but not limited to liquidated damages, will become due and will be paid by Owner to Construction Manager.

14.08 Final Completion Delayed

- A. If, through no fault of Construction Manager, final completion of the Work is significantly delayed, and if Engineer so confirms, Owner shall, upon receipt of Construction Manager's final Application for Payment (for Work fully completed and accepted) and recommendation of Engineer, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by Owner for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if bonds have been furnished as required in Paragraph 5.01, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by Construction Manager to Engineer with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

14.09 Waiver of Claims

- A. The making of any payment, including final payment, shall not constitute a waiver of claims by the Owner or a waiver of any of Construction Manager's continuing obligations.
- B. Acceptance of final payment by the Construction Manager, a subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION

15.01 Owner May Suspend Work

- A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by notice in writing to Construction Manager and Engineer. Construction Manager shall resume the Work Upon written notification from Owner. Construction Manager shall be granted an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension if Construction Manager makes a Claim therefor as provided in Paragraph 10.05.

15.02 Owner May Terminate for Cause

- A. The occurrence of any one or more of the following events will justify termination for cause:
1. Construction Manager's failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the Progress Schedule established under Paragraph 2.07 as adjusted from time to time pursuant to Paragraph 6.04);

2. Construction Manager's disregard of or failure to comply with Laws or Regulations of any public body having jurisdiction or the authority of the Engineer;
 3. Construction Manager's failure to make payment to Subcontractors for services, materials or labor in accordance with the respective agreements;
 4. Construction Manager is otherwise guilty of a material breach of a provision of the Contract Documents;
 5. Construction Manager shall institute proceedings or consent to proceedings requesting relief or arrangement under the Federal Bankruptcy Act or any similar or applicable federal or state law, or if a petition under any federal or state bankruptcy or insolvency law is filed against the Construction Manager and such petition is not dismissed within sixty (60) days from the date of said filing;
 6. Construction Manager admits in writing his inability to pay his debts generally as they become due, or if the Construction Manager makes a general assignment for the benefit of his creditors, or if a receiver, liquidator, trustee or assignee is appointed on account of his bankruptcy or insolvency;
 7. Construction Manager submits an Application for Payment, sworn statement, waiver of claim, affidavit or document of any nature whatsoever which is intentionally falsified;
 8. Construction Manager fails to adequately perform its Preconstruction Services.
- B. If one or more of the events identified in Paragraph 15.02.A occur, Owner may, after giving Construction Manager (and surety) seven days written notice of its intent to terminate the services of Construction Manager:
1. exclude Construction Manager from the Site, and take possession of the Work and of all Construction Manager's tools, appliances, construction equipment, and machinery at the Site, and use the same to the full extent they could be used by Construction Manager (without liability to Construction Manager for trespass or conversion);
 2. incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Construction Manager but which are stored elsewhere; and
 3. complete the Work as Owner may deem expedient.
- C. If Owner proceeds as provided in Paragraph 15.02.B, Construction Manager shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, Engineers, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Owner arising out of or relating to completing the Work, such excess will be paid to Construction Manager. If such claims, costs, losses, and damages exceed such unpaid balance, Construction Manager and its surety shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this Paragraph, Owner shall not be required to obtain the lowest price for the Work performed.
- D. Notwithstanding Paragraphs 15.02.B and 15.02.C, Owner, in its sole discretion, may choose not to terminate Construction Manager's services if Construction Manager begins within seven days of receipt of notice of intent to terminate to correct its failure to perform and proceeds diligently to cure such failure within no more than 15 days of receipt of said notice.

- E. Where Construction Manager's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Construction Manager then existing or which may thereafter accrue. Any retention or payment of moneys due Construction Manager by Owner will not release Construction Manager from liability.
- F. If and to the extent that Construction Manager has provided a performance bond, that bond shall incorporate the provisions of this Agreement.
- G. Notwithstanding (C) above, if Construction Manager is terminated for cause during Preconstruction Services, Construction Manager's sole compensation shall be for Preconstruction Services properly performed as set for in Article 6 of the Agreement. Construction Manager shall not be entitled to payment of any further amounts or damages including but not limited to lost profits, Fee on Work not performed, consequential or other damages.

15.03 Owner May Terminate For Convenience

- A. The Owner may terminate this Contract for convenience upon providing Construction Manager fourteen (14) days written notice of the same. If this Contract is terminated as provided herein, the Construction Manager shall be paid for all completed and acceptable Services and Work executed and allowable and proven demobilization expenses incurred due to such termination. Payment shall include services and Work actually performed in full prior to termination date, but shall exclude all lost profits, direct, indirect, consequential, special damages, or other damages for the remainder of the Project.

If a court of competent jurisdiction finds that the Owner wrongfully terminated this Contract, then in such event, this Contract shall be deemed terminated for convenience as provided for in this Paragraph 15.03A., and the Construction Manager shall not be entitled to damages or loss of profits, consequential, indirect, or special damages, but may be entitled to all items as authorized herein.

- B. Similarly, Owner may elect not to execute a GMP Amendment for any reason at which point, the Contract shall be terminated for Construction Phase Services and Construction Manager's full, total and final compensation shall be payment for Preconstruction Services properly performed as set for in Article 6 of the Agreement. Construction Manager shall not be entitled to payment of any further amounts or damages including but not limited to lost profits, Fee on Work not performed, consequential or other damages.

15.04 Construction Manager May Stop Work or Terminate

- A. If, through no act or fault of Construction Manager, (i) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (ii) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (iii) Owner fails for 30 days to pay Construction Manager any sum finally determined to be due, then Construction Manager may, upon fourteen (14) days written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the Contract and recover from Owner for call completed and acceptable Work executed and allowable and proven demobilization expenses as a result of such termination, but in no event shall Construction Manager be entitled to any lost profits, overhead, direct, indirect, consequential special damages or other damages for the remainder of the Project.
- B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Construction Manager any sum finally determined to be due, Construction Manager may, seven days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Construction Manager, including interest thereon. The provisions of this Paragraph 15.04 are not intended to preclude Construction Manager from making a Claim under Paragraph 10.05 for an adjustment in Contract

Price or Contract Times or otherwise for expenses or damage directly attributable to Construction Manager's stopping the Work as permitted by this Paragraph.

ARTICLE 16 –

16.01 [This paragraph intentionally left blank].

ARTICLE 17 – MISCELLANEOUS

17.01 Giving Notice

- A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if:
1. delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended; or
 2. delivered at or sent by registered or certified mail, postage prepaid, Federal Express or other similar carrier with signature required to the last business address known to the giver of the notice.

17.02 Computation of Times

- A. When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first 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 made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

17.03 Cumulative Remedies

- A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract Documents. The provisions of this Paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

17.04 Survival of Obligations

- A. All representations, indemnifications, warranties, and guarantees made in, required by Construction Manager, or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion, and acceptance of the Work or termination or completion of the Contract or termination of the services of Construction Manager.

17.05 Controlling Law

- A. This Contract is to be governed by the law of the State of Florida. Any legal proceeding arising from the Contract Documents shall be brought only in a court of competent jurisdiction in Palm Beach County, Florida.

17.06 Headings

- A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

17.07 Waiver of Consequential Damages

A. The Construction Manager waives claims against the Owner for consequential damages arising out of or related to this Construction Management Agreement or its performance, including consequential damages proximately caused by either Party's termination of this Construction Management Agreement, including but not limited to damages for lost income, profit, lost bonding capacity, financing, business and reputation, or for loss of management or labor productivity, damages incurred for principal office expenses, including the compensation of personnel stationed there, and for anticipated profit on any Work not performed under this Construction Management Agreement.

END OF SECTION

SAMPLE

EXHIBIT “B”

REQUEST FOR QUALIFICATIONS

SAMPLE

EXHIBIT “C”

CONSTRUCTION MANAGER’S QUALIFICATIONS

SAMPLE

EXHIBIT “D”

CONSTRUCTION MANAGER’S INSURANCE CERTIFICATES

SAMPLE

EXHIBIT “E”

PAYMENT AND PERFORMANCE BONDS

SAMPLE

BOND NO: _____

FORM OF PAYMENT BOND

BY THIS BOND, We _____, as Principal, hereinafter called CONTRACTOR, and _____, as Surety, are bound to the Village of Wellington, as Obligee, hereinafter called "VILLAGE"; in the amount of _____ Dollars (\$ _____) for the payment whereof CONTRACTOR and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally.

