

AGREEMENT FOR CONSTRUCTION MANAGEMENT SERVICES


December

This Agreement for Construction Management Services (the "Agreement") is made and entered into this 5th day of ~~November~~, 2012, by and between The City of Gainesville ("Owner") and CHARLES PERRY PARTNERS, INC., 107 SW 7th Street, Gainesville, FL 32601, Federal I.D. No.45-1601307 ("Construction Manager"), which is authorized to do business in Florida.

WITNESSETH:

WHEREAS, Owner solicited statements of qualifications from interested construction managers for the provision of continuing construction management services on certain of the Owner's construction projects as determined by the Owner; and

WHEREAS, based on Construction Manager's interview, qualifications statement, and related submissions, Owner has selected Construction Manager for such purpose; and

WHEREAS, Owner and Construction Manager desire to enter into this Agreement; and

WHEREAS, the projects to be performed under this Agreement may include new construction, renovation, remodeling, building maintenance, equipment installation, and other miscellaneous projects on properties within the four Redevelopment Areas; Downtown, Eastside, Fifth Avenue/Pleasant Street and College Park University Heights. Properties may be owned by the Gainesville Community Redevelopment Agency, the City of Gainesville, or others and Construction Costs for each project (hereinafter defined) do not exceed \$2,000,000.

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

ARTICLE 1. GENERAL DESCRIPTION OF AGREEMENT

1.1 Definition of Services. The Construction Manager agrees to furnish its best skill and judgment and to cooperate with the Professional, where applicable, in furthering the interests of the Owner. The Construction Manager agrees to furnish efficient business administration and superintendence and to use its best efforts to complete each project in an expeditious and economical manner consistent with the interests of the Owner. The Construction Manager agrees to furnish construction services as set forth herein and required for completion of each Project on a Guaranteed Maximum Price (hereinafter defined) basis. Construction Manager represents that it is thoroughly familiar with and understands the requirements of the referenced project types and that it is experienced in the administration and construction of building projects of the types and scopes referenced above. Construction Manager represents to Owner that it has all necessary construction education, skill, knowledge, and experience required for these Projects and will maintain, at all times during the term of this Agreement, such personnel on its staff to provide the services contemplated hereby within the time periods required for each Project. In addition, Construction Manager represents that it has, and all of the subcontractors performing services under this Agreement will have, all applicable licenses required by the State of Florida, and any other regulatory entity, to perform such services.

1.2 Project Team. The Construction Manager, the Owner and the Professional (the "Project Team") will work as a team through construction completion of each project. The Construction Manager shall provide leadership to the Project Team on all matters relating to construction. The Professional will provide leadership to the Project Team on all matters relating to design. When performing any services under this Agreement, the Construction Manager shall utilize the key personnel described in Exhibit A, attached hereto and incorporated herein by reference. In the event any such personnel discontinue employment with Construction Manager, Construction Manager shall promptly replace such personnel with individuals approved by Owner, in writing, which approval will not be unreasonably withheld.

1.3 Project Schedule / Time of the Essence. This is a contract for continuing services. Services will be provided upon request of Owner on a per Project basis. When the Owner identifies a project, the Owner will provide the Construction Manager with a detailed description of the Project Scope and request for the Construction Manager to provide a Guaranteed Maximum Price cost proposal for completing the Project. If the Owner and the Construction Manager agree on a Project Proposal, certain Project specific contract documents (the form of which are attached to the Agreement as Exhibits C, D, E, F and G) shall be completed and executed as further described in this Agreement. Construction Manager will provide Owner with a preliminary schedule covering the construction of Project in the form attached as **Exhibit D**. This preliminary schedule shall serve as the framework for the subsequent development of all detailed construction schedules described herein and in the General Terms and Conditions. The Construction Manager shall at all times carry out its duties and responsibilities as expeditiously as possible and in accordance with the Project schedule, subject to delays in the schedule not the fault of Construction Manager or its subcontractors. Time is of the essence in the performance of this Agreement.

1.4 Preparation/Sufficiency of Site. The Construction Manager shall, among other things, (i) visit and thoroughly inspect the Project Site and any structure(s) or other manmade features to be modified and become familiar with local conditions under which the Project will be constructed and operated; (ii) if applicable, familiarize itself with the survey, including the location of all existing buildings, utilities, conditions, streets, equipment, components and other attributes having or likely to have an impact on the Project; (iii) familiarize itself with the Owner's layout and design requirements, conceptual design objectives, and budget for the Project; (iv) familiarize itself with pertinent Project dates, including the Project schedule, (v) review and analyze all Project geotechnical, Hazardous Substances, structural, chemical, electrical, mechanical, and construction materials tests, investigations and recommendations; and (vi) gather any other information necessary for a thorough understanding of the Project. If the Project involves modifications to any existing structure(s) or other man-made feature(s) on the Project site, the Construction Manager shall also review all as-built and record drawings, plans and specifications of which Construction Manager has been informed by Owner about and thoroughly inspect the existing structure(s) and man-made feature(s) to identify existing deficiencies and ascertain the specific locations of pertinent structural components. Claims by Construction Manager resulting from Construction Manager's failure to familiarize itself with the Site or pertinent documents shall be deemed waived.