WHEREAS, CONTRACTOR has by written agreement entered into a Contract on the ____ day of _____, 20____, with the VILLAGE, Contract Number: _____ ("Contract") for the _____ Project which Contract is by reference incorporated herein and made a part hereof, and specifically includes provision for liquidated damages and other damages;

THE CONDITION OF THIS BOND is that if CONTRACTOR:

1. Pays VILLAGE all losses, liquidated damages, expenses, costs and attorney's fees including appellate proceedings, that VILLAGE sustains because of default by CONTRACTOR under the Construction Contract; and
2. Promptly makes payments to all claimants as defined by Florida Statute 255.05(1) for all labor, materials and supplies used directly or indirectly by CONTRACTOR in the performance of the Construction Contract;

THEN CONTRACTOR'S OBLIGATION SHALL BE VOID; OTHERWISE, IT SHALL REMAIN IN FULL FORCE AND EFFECT SUBJECT, HOWEVER, TO THE FOLLOWING CONDITIONS:

- 2.1. A claimant, except a laborer, who is not in privity with CONTRACTOR shall, within forty-five (45) days after beginning to furnish labor, materials, or supplies for the prosecution of the work, furnish to CONTRACTOR a notice that he intends to look to the bond for protection.
- 2.2. A claimant who is not in privity with CONTRACTOR and who has not received payment for its labor, materials, or supplies shall, within ninety (90) days after performance of the labor or after complete delivery of the materials or supplies, deliver to CONTRACTOR and to the Surety, written notice of the performance of the labor or delivery of the materials or supplies and of the nonpayment.
- 2.3. No action for the labor, materials, or supplies may be instituted against CONTRACTOR or the Surety unless the notices stated under the preceding conditions (2.1) and (2.2) have been given.
- 2.4. Any action or claim under this Bond must be instituted in accordance with the Notice and Time Limitations provisions prescribed in Section 255.05(2), Florida Statutes.

Any changes in or under the Contract Documents and compliance or noncompliance with any formalities connected with the Construction Contract or the changes does not affect the Surety's obligation under this Bond.

DEFINITIONS

Contract: For purposes of this Bond, the Contract is the entire integrated agreement between the Village and the Contractor, which includes the Agreement and other documents incorporated therein and all Contract Documents and the changes thereto.

Signed and sealed this ____ day of _____, 20__.

ATTEST:

(Secretary)

CORPORATE SEAL

IN THE PRESENCE OF:

CONTRACTOR

(Name of Corporation)

By: _____
(Signature)

(Print Name and Title)

____ day of _____, 20__.

SURETY COMPANY:

By: _____

Print Name: _____

Address: _____
(Street)

(City, State and Zip Code)

Telephone No: _____

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, _____, certify that I am the Secretary of the corporation named as Principal in the foregoing Performance and Payment Bonds; that _____, who signed the Bond(s) on behalf of the Principal, was then _____ of said corporation; that I know his/her signature; and his/her signature thereto is genuine; and that said Bond(s) was (were) duly signed, sealed and attested to on behalf of said corporation by authority of its governing body.

Secretary (on behalf of)

(SEAL)

Corporation

STATE OF FLORIDA

)

) SS

COUNTY OF PALM BEACH

)

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this ____ day of _____, 20____ by _____ as _____ (INSERT TITLE), of _____ (INSERT NAME OF ENTITY – ie: corporation, limited liability company, etc.), (insert status ie: a corporation existing under the laws of the State of _____), ☐ who is personally known to me or ☐ who has produced as identification Driver's License # _____ or (other identification) (describe) _____.

Notary Public Signature and Seal

Print Notary Name and Commission No.

PERFORMANCE BOND

BOND NO: _____

AMOUNT: _____

KNOW ALL MEN BY THESE PRESENTS, that we, _____ a Corporation, as Principal (hereinafter called Contractor), whose principal business address and telephone number is _____ and _____ organized and existing under and virtue of the laws of the State of Florida, as Surety (hereinafter called Surety), and authorized to transact business within the State of Florida, whose principal business address and telephone number is _____, are held and firmly bound unto the Village of Wellington, a Municipality of the State of Florida, as OBLIGEE (hereinafter called the Village or Obligee), in the sum of _____ Dollars (\$ _____), lawful money of the United States of America, for the payment of which, well and truly be made to the VILLAGE, the Contractor and the Surety bind themselves and each of their heirs, executors, administrators, personal representatives, successors, and assigns, jointly and severally, firmly by these presents as follows:

WHEREAS, the CONTRACTOR has executed and entered into a Contract, dated the ____ day of _____, 20__, with VILLAGE, Contract Number: _____ ("Contract"), for _____ ("Project") which is by reference incorporated herein and made a part of this Bond as fully and completely as if set forth herein;

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH THAT IF CONTRACTOR:

1. In all respects fully, promptly and faithfully complies with the terms and conditions of the Contract; and
2. Indemnifies and saves harmless the above VILLAGE against and from all costs, expenses, damages including liquidated damages, attorney's fees, including appellate proceedings, injury, or loss to which said VILLAGE may be subject by reason of any wrong doing, misconduct, want of care or skill, negligence, failure to complete within the prescribed time, failure to petition within the prescribed time, or default, including patent infringements, on the part of said CONTRACTOR, its agents or employees, in the execution or performance of said Contract; and
3. Performs the guarantee and warranty of all work and materials furnished under the Construction Contract for the time specified in the Contract;

THEN THIS BOND IS VOID; OTHERWISE IT WILL REMAIN IN FULL FORCE AND EFFECT for the term of the Contract, including any and all warranty periods as specifically mentioned in said Contract.

By incorporating the Contract into its Performance Bond, the Surety consents to the provisions of the Contract wherein Contractor's and Surety's obligations are mentioned and further agrees that if the Contractor or any party for whom the Contractor is responsible fails to perform any of its obligations pursuant to the Contract, then Surety will be liable to VILLAGE for all damages VILLAGE may sustain and be entitled to in law and pursuant to the Contract including, but not limited to, all damages to correct defects or deficiencies in Contractor's Work, to cure defaults and breaches of the Contract, to add manpower, for all delay damages including Liquidated Damages, to perform the Contractor's warranty or guarantee obligations pursuant to the Contract, and pay VILLAGE all damages VILLAGE may be entitled to. The VILLAGE shall simply give the Surety the same notices that VILLAGE shall be required to give to Contractor of Contractor's Default(s) pursuant to the Contract to trigger Surety's liability. The VILLAGE will not be required to terminate the Contractor to trigger the Surety's liability for the Contractor's Defaults.

The Surety is also obligated to the VILLAGE without duplication for:

1. The responsibilities of the Contractor for correction of defective or deficient work, materials, and completion of the Contract, including all punch list work, the performance of all warranty and guarantee obligations, including those which arise subsequent to substantial and final completion of the Contract,
2. Additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act pursuant to this Bond, and

3. Liquidated damages, or if no liquidated damages are specified in the Contract, actual damages caused by delayed performance or non-performance by the Contractor.

After notice by the VILLAGE of a Contractor Default, the Surety shall be deemed to be in default on this Bond if the Surety fails to take appropriate action to cure the Contractor's Default within fifteen (15) days after receipt of the written default notice from the VILLAGE to the Surety demanding that the Surety perform Contractor's obligations. Should the Surety not take reasonable action to cure the default within fifteen (15) days the VILLAGE shall be entitled to all damages as set forth herein or in the Construction Contract and enforce any other remedy available to the VILLAGE.

The Surety shall indemnify, save harmless and pay the VILLAGE after fifteen (15) days' additional notice from the VILLAGE of the amount due.

The Surety shall be bound by any decision made in accordance with the procedure for dispute resolution set forth in the Construction Contract.

The statute of limitations for all claims arising under this bond shall be five (5) years from completion and acceptance of the Project as provided by Florida law.

The Surety for value received hereby stipulates and specifically agrees that no change involving any extension of time, or alteration or addition to the terms of the Construction Contract or to the Work to be performed, or materials, equipment or supplies to be furnished thereunder, or in the Plans, Drawings and Specifications accompanying the said Construction Contract shall affect the said Surety's obligation under this Bond and the said Surety does hereby waive notice of any such changes, extensions of time, alterations or additions to the terms of the Construction Contract or to the Work, or to the Plans, Drawings and Specifications or any other changes, compliance or noncompliance to the terms of the Construction Contract or to the work or to the Specifications.

DEFINITIONS

Contract: For purposes of this Bond, the Contract is the entire integrated agreement between the VILLAGE and the Contractor, which includes the Agreement and other documents incorporated therein and all Contract Documents and the changes thereto.

Contractor Default: Failure of the Contractor, which has not been remedied, to perform or otherwise to comply with the Construction Contract.

IN WITNESS WHEREOF, the above parties bound together have executed this instrument this ____ day of _____, 20____, with the name and corporate seal of each corporate party being hereto affixed and those presents duly signed by its undersigned representative, pursuant to the authority of its governing body.

CONTRACTOR (Principal)

(Typed Name of Contractor)

ATTEST:

By: _____
(Signature of Officer)

(SEAL)

(Typed Name and Title)

SURETY

(Typed Name of Surety)

(Florida Resident Agent)

By: _____
(Signature of Attorney-in-fact. Attach
Power of Attorney)

STATE OF FLORIDA
_____ COUNTY

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this ____ day of _____, 20____ by _____ as _____(INSERT TITLE), of _____ [INSERT NAME OF ENTITY – ie: corporation, limited liability company, etc.), (insert status ie: a corporation existing under the laws of the State of _____), ☐ who is personally known to me or ☐ who has produced as identification Driver's License # _____ or (other identification) (describe) _____.

Notary Public Signature and Seal

Print Notary Name and Commission No.

IMPORTANT: Surety companies executing this Bond must appear on and have sufficient bonding capacity per the Treasury Department's most current list (circular 570 as amended) and be authorized to transact business in the State of Florida.

EXHIBIT “F”

NOTICE OF AWARD

SAMPLE

EXHIBIT “G”

(Not applicable for this agreement)

SAMPLE

EXHIBIT “H”

SURVEYS AND REPORTS

SAMPLE

EXHIBIT “I”

SCHEDULE FOR PRECONSTRUCTION SERVICES

SAMPLE

EXHIBIT "J"
WARRANTY FORMS

CONTRACTOR WARRANTY FORM

PROJECT: _____

OWNER: VILLAGE OF WELLINGTON

CONTRACTOR: _____

Contractors does hereby warrant to the Owner, that all labor and materials furnished, and Work performed in conjunction with the above-referenced project are in accordance with the Contract Documents and authorized modifications thereto, and will be free from defects due to defective labor, materials or workmanship. This warranty commences on the date of Substantial Completion of the entire Project (as defined in the Contract Documents), and expires after the later of one year from the date of Substantial Completion of the entire Project, or such longer time periods for particular items according to the specifications listed in the Contract Documents. The consideration for this warranty is the amount of the Contract to Contractor for the performance of Work.

Should any defect or deficiency develop during the warranty period due to improper labor, materials, workmanship or otherwise, the same, including adjacent Work displaced, shall be made good by the undersigned at no expense to the Owner.

The Owner will give the Contractor written notice of defective Work. Should Contractor fail to correct defective Work within three (3) calendar days after receiving written notice, the Owner may, at its option, correct defects and charge the Contractor with the costs for such correction. Contractor agrees to pay such charges upon demand.

Nothing in the above shall be deemed to apply to Work which has been abused or neglected by the Owner.

By: _____

Name and Title: _____

Date: _____

STATE OF FLORIDA)

SS: _____

COUNTY OF PALM BEACH)

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this ____ day of _____, 20____ by _____ as _____ (INSERT TITLE), of _____ [INSERT NAME OF ENTITY – ie: corporation, limited liability company, etc.), (insert status ie: a corporation existing under the laws of the State of _____), ☐ who is personally known to me or ☐ who has produced as identification Driver's License # _____ or (other identification) (describe) _____.

Notary Public Signature and Seal

Print Notary Name and Commission No.

SUBCONTRACTOR'S MATERIAL AND WORKMANSHIP WARRANTY FORM

PROJECT:

OWNER: VILLAGE OF WELLINGTON

CONTRACTOR:

SUBCONTRACTOR:

Subcontractor does hereby warrant to the Owner, that all labor and materials furnished, and Work performed in conjunction with the above-referenced project are in accordance with the Contract Documents and authorized modifications thereto, and will be free from defects due to defective labor, materials or workmanship. This warranty commences on the date of Substantial Completion of the entire Project (as defined in the Contract Documents), and expires in accordance with the longer of one year from the date of Substantial Completion or the durations listed in the specifications in the Contract Documents for the Subcontractor's Work. The consideration for this warranty is the amount of the Contract to Subcontractor for the performance of Work.

Should any defect or deficiency develop during the warranty period due to improper labor, materials, workmanship or otherwise, the same, including adjacent Work displaced, shall be made good by the undersigned at no expense to the Owner.

The Owner will give the Contractor and/or Subcontractor written notice of defective Work. Should Subcontractor fail to correct defective Work within three (3) days after receiving written notice, the Owner may, at its option, correct defects and charge the Subcontractor with the costs for such correction. Subcontractor agrees to pay such charges upon demand.

Nothing in the above shall be deemed to apply to Work which has been abused or neglected by the Owner.

SUBCONTRACTOR

By: _____

Title: _____

Date: _____

STATE OF FLORIDA)

SS:

COUNTY OF PALM BEACH)

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this ____ day of _____, 20____ by _____ as _____ (INSERT TITLE), of _____ [INSERT NAME OF ENTITY – ie: corporation, limited liability company, etc.), (insert status ie: a corporation existing under the laws of the State of _____), ☐ who is personally known to me or ☐ who has produced as identification Driver's License # _____ or (other identification) (describe) _____.

Notary Public Signature and Seal

Print Notary Name and Commission No.

EXHIBIT "K"
FORM OF CERTIFICATE OF SUBSTANTIAL COMPLETION

CERTIFICATE OF SUBSTANTIAL COMPLETION

PROJECT: _____
BID NO.: _____

CONTRACTOR: _____

DATE OF ISSUANCE: _____ NOTICE TO PROCEED DATE: _____

PROJECT OR DESIGNATED PORTION SHALL INCLUDE:

The work performed under this Contract has been reviewed and found to be substantially complete and all documents required to be submitted by CONTRACTOR under the Contract Documents have been received and accepted. The Date of Substantial Completion of the Project or portion thereof designated above is hereby established as _____ which is also the date of commencement of applicable warranties required by the Contract Documents, except as stated below.

Definition of Date of Substantial Completion

The Date of Substantial Completion of the work or portion thereof designated by VILLAGE is the date certified by VILLAGE when all conditions and requirements of permits and regulatory agencies have been satisfied and the Work is sufficiently complete in accordance with the Contract Documents including, but not limited to Article 38, so the Project is available for beneficial occupancy by VILLAGE. A Certificate of Occupancy must be issued for Substantial Completion to be achieved; however, the issuance of a Certificate of Occupancy or the date thereof are not to be determinative of the achievement or date of Substantial Completion.

A list of items to be completed or corrected, prepared by VILLAGE, is attached hereto. The failure to include any items on such list does not alter the responsibility of CONTRACTOR to complete all work in accordance with the Contract Documents. The date of commencement of warranties for items on the attached list will be the date of final payment unless otherwise agreed in writing.

CONTRACTOR

By: _____ DATE: _____
Print Name: _____

In accordance with the Agreement, CONTRACTOR will complete or correct the work on the list of items attached hereto within 15 days from Substantial Completion.

CONTRACTOR

By: _____ DATE: _____
Print Name: _____

VILLAGE accepts the Work or portion thereof designated by VILLAGE as substantially complete and will assume full possession thereof at _____ (time) on _____ (date).

VILLAGE OF WELLINGTON

By: _____ DATE: _____

Title

The responsibilities of VILLAGE and CONTRACTOR for security, maintenance, heat, utilities, damage to the Work and insurance shall be as follows:

EXHIBIT "L"
FORM OF APPLICATION FOR PAYMENT
APPLICATION FOR PAYMENT NO. _____

Project: _____

Start Date: _____

Completion Date: _____

Application is made for payment, as hereinafter shown, in connection with this Contract:

Total Work to Date – see attached schedule	\$ _____
Total Material Suitably Stored – see attached schedule	\$ _____
Gross Amount Due	\$ _____
Less 5% Retainage	\$ _____
Amount Due to Date	\$ _____
Less Previous Applications	\$ _____
Amount Due This Application	\$ _____

Contractor's Certification – The undersigned Contractor certifies that:

- (1) all previous progress payments received from Owner on account of Work done under the Agreement referred to above have been applied to discharge in full all obligations of Contractor incurred in connection with Work covered by prior Applications for Payment numbered 1 through _____, inclusive; and
- (2) title to all materials and equipment incorporated in said Work or otherwise listed in or covered by this Application for Payment will pass to Owner at time of payment free and clear of all liens, claims, security interests and encumbrances (except such as covered by Bond acceptable to Owner).

Dated: _____, _____

Contractor: _____

Mailing Address: _____

By _____
(Name and Title)

State of _____)
County of _____)ss

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this ____ day of _____, 20____ by _____ as _____ (INSERT TITLE), of _____ [INSERT NAME OF ENTITY – ie: corporation, limited liability company, etc.), (insert status ie: a corporation existing under the laws of the State of _____), ☐ who is personally known to me or ☐ who has produced as identification Driver's License # _____ or (other identification) (describe) _____.

Notary Public Signature and Seal

Print Notary Name and Commission No.

Payment of the above AMOUNT DUE THIS APPLICATION is recommended.

WELLINGTON DESIGNEE

Date: _____

By: _____
(Name) (Title)

Engineer's Certification (if applicable) In accordance with the contract documents, based on on-site observations and the data comprising the application, the Engineer certifies to the Owner that to the best of the Engineer's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the amount above.

Date: _____

By: _____

EXHIBIT "M"
CONTRACTOR'S AFFIDAVIT TO OWNER
AND FINAL RELEASE OF LIENS

STATE OF FLORIDA

COUNTY OF _____

Before me, the undersigned authority, authorized to administer oaths and take acknowledgements, personally appeared _____, who, being by me first duly sworn, on oath depose(s) and say(s):

(1) He/she is/they are a (Corporation, Partnership, or Individual) of _____ (State), doing business as _____, hereinafter called "Contractor".

(2) Contractor heretofore entered into a Contract with Wellington, hereinafter called "Owner" to do Work (furnish material, labor and services) for Water Treatment Plant Warehouse, Generator Storage, Field Services Building Modifications and Miscellaneous Engineerural, Security, and Site Improvements Project, located at Palm Beach County, Florida.

(3) Contractor has fully completed construction in accordance with the terms of the Contract, and all lienors have been paid in full, except:

<u>NAME OF LIENOR</u>	<u>AMOUNT DUE AND UNPAID</u>

(4) All Workmen's Compensation claims have been settled and no liability claims are pending, in connection with, arising out of or resulting from the Contractor.

(5) Receipt by the Contractor of the final payment, under the aforementioned Contract, shall constitute a full release and discharge by the Contractor to the Owner of any and all claims of the Contractor against the Owner, arising out of, connected with, or resulting from performance of the obligations of the Contractor pursuant to the Contract Documents.

(6) The term "lienor" as used in this affidavit means any person having a lien or a prospective lien, under the Mechanics Lien Law of Florida, on the land and property of the Owner referred to in paragraph (2) of this affidavit. Further, Contractor represents, warrants and covenants that all subcontractors, materialmen and suppliers have been paid in full. The contractor further provides under penalty of perjury that there are no claims of lien on the project.

(7) This affidavit is given pursuant to the provisions of Florida Statutes Section 713.06 or Section 255.05, whichever is applicable.

Signed and sealed in the presence of:

	(Entity)
	By: _____ (Seal)

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this ____ day of _____, 20____ by _____ as _____ (INSERT TITLE), of _____ [INSERT NAME OF ENTITY – ie: corporation, limited liability company, etc.), (insert status ie: a corporation existing under the laws of the State of _____), ☐ who is personally known to me or ☐ who has produced as identification Driver's License # _____ or (other identification) (describe) _____.

Notary Public Signature and Seal

Print Notary Name and Commission No.

EXHIBIT “N”
PRECONSTRUCTION SERVICES PROPOSAL

SAMPLE

EXHIBIT "O1"

WELLINGTON LOCAL PREFERENCE

APPLICATION TO BE CONSIDERED A LOCAL BUSINESS IN ACCORDANCE WITH VILLAGE OF WELLINGTON FLORIDA'S LOCAL PREFERENCE POLICY

Wellington gives preference to local businesses in certain purchasing situations as set forth in Chapter 9 of Wellington's Purchasing and Procurement Manual. In order to be considered a local business, entitled to be given preference, the business must make application with Wellington and meet one of the following criteria as such is more fully set forth in Chapter 9, of Wellington's Purchasing and Procurement Manual:

Chapter 9, LOCAL PREFERENCE

Western Communities Local Business - For the purpose of determining a "Western Communities local business" a vendor must have a principal permanent business location and headquarters within Wellington of Wellington, Florida or west of the Florida Turnpike to the Palm Beach County western boundary line as depicted in Exhibit "A" hereto. This applies to all entity formations, including, but not limited to, limited liability companies, partnerships, limited partnerships and the like or sole proprietors. Further, the entity or sole proprietor must provide that it, he or she has been domiciled and headquartered in the jurisdictional boundaries of the Western Communities for at least six months prior to the solicitation. Post Office boxes will not be considered a permanent business location within the Western Communities. Home business offices shall be considered as a business location if it otherwise meets the requirements herein. In order to be eligible for such local preference the vendor shall have a local business tax receipt pursuant to the County's and/or municipalities' Code of Ordinances, having jurisdiction over the location of the business, unless otherwise exempt therefrom. Further, the vendor must be properly licensed and authorized by law to provide the goods, services or professional services to the extent applicable and the location of the business must be properly zoned in order for the vendor to conduct its business.

Palm Beach County local business - For the purpose of determining a "Palm Beach County local business" a vendor must have a principal permanent business location and headquarters within Palm Beach County, Florida. This applies to all entity formations, including, but not limited to, limited liability companies, partnerships, limited partnerships and the like or sole proprietors. Further, the entity or sole proprietor must provide that it, he or she has been headquartered and domiciled in the jurisdictional boundaries of Palm Beach County, Florida for at least six months prior to the solicitation. Post Office boxes will not be considered a permanent business location within Palm Beach County, Florida. Home business offices shall be considered as a business location if it otherwise meets the requirements herein. In order to be eligible for such local preference the vendor shall have a local business tax receipt pursuant to the Palm Beach County Code of Ordinances as amended from time to time, unless otherwise exempt therefrom. Further, the vendor must be properly licensed and authorized by law to provide the goods, services or professional services to the extent applicable and the location of the business must be properly zoned in order for the vendor to conduct its business.

Subcontractor utilization - In competitive bid situations, a business may also qualify as either a Palm Beach County or Western Community local business if they are utilizing subcontractors to perform the work or materialmen to supply the job and more than fifty (50%) percent of their proposed bid price will be paid to subcontractors and/or materialmen who qualify, under the above standards, as Palm Beach County and/or Western Community local businesses.

Please check the box below indicating which preference category your business is applying for:

☐ Western Communities Local Business

☐ Palm Beach County Local Business

☐ Subcontractor Utilization

1. The name of the business is: _____

2. The address of the business is: _____

3. How long has the business been located at its current address: _____

4. If the business has relocated within the last six months, please provide the answers to questions 1-3 for the previous location:

5. The previous name of the business is: _____

6. The previous address of the business is: _____

7. How long was this business at the previous location: _____

8. If the business is attempting to qualify under the subcontractor utilization provision, please provide a breakdown of the subcontractors who would qualify for either the Palm Beach County or Western Community, business classification, the requisite information, provide their responses to the above 1 - 7 questions and for each of the subcontractors, indicate the amount that they are proposed to be compensated at under the bid price.

9. The business as a local business tax receipt from: (1) Palm Beach County ☐ (2) the following municipality: _____ (3) located in unincorporated Palm Beach County: ☐

10. Please provide a copy of Local Business Tax Receipts from Palm Beach County and the applicable municipality are attached.

11. Please provide a Certificate of Good Standing indicating the formation or domestication of the entity in and for the State of Florida is attached.

12. Please provide copies of licenses if applicable from the State of Florida authorizing the business to provide the good services or professional services contemplated in the bid documents.

By signing below, I hereby certify that under penalty of perjury I believe my business qualifies as a Palm Beach County, Western Community or subcontractor utilization business in accordance with Wellington's Local Preference Policy and that I have submitted current and accurate information and documents relating to my qualifications. I further acknowledge and agree that any fraudulent or duplicitous information submitted in furtherance of this application will be grounds for disqualification from bidding on this project and doing business with Wellington in the future.

Applicants Federal Tax ID Number: _____

Applicants Business Address: _____

Signature of Authorized Representative of Corporation, Partnership, or other business entity:

Print Name: _____

Title: _____

Date: _____

CITY OF: _____

COUNTY OF: _____

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this ____ day of _____, 20____ by _____ as _____ (INSERT TITLE), of _____ [INSERT NAME OF ENTITY – ie: corporation, limited liability company, etc.), (insert status ie: a corporation existing under the laws of

the State of _____), ☐ who is personally known to me or ☐ who has produced as identification Driver's License # _____ or (other identification) (describe) _____.

Notary Public Signature and Seal

Print Notary Name and Commission No.

Signature of Individual if Sole Proprietor:

Print Name: _____

Date: _____

CITY OF: _____

COUNTY OF: _____

SUBSCRIBED AND SWORN TO (or affirmed) before me on this ____ day of _____, 20____, by _____ He/She is personally known to me or has presented _____ as identification.

(Signature of Notary)

(Print or Stamp Name of Notary)

Notary Public _____
(State)

Notary Seal

EXHIBIT “O2”

CONFLICT OF INTEREST STATEMENT

This Proposal/Agreement (whichever is applicable) is subject to the conflict of interest provisions of the policies and Code of Ordinances of WELLINGTON, the Palm Beach County Code of Ethics, and the Florida Statutes. During the term of this Agreement and any renewals or extensions thereof, the VENDOR shall disclose to WELLINGTON any possible conflicts of interests. The VENDOR’s duty to disclose is of a continuing nature and any conflict of interest shall be immediately brought to the attention of WELLINGTON. The terms below shall be defined in accordance with the policies and Code of Ordinances of WELLINGTON, the Palm Beach County Code of Ethics, and Ch. 112, Part III, Florida Statutes.

CHECK ALL THAT APPLY.

- ☐ To the best of our knowledge, the undersigned business has no potential conflict of interest for this Agreement due to any other clients, contracts, or property interests.
- ☐ To the best of our knowledge, the undersigned business has no employment or other contractual relationship with any WELLINGTON employee, elected official or appointed official.
- ☐ To the best of our knowledge, the undersigned business has no officer, director, partner or proprietor that is a WELLINGTON purchasing agent, other employee, elected official or appointed official. The term “purchasing agent”, “elected official” or “appointed official”, as used in this paragraph, shall include the respective individual’s spouse or child, as defined in Ch. 112, Part III, Florida Statutes.
- ☐ To the best of our knowledge, no WELLINGTON employee, elected official or appointed official has a material or ownership interest (5% ownership) in our business. The term “employee”, “elected official” and “appointed official”, as used in this paragraph, shall include such respective individual’s relatives and household members as described and defined in the Palm Beach County Code of Ethics.
- ☐ To the best of our knowledge, the undersigned business has no current clients that are presently subject to the jurisdiction of WELLINGTON’s Planning, Zoning and Building Department.
- ☐ The undersigned business, by attachment to this form, submits information which may be a potential conflict of interest due to any of the above listed reasons or otherwise.

THE UNDERSIGNED UNDERSTANDS AND AGREES THAT THE FAILURE TO CHECK THE APPROPRIATE BLOCKS ABOVE OR TO ATTACH THE DOCUMENTATION OF ANY POSSIBLE CONFLICTS OF INTEREST MAY RESULT IN DISQUALIFICATION OF YOUR BID/PROPOSAL OR IN THE IMMEDIATE CANCELLATION OF YOUR AGREEMENT, WHICHEVER IS APPLICABLE.

COMPANY NAME

AUTHORIZED SIGNATURE

NAME/TITLE (PRINT OR TYPE)

EXHIBIT "O3"
NON-COLLUSION AFFIDAVIT

State of _____

County of _____

Being duly sworn deposes and says:

That he/she is an officer of the parties making the forgoing bid submittal, that such bid submittal is genuine and not collusive or sham, that said Bidder has not colluded, conspired, connived or agreed, directly or indirectly with any bidder or person, to put in a sham bid or to refrain from bidding and has not in any manner, directly, or indirectly, sought by agreement of collusion or communication or conference with any person, to fix the price of affiant or any other bidder, or to fix any overhead, profit of cost element of said price, or that of any other bidder, or to secure any advantage against the authority, of any person interested in the proposed contract and that all statements in said bid is true.

Name of Bidder

Print name of designated signatory

Signature

Title

On this _____ day of _____, 20____, before me appeared _____ personally known to me to be the person described in and who executed this _____ and acknowledged that (she/he) signed the name freely and voluntarily for the uses and purposes therein described.

In witness thereof, I have hereunto set my hand and affixed seal the day and year last written above.

Signature

Notary Public in and for the State of _____

(Affix Seal Here)

(Name Printed)

Residing at _____

My commission expires _____

EXHIBIT “P”

SALES TAX RECOVERY PROGRAM SPECIAL CONDITIONS FOR OWNER FURNISHED MATERIALS AND EQUIPMENT

During the course of this Project, Wellington (hereinafter referred to as “Owner”) may issue a Change Order or Change Orders to delete from the contract certain items that the Owner desires to purchase directly and furnish to Contractor for use in the Project. Contractor agrees that if Owner desires to issue such Change Order(s), Contractor will assist the Owner in identifying appropriate materials and equipment to be included in the Change Order(s), will execute such Change Order(s) and will participate in this tax savings program at no additional cost to the Owner. Furthermore, Contractor agrees to abide by and comply with the following Special Conditions.

1. Sales and Use Taxes. The Owner is exempt from paying sales and use taxes on materials and equipment purchased for, and incorporated into the “Project”. The Owner shall make direct purchases of all materials and equipment purchased for, or to be incorporated into the Project, as agreed to by the Contractor and agreed upon by the Owner in the form of a Change Order. All direct purchases of materials and equipment shall be made by the Owner with funds specifically allocated for the construction of the Project. Material suppliers shall be competitively bid by the Contractor and its subcontractors. The Contractor shall furnish to Owner with its bid a detailed list of all materials, equipment and supplies necessary for Contractor to perform the Work (“Materials and Equipment List”). The Materials and Equipment List shall: (1) Identify all of the materials and equipment to be purchased by or through Contractor as part of the Work in such detail as may be required to adequately identify the materials and equipment; (2) Include the name of each intended supplier, vendor or manufacturer of the materials and equipment necessary for Contractor to perform the Work; and (3) include price quotes from all intended vendors, suppliers, or manufacturers of all construction materials and equipment necessary for Contractor to perform the Work. This Materials and Equipment List shall be submitted as part of the Contractor’s Bid, and as part of the preliminary Schedule of Values. The Contractor shall notify the Owner no later than **10 calendar days** after request by Owner of the requested materials and equipment to be purchased by the Owner for the Project. The standard Owner Terms and Conditions applicable to this program are included as Attachment A to this section. Each equipment supplier of equipment to be provided under the Sales Tax Recovery Program shall be obligated to meet the requirements of the Owner of Wellington Terms and Conditions and the Project Technical Specifications.
- 1.1 The Contractor shall: (a) compile Contractor’s and any Subcontractors’ itemized requirement for materials and equipment, including quantities, unit costs, manufacturers’ or vendors’ catalogue or order numbers, delivery instructions, and other specific terms and information that are required to order the specific materials and equipment, and terms and conditions to be imposed on suppliers regarding delivery and submittal time requirements, and quantities thereof required by Contractor or Subcontractors in accordance with the applicable requirements of the Construction Contract, from time to time, during the construction of the Project, as materials and equipment need to be ordered for the Project, and submit such compilation to the Owner; (b) prepare a requisition for such materials and equipment on the Owner’s form of requisition; and (c) deliver any such requisition to the Owner no less than thirty (30) days prior to the date the manufacturer or vendor of the materials or equipment, as the case may be, requires orders for such materials or equipment to be placed to assure delivery of such materials or equipment to the Site in accordance with the Project Schedule (the “Order Date”). The requisition shall identify the Order Date. The Owner shall issue a Purchase Order directly to the vendor of the materials or equipment, prior to the Order Date (a Purchase Order). The Owner shall include with any such Purchase Order, a copy of the Owner’s sales and use tax exemption certificate and a copy of the Owner’s Certificate of Entitlement required under F.A.C. Rule 12A-1.094(4)(c). The Owner shall make direct payment to the vendor from the Owner’s account.
- 1.2 The Contractor, upon the delivery of any such materials or equipment, shall verify the conformity of such materials or equipment with the terms of the Purchase Order and the Contract Documents. If the Contractor determines that the materials and equipment are conforming, the Owner shall take title and possession of such material and equipment before such materials and equipment are incorporated into the Project. If the

Contractor determines that the materials and equipment are non-conforming, the Contractor shall immediately notify the Owner in writing and the Owner shall reject such material and equipment.

- 1.3 The Owner shall assume all risk of loss on all materials and equipment purchased pursuant to its sales and use tax exemption, subject to the provisions of section 1.10 below. The Owner shall maintain Builder's Risk Insurance for the full insurable value for all materials and equipment purchased as a result of the Owner Sales Tax Recovery Program herein. This coverage shall be in addition to all other coverage required in Section 1.11 below or as otherwise provided in these Contract Documents.
- 1.4 To the extent that materials and equipment are purchased pursuant to the Owner's sales and use tax exemption, the Contractor shall reduce the Contract Amount and the penal sum of its public construction bond by 1.07 times the cost of the materials and equipment purchased directly by the Owner.
- 1.5 Savings and Overruns. The Contractor shall use its best efforts to purchase all materials and equipment required as part of the Work at the best price. All buyout savings realized from the purchase of materials and equipment shall inure 100% to the benefit of the Owner. Owner shall not be obligated to pay any additional amounts should the actual cost of the materials, equipment or supplies to be furnished as part of Contractor's Work, exceed the amounts set forth on the Materials and Equipment List.
- 1.6 The Contractor shall be fully responsible for all matters relating to the receipt of materials and equipment furnished by the Owner in accordance with this Special Condition, including, but not limited to, the responsibility for verifying correct quantities, verifying documents or orders in a timely manner, coordinating purchases, providing and obtaining all warranties and guarantees required by the Contract Documents, inspection and acceptance of the materials and equipment at the time of delivery, and loss or damage to materials and equipment following acceptance of items due to the negligence of such Contractor or any Subcontractors or other party. The Contractor shall coordinate delivery schedules, sequence of delivery, loading orientation, and other arrangements normally required by such Contractor for the particular materials and equipment furnished. The Contractor shall provide or arrange for all services required for the unloading, handling and storage of such materials and equipment through installation.
- 1.7 The Contractor shall visually inspect all shipments from material and equipment vendors purchased directly by the Owner in accordance with this Special Condition (the "Owner Furnished Materials") and approve the vendors' invoices for materials or equipment delivered, as Owner Furnished Materials are furnished to the Site in accordance with this Special Condition. The Contractor shall assure that each delivery of the Owner Furnished Materials is accomplished by documentation adequate to identify the Purchase Order against which the purchase is made. This documentation may consist of a delivery ticket and an invoice from the vendor conforming to the Purchase Order, together with such additional information as the Owner may require. The Contractor shall deliver to the Owner all invoices for materials and equipment upon verification by such Contractor that the materials and equipment conform exactly to the Contract Documents and the Purchase Order. Upon receipt of any invoice for Owner Furnished Materials, the Owner shall accept such materials and deliver such invoice to the Owner for payment directly to the vendor.
- 1.8 The Contractor shall inspect all Owner Furnished Materials to determine that such Owner Furnished Materials conform to the Contract Documents, including the Drawings and Specifications, and to determine prior to incorporation into the Work whether any such Owner Furnished Materials are patently defective, and whether such Owner Furnished Materials are identical to the materials ordered and match the description of the bill of lading and the Purchase Order. If Contractor discovers defective or non-conforming Owner Furnished Materials upon such visual inspection, Contractor shall: (1) not recommend acceptance of such non-conforming materials and equipment, (b) not utilize such non-conforming or defective materials in the Work; (c) not allow Subcontractor to utilize such non-conforming or defective materials in the Work; and (d) promptly notify the Owner, in writing, of the defective or non-conforming condition so that repair or replacement of those Owner Furnished Materials can occur without any undue delay or interruption to the Project. In the event that such Contractor fails to perform such inspection or otherwise incorporates into the Work such defective or non-conforming Owner Furnished Materials, the Contractor shall be responsible for the repair and replacement of defective or non-conforming materials, at its sole cost and expense.

- 1.9 The Contractor shall maintain written and detailed records of all Owner Furnished Materials incorporated into the Work from the stock of Owner Furnished Materials. The Contractor shall account monthly to the Owner for any Owner Furnished Materials delivered to the Site, indicating which Owner Furnished Materials have been incorporated into the Work.
- 1.10 The Contractor shall be responsible for obtaining and managing all warranties and guarantees for all Owner Furnished Materials. All repair, maintenance or damage-repair calls shall be forwarded by the Owner to the Contractor for resolution with the appropriate vendor, supplier or Subcontractor. The Contractor warrants represents and covenants that it shall be responsible for all warranties and guarantees of the Owner Furnished Materials.
- 1.11 After the Owner takes possession of the Owner Furnished Materials at the Site, possession of the Owner's Furnished Material shall immediately and automatically transfer to the Contractor without notice. The transfer of possession of Owner Furnished Materials from the Owner to the Contractor shall constitute a bailment for the mutual benefit of the Owner and such Contractor. The Owner shall be considered the bailor and such Contractor the bailee of the Owner Furnished Materials. Owner Furnished Materials shall be considered returned to the Owner for purposes of their bailment at such time as they are incorporated into the Project or consumed in the process of completing the Project and they are accepted in writing by the Owner upon final completion and acceptance of the Project by the Owner.
- 1.12 The Contractor shall purchase and maintain Builder's Risk Insurance sufficient to protect against loss of or damage to Owner Furnished Materials. Such insurance shall cover the full value of any Owner Furnished Materials between the time the Owner and or Contractor or its agents first takes title to and possession of any of such Owner Furnished Materials until final completion of the Work. The Contractor shall also maintain any other insurance with such deductible amounts that the Owner deems necessary as it relates to the Owner Furnished Materials.
- 1.13 The Owner shall not be liable for any interruption or delay damages in the Project by virtue of ordering the Owner Furnished Materials, for any defects or other problems with the Project by virtue of ordering the Owner Furnished Materials, or for any extra costs resulting from any delay in the delivery of, or defects in, the Owner Furnished Materials.
- 1.14 The Contractor, on a monthly basis, shall review invoices submitted by all vendors of Owner Furnished Materials delivered to the Site during the prior month and either concur or object to the Owner's issuance of payment to the vendors, based upon such Contractor's records of materials delivered to the Site and whether any of the Owner Furnished Materials for which payment has not been made were either non-conforming or defective.
- 1.15 In order to arrange for the prompt payment to the vendor, the Contractor shall provide to the Owner a list of the acceptance of the goods or materials within fifteen (15) days of receipt of said goods or materials. Accompanying the list shall be a copy of the applicable Purchase Order, invoices, delivery tickets, written acceptance of the delivered items, and such other documentation as may be reasonably required by the Owner. Upon receipt of the appropriate documentation, the Owner shall prepare a check payable to the vendor based upon the receipt of data provided. This check will be released, delivered and remitted directly to the vendor. The Contractor shall assist the Owner to immediately obtain partial or final release of waivers as appropriate. The Owner shall not make any payment without the appropriate Contractor's concurrence and approval, which shall be delivered to the Owner. There shall be no retention on Owner Furnished Materials against either the vendor, the Contractor(s) or the Subcontractor(s).

1.16 The Contractor and or/the Owner may, in its or their reasonable discretion, require certain material and equipment vendors to provide a supply bond in the amount of one-hundred percent (100%) of the Purchase Order price. The supply bond, if required, shall be issued by a qualified surety company authorized to do business in the State of Florida and acceptable to the Owner. If the supply bond is required, the costs thereof will be added to the amount of the Purchase Order. The Contractor shall verify that a vendor can furnish a supply bond. All bonds will name the Owner and the Contractor as additional obligees.

Terms and Conditions (Attachment A).

The following Terms and Conditions are applicable to this order entered into by and between the Village of Wellington (referred to hereafter as Buyer) and Vendor (referred to as Seller).

- 2.1 Seller's acceptance of this order will be presumed unless Seller acknowledges exception, in writing, to Buyer within ten (10) calendar days after date of order.
- 2.2 Sellers doing business with the Buyer are prohibited from discriminating against any employee, applicant, or client because of race, color, religion, disability, sex, age, national origin, ancestry, marital status, or sexual orientation with regard to but not limited to the following employment practices, rates of pay or other compensation methods, and training selection.
- 2.3 Any assignment of this order, performance of work hereunder, in whole or in part, or monies due or to become due hereunder, shall be void unless consented to by Buyer in writing and Buyer shall have no obligations to any assignee of Seller under any assignment not consented to in writing by Buyer.
- 2.4 In the event of default by the Seller, Buyer may procure the articles or services covered by this order from other sources and hold the seller responsible for any excess costs occasioned thereby.
- 2.5 Deliveries are to be made during hours 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding holidays, unless otherwise stipulated. Seller shall notify the Buyer of deliveries that require special handling and/or assistance for off-loading. Failure to notify the Buyer concerning this type of delivery will result in the billing to Seller of any add-on re-delivery, storage, or handling charges.
- 2.6 The Buyer may grant additional time for any delay or failure to perform hereunder if the delay will not adversely impact the best interest of the Buyer and is due to causes beyond the control of the Seller. Such grant must be in writing and made part of the order.
- 2.7 In those cases where prices stated are not F.O.B. Destination, Seller is required to prepay charges and list on invoices.
- 2.8 To the extent authorized by law, Seller shall indemnify, save and hold harmless the Buyer, its employees and agents against any and all claims, damages, liability and court awards including costs, expenses and attorney fees incurred as a result of any act or omission by the Seller, or its employees, agents, subcontractors of assignees pursuant to the terms of this order.
- 2.9 All Commodities delivered on this order are subject to inspection upon receipt by a representative of the Buyer. All rejected commodities shall remain the property of the Seller and will be returned at the Seller's expense.
- 2.10 Seller must render original invoice to the Buyer, Attention "Project Manager, 12300 Forest Hill Blvd., Wellington, FL 33414"

- 2.11 By accepting this order, Seller understands and agrees that the items covered herein, or services to be rendered, shall be manufactured, sold or performed in compliance with applicable Federal, State, County and Local laws, ordinances, rules, codes and regulations. Lack of knowledge by the Seller shall in no way be a cause for relief from responsibility.
- 2.12 Seller shall save and hold harmless the Buyer, its employees and agents from liability for infringement of any United States patent, trademark or copyright trademark or copyright for or on account of the use of any product sold to Buyer or used in the performance of this order.
- 2.13 No modifications of this order shall be binding upon Buyer unless approved by an authorized representative of Buyer's Purchasing Office.
- 2.14 Seller compliance required under Chapter 442, Florida Statutes, that any toxic substance delivered as a part of this order must be accompanied by a Material Safety Data Sheet (MSDS).
- 2.15 Order Number must appear on all invoices, packing slips, shipping notices, freight bills, and correspondence concerning this order.
- 2.16 Payments will be made only to the company and address as set forth on order unless the Seller has requested a change thereto on official company letterhead, signed by an authorized officer of the company.
- 2.17 No endorsement by the Buyer of the product and/or service will be used by Seller in any way, manner or form in product literature or advertising.
- 2.18 Quantities specified in the order cannot be changed without Buyer's prior written approval. Goods shipped in excess of quantity designated may be returned at Seller's expense.
- 2.19 All parties to this order agree that the representatives named herein are, in fact, bona fide and possess full and complete authority to bind said parties.
- 2.20 Responsibility will not be accepted for any goods delivered or services performed unless covered by a duly authorized Buyer Purchase Order.
- 2.21 The Buyer of Wellington is exempt from Federal and State taxes for tangible personal property. Sellers doing business with the Buyer shall not be exempt from paying sales tax to their suppliers for materials to fulfill contractual obligations with the Buyer, nor shall any Seller be authorized to use the Buyer's Tax Exemption Number in securing such materials.
- 2.22 Buyer reserves the right to terminate this order in whole or in part for default (a) if Seller fails to perform in accordance with any of the requirements of this order or (b) if Seller becomes insolvent or suspends any of its operations or if any petition is filed of proceeding commenced by or against Seller under any State or Federal law relating to bankruptcy, arrangement, reorganization, receivership or assignment for the benefit of creditors. Any such termination will be without liability to Buyer except for completed items delivered and accepted by the Buyer. Seller will be liable for excess cost of re-procurement.
- 2.23 By accepting this order, the Seller agrees that payment terms shall be in accord with the Florida Prompt Payment Act, Florida Statute 218.70, *et seq.*
- 2.24 No provision of Seller's agreement to supply the ordered goods, equipment, or materials shall in any way limit Seller's liability for damages caused by defects in the materials incorporated in, nor the design or manufacture of, Seller's equipment, goods, or materials. Seller's agreement shall not

include any provision requiring the Buyer to pay Seller's attorney's fees in any dispute or claim arising out of this Purchase Order.

- 2.25 The Uniform Commercial Code (Florida Statutes, Chapter 672) shall prevail as the basis for contractual obligations between the Seller and Buyer for any terms and conditions not specifically stated in this order.
- 2.26 Any and all legal actions arising from or necessary to enforce this contract will be held in Palm Beach County, Florida and the service of process and interpretation of contractual obligation shall be in accordance with the laws of the State of Florida.
- 2.27 Seller acknowledges that the materials being ordered are for incorporation into the Project for Buyer pursuant to a contract with a contractor. Seller agrees that it shall warrant its goods, equipment, or materials being ordered herein in compliance with Seller's normal warranties, or in compliance with the warranty provisions of the construction contract, the terms of which are incorporated herein, whichever warranty provides the Buyer with the greatest protection. Regardless of the forgoing all warranties shall be in accordance with the contract documents to which Contractor is bound with the buyer.

END OF SECTION

EXHIBIT "Q"

SALES TAX EXEMPTION CERTIFICATE OF ENTITLEMENT – SAMPLE

I, the undersigned authorized representative of _____ (hereinafter "Governmental Entity"), Florida Consumer's Certificate of Exemption Number _____, certify that the tangible personal property purchased on or after _____ (date) will be incorporated into or become a part of a public facility as part of a public works contract pursuant to contract # _____ with _____ (Name of Contractor) for the building of _____.

I certify that the purchase of the materials contained in the attached Purchase Order meets the following exemption requirements contained in Section 212.08(6), F.S., and Rule 12A-1.094, F.A.C.:

You must initial each of the following requirements.

____ 1. The attached Purchase Order is issued directly to the vendor supplying the materials the contractor will use in the identified public works.

____ 2. The vendor's invoice is issued directly to Governmental Entity.

____ 3. Payment of the vendor's invoice is made directly by Governmental Entity to the vendor from public funds.

____ 4. Governmental Entity will take title to the tangible personal property from the vendor at the time of purchase or delivery by the vendor.

____ 5. Governmental Entity assumes the risk of damage or loss at the time of purchase.

I understand that if the tangible personal property identified in the attached Purchase Order does not qualify for the exemption provided in Section 212.08(6), F.S., and Rule 12A-1.094, F.A.C., Governmental Entity will be subject to the tax, interest, and penalties due on the materials purchased. If the Department of Revenue determines that the materials purchased tax-exempt by issuing this Certificate do not qualify for the exemption, Governmental Entity will be liable for any tax, penalty, and interest determined to be due.

I understand that if I fraudulently issue this certificate to evade the payment of sales tax I will be liable for payment of the sales tax plus a penalty of 200% of the tax and may be subject to conviction of a third degree felony.

Under the penalties of perjury, I declare that I have read the foregoing Certificate of Entitlement and the facts stated in it are true.

Signature of Authorized Representative

Title

Purchaser's Name (Print or Type)

Date

Federal Employer Identification:

Telephone Number:

You must attach the Purchase Order and the Florida Consumer's Certificate of Exemption issued to Governmental Entity.

Do not send to the Department of Revenue. This Certificate of Entitlement must be retained in the vendor's and the contractor's books and records.

(d)(c) If the contractor does not have a Certificate of Entitlement, sales to the contractor are subject to tax, unless the contractor can demonstrate to the satisfaction of the Executive Director or designee that such sales are, in substance, tax-exempt direct sales to a governmental entity.

(e) The governmental entity may not transfer liability for such tax, penalty, and interest to another party by contract or agreement.

(f) In the case of contracts with any agency or branch of the United States government in which the federal governmental agency or branch is not required to produce a Certificate of Entitlement, the purchase must comply with the five criteria provided in paragraph (4)(b), for the purchase of supplies and materials to be exempt from sales and use tax. If the criteria in paragraph (4)(b) are not met, the contractor is the ultimate consumer of such supplies or materials and is liable for sales or use tax on such purchases and manufacturing costs.

(5) Contractors, including subcontractors, that manufacture or fabricate their own materials for incorporation into public works cannot be included in a governmental entity's direct purchase program and may not accept a Certificate of Entitlement. The contractor and subcontractors, not the governmental entity, are deemed to be the ultimate consumers of the articles of tangible personal property they manufacture or fabricate to perform their contracts and are liable for tax in the manner provided in subsection (10) of Rule 12A-1.051, F.A.C.

(6) through (8) No change.

Rulemaking Authority 212.08(6), 212.17(6), 212.18(2), 212.183, 213.06(1) FS. Law Implemented 212.02(4), (14), (15), (16), (19), (20), (21), 212.06(1), (2), (14), 212.07(1), 212.08(6), (7)(bbb), 212.085, 212.18(2), 212.183 FS., s. 8, Ch. 2010-138, L.O.F. History—New 6-3-80, Amended 11-15-82, Formerly 12A-1.94, Amended 1-2-89, 8-10-92, 6-28-04,

EXHIBIT “R”

**“R1” THROUGH “R8” TO BE PROVIDED BY THE CONTRACTOR
PRIOR TO GMP APPROVAL**

SAMPLE

GUARANTEED MAXIMUM PRICE AMENDMENT - SAMPLE

EXHIBIT “R” TO CONSTRUCTION MANAGEMENT AGREEMENT DATED _____
BETWEEN VILLAGE OF WELLINGTON AND _____ (“CONSTRUCTION
MANAGER”) FOR THE _____ (“PROJECT”) MADE THIS _____ DAY OF
_____ 202__.

ARTICLE 1 - GUARANTEED MAXIMIM PRICE

1.1 Guaranteed Maximum Price (“GMP”)

Pursuant to Section 3.2 of the Agreement, the Owner and Construction Manager hereby amend the Agreement to establish a Guaranteed Maximum Price. As agreed by the Owner and Construction Manager, the Guaranteed Maximum Price is an amount that the Contract Sum shall not exceed. The Contract Sum consists of the Construction Manager’s Fee plus the Cost of the Work, as that term is defined in Article 8 of this Agreement, and the Owner’s Contingency. There shall be no Fee on Owner’s Contingency unless and until such time as use of the Owner’s Contingency is authorized by Owner. Notwithstanding, Manager’s insurance and bond costs shall not be subject to Construction Manager’s Fee.

1.1.1 The Contract Sum is guaranteed by the Construction Manager not to exceed « » (\$ « »), subject to additions and deductions by Change Order as provided in the Contract Documents. The GMP is subject to Construction Manager’s Assumptions and Clarifications to the GMP attached as **Exhibit “R5”**.

1.1.2 Allowances included in the Guaranteed Maximum Price are attached as **Exhibit “R4”**.

1.1.3 The Guaranteed Maximum Price includes a fixed amount for General Conditions and General Requirements of _____ as detailed in **Exhibit “R7”**. Construction Manager’s General Conditions and General Requirements are fixed and shall not be subject to increase or decrease unless authorized by written Change Order as set forth in the Agreement.

1.1.4 The GMP includes an Owner’s Contingency in the amount of _____ to be utilized as set forth in 7.2.3 of the Agreement.

1.1.5 It is the intent and understanding of Construction Manager in providing a GMP for this Work, that the Drawings, Plans and Specifications listed in the attached **Exhibit “R1”** provide for the construction of completed Work by the Construction Manager, including all devices, fasteners, materials or other work not shown in the Drawings and Specifications but which are reasonably inferable therefrom and any and all incidental accessories necessary to make the Work complete and operable in all respects (even if not specified in the description of the Work, but necessary for proper installation and operation of the Work under the Drawings and Specifications), all of which shall be included as part of the Cost of the Work. The expression "reasonably inferable" and similar terms in the Contract Documents shall be interpreted to mean reasonably inferable by a construction manager and general contractor familiar with the Project, having performed extensive Preconstruction Services, and exercising the care, skill and diligence of the Construction Manager by the Contract Documents. Notwithstanding, the foregoing shall not be construed to impose any design responsibility or liability on Construction Manager except where such design responsibility is an existing requirement of Florida law or the Contract Documents.

1.2 Schedule of Values. The Schedule of Values allocating the Contract Sum to the various portions of the Work is attached as **Exhibit “R2”**. The Construction Manager shall not imbalance its Schedule of Values nor artificially inflate any element thereof. Any violation of this provision by the Construction Manager shall constitute a material breach of this Construction Management Agreement. The Schedule of Values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Construction Manager’s Fee shall be shown as a single separate item.

ARTICLE 2 – CONTRACT TIME

2.1 Date of Commencement. The Work to be performed under this Construction Management Agreement shall be commenced upon the issuance of a Notice to Proceed from Owner ("Date of Commencement").

2.2 Contract Time. Construction Manager shall meet all Milestones outlined in **Exhibit "R3"** and the entire Project shall reach Substantial Completion no later than _____ calendar days from the Date of Commencement. Construction Manager shall reach Final Completion no later than sixty (60) days from the delivery of the Punch List as outlined in Paragraph 14.4(G) of the General Conditions, subject to any authorized extensions of time as set forth in the Contract Documents. All Work shall be performed in an expeditious manner.

2.2.1 Liquidated Damages. The parties to this Agreement agree that time is of the essence in the performance of this Agreement. Substantial Completion of the Work under this Agreement, as defined in Article 1 of the General Conditions shall be no later than the Substantial Completion date set forth in Section 2.2 of this GMP Amendment, subject to authorized extensions of time as set forth in the Article 12 of the General Conditions. In the event the Work is not substantially completed by the completion date stated above, and has not been extended by Change Order, the Owner shall be entitled to collect liquidated damages. Construction Manager and Owner agree that, because of the nature of the Work, the inability of the parties to precisely calculate actual damages for delay and the difficulty of determining these damages, the Construction Manager shall pay the Owner the sum of \$_____ for each calendar day in achieving Substantial Completion of the Work. Further, Construction Manager and Owner agree that, because of the nature of the Work, the inability of the parties to precisely calculate actual damages for delay and the difficulty of determining these damages, the Construction Manager shall pay the Owner the sum of 25% of the per diem rate set forth in the preceding sentence as liquidated damages for each and every calendar day of unexcused delay for failure to achieve Final Completion. It is hereby agreed that the amount of the per diem assessment for liquidated damages for the Construction Manager's failure to achieve Substantial Completion of the Work or Final Completion of the Work within the time specified in this Agreement is not a penalty and not excessive in light of the circumstances known to the parties at the time this Agreement is executed. The Owner's exercise of its right to terminate this Agreement shall not release the Construction Manager from its obligation to pay liquidated damages in the amount set forth herein. Such assessments shall be immediately due and payable to the Owner or, at the Owner's option, may be deducted from future payments that may be due and owing to Construction Manager. Any sums due and payable hereunder by the Construction Manager shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by the Owner, estimated at or before the time of executing this Agreement. Construction Manager's liability for liquidated damages shall survive completion and termination of the Agreement and are in addition to Owner's other remedies available under the Contract Documents and by law.

ARTICLE 3 - MISCELLANEOUS

3.1 In addition to Construction Manager's and Subcontractor's warranty set forth in 6.19 of the General Conditions, Construction Manager shall be responsible for providing the Extended Warranties as set forth in **Exhibit "R6"**.

3.2 The GMP Amendment incorporates the following exhibits:

- 1.** Drawings, plans and specifications listed in the attached List of Drawings attached hereto as **Exhibit "R1"**;
- 2.** Construction Manager's Schedule of Values to be attached as **Exhibit "R2"**;
- 3.** Construction Schedule to be attached as **Exhibit "R3"**;
- 4.** Construction Manager's Allowances to be attached as **Exhibit "R4"**;
- 5.** Construction Manager's Assumptions and Clarifications to the GMP, if any, to be attached as **Exhibit "R5"**;
- 6.** List of extended warranties to be attached as **Exhibit "R6"**;
- 7.** Construction Manager's Stipulated General Conditions and General Requirements to be attached as **Exhibit "R7"**.
- 8.** Submittal Schedule to be attached as **Exhibit "R8"**.

This GMP Amendment and all Exhibits are hereby incorporated as part of the Contract Documents as defined in the Agreement.

3.3 Construction Manager shall deliver Payment and Performance Bonds in accordance with Fla. Stat. §255.05 and the forms set forth as **Exhibit "E"** from a surety registered in Florida and acceptable to Owner for the full value of the Guaranteed Maximum Price, plus all change orders.

3.4 Other than as modified herein, the terms and conditions set forth in the Agreement, General Conditions and other Contract Documents remain in full force and effect.

IN WITNESS WHEREOF, Owner and Construction Manager have signed this GMP Amendment. One counterpart each has been delivered to Owner, Construction Manager, and the Engineer. All portions of the Contract Documents have been signed or identified by Owner and Construction Manager or by the Engineer on their behalf.

OWNER:

CONSTRUCTION MANAGER:

VILLAGE OF WELLINGTON

By _____

Anne Gerwig, Mayor

By _____

Printed Name/Title _____

Attest: _____

Chevelle Addie, Wellington's Clerk

Attest: _____

Printed Name: _____

(SEAL)

(CORPORATE SEAL)

Address for giving notices

12300 Forest Hill Boulevard

Wellington, Florida 33414

Address for giving notices

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

Laurie Cohen, Attorney for Wellington

License No. _____

Agent for service of process:

(If Construction Manager is a corporation, attach evidence
of authority to sign.)

EXHIBIT “S”

KEY EMPLOYEES

SAMPLE

TAB 4:

CONFLICT OF INTEREST

CONFLICT OF INTEREST STATEMENT (TAB# 4)

This Proposal/Agreement (whichever is applicable) is subject to the conflict of interest provisions of the policies and Code of Ordinances of WELLINGTON, the Palm Beach County Code of Ethics, and the Florida Statutes. During the term of this Agreement and any renewals or extensions thereof, the VENDOR shall disclose to WELLINGTON any possible conflicts of interests. The VENDOR's duty to disclose is of a continuing nature and any conflict of interest shall be immediately brought to the attention of WELLINGTON. The terms below shall be defined in accordance with the policies and Code of Ordinances of WELLINGTON, the Palm Beach County Code of Ethics, and Ch. 112, Part III, Florida Statutes.

CHECK ALL THAT APPLY.

NO CONFLICT:

- ☒ To the best of our knowledge, the undersigned business has no potential conflict of interest for this Agreement due to any other clients, contracts, or property interests.
- ☒ To the best of our knowledge, the undersigned business has no employment or other contractual relationship with any WELLINGTON employee, elected official or appointed official.
- ☒ To the best of our knowledge, the undersigned business has no officer, director, partner or proprietor that is a WELLINGTON purchasing agent, other employee, elected official or appointed official. The term "purchasing agent", "elected official" or "appointed official", as used in this paragraph, shall include the respective individual's spouse or child, as defined in Ch. 112, Part III, Florida Statutes.
- ☒ To the best of our knowledge, no WELLINGTON employee, elected official or appointed official has a material or ownership interest (5% ownership) in our business. The term "employee", "elected official" and "appointed official", as used in this paragraph, shall include such respective individual's relatives and household members as described and defined in the Palm Beach County Code of Ethics.
- ☒ To the best of our knowledge, the undersigned business has no current clients that are presently subject to the jurisdiction of WELLINGTON's Planning, Zoning and Building Department.

POTENTIAL CONFLICT:

☐ The undersigned business, by attachment to this form, submits information which may be a potential conflict of interest due to any of the above listed reasons or otherwise.

THE UNDERSIGNED UNDERSTANDS AND AGREES THAT THE FAILURE TO CHECK THE APPROPRIATE BLOCKS ABOVE OR TO ATTACH THE DOCUMENTATION OF ANY POSSIBLE CONFLICTS OF INTEREST MAY RESULT IN DISQUALIFICATION OF YOUR BID/PROPOSAL OR IN THE IMMEDIATE CANCELLATION OF YOUR AGREEMENT, WHICHEVER IS APPLICABLE.

Wharton-Smith, Inc.

COMPANY NAME

AUTHORIZED SIGNATURE

Gregory Williams

NAME (PRINT OR TYPE)