1.5 Contract for Construction. The "Agreement" or "Contract for Construction," which constitutes the entire agreement between Owner and Construction Manager for each project consists of:

1. Project Specific Documents, which may include: Exhibits C, D, E, F and G, Change Orders and Field Orders;
2. Written Amendments to this Agreement;
3. This Agreement and its Exhibit A (Construction Managers Personnel) and Exhibit B (General Terms and Conditions);
4. Project Specific Purchase Order;
5. The Request for Qualifications (RFQ No. CRAX-120051-FB) issued May 7, 2012 and addenda issued, if any.

Documents not included or expressly contemplated in this section do not, and shall not, form any part of the Contract for Construction. Without limiting the generality of the foregoing, shop drawings and other submittals from the Construction Manager or its subcontractors and suppliers do not constitute a part of the Contract for Construction. In the event of conflict or inconsistency among or between the documents that comprise the "Contract for Construction" the order of precedence is the order in which the documents are listed above.

ARTICLE 2. OWNER'S DUTIES, OBLIGATIONS, AND RESPONSIBILITIES

2.1 Project Information. Construction Manager acknowledges that Owner has provided Construction Manager with information regarding Owner's requirements for the Project as set forth in the Project Scope.

2.2 Owner's Budget. The Owner shall establish and update a budget for the Project, including the amount allocated for construction, the Owner's other costs, and reasonable contingencies related to these costs as appropriate.

2.3 Owner's Representative. The Owner shall designate a representative authorized to act on the Owner's behalf with respect to the Project.

2.4 Time for Performance. The Owner shall review and approve or take other appropriate action on all design submittals within the timeframes set forth in the Project Schedule (form Exhibit D).

2.5 Purpose of Owner's Review. Owner's review, inspection, or approval of any Work, Applications for Payment, or other submittals shall be solely for the purpose of determining whether the same are generally consistent with Owner's Project Scope and requirements. No review, inspection, or approval by Owner of such Work or documents shall relieve Construction Manager of its responsibility for the performance of its obligations under the Contract for Construction or the accuracy, adequacy, fitness, suitability, or coordination of the Work. Approval by any governmental or other regulatory agency or other governing body of any Work, Design Document, or Construction Documents shall not relieve Construction Manager of responsibility for the performance of its obligations under the Contract for Construction. Payment by Owner pursuant to the Contract for Construction shall not constitute a waiver of any of Owner's rights under the Contract for Construction or at law, and Construction Manager expressly accepts the risk that defects in its performance, if any, may not be discovered until after payment, including final payment, is made by Owner. Notwithstanding the foregoing, prompt written notice shall be given by the Owner or Professional to the Construction Manager if the Owner becomes aware of any fault or defect in the Project or non-conformance with the Contract for Construction.

2.6 Status of Owner. The Owner shall not have control or charge of construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Construction Manager, for any of the foregoing purposes, be deemed the agent of the Owner.

2.7 Owner's Utilities. The Construction Manager shall be responsible to provide and pay for consumption of, and connections to, utilities required for temporary service and construction unless otherwise directed by the Owner.

ARTICLE 3. CONSTRUCTION MANAGER'S SERVICES

3.1 The Construction Manager's services under the Contract for Construction may include pre-construction and/or construction services and will be initiated by Owner when Owner desires to procure such services from Construction Manager under the Contract for Construction. The scope of such services will be described in the Purchase Order for each project and in the Individual Project Description (form Exhibit C). The Construction Manager shall perform or cause to be performed all services and Work described in the Purchase Order upon Owner's request.

3.2 For each project, Construction Manager shall commence performance of Construction Services within ten (10) days after receipt from the Owner of the executed Purchase Order for such project and Notice to Proceed accompanied by completed and executed Exhibits C, D, E, F, and G, whichever is received later. The parties acknowledge that (i) the Owner may determine not to proceed with Construction Services, (ii) performance of Pre-Construction Services, if required, may overlap performance of Construction Services, and (iii) categories of Work performed during Construction Services may be performed in separate phases.

3.3 General Project Services. The Construction Manager agrees to:

3.3.1 Provide all services required to professionally complete the Work in an expeditious and economical manner consistent with this Contract for Construction and the best interests of the Owner.

3.3.2 Endeavor to develop, implement and maintain, in consultation with the Owner, Professional, and the Subcontractors, a spirit of cooperation, collegiality, and open communication among the parties so that the goals and objectives of each are clearly understood, potential problems are resolved promptly, and, upon completion, the Project is deemed a success by all parties.

3.3.3 Perform its services in accordance with schedule requirements.

3.3.4 Work with Owner and Professional to pursue Owner's goal of obtaining Leadership in Energy and Environmental Design (LEED) certification for the Project, at the level set forth on Project Specific

Requirements form **Exhibit F**.

3.3.5 Participate in, and cooperate with, design phase, construction phase, and post-occupancy commissioning, validation, and other quality assurance and quality control processes.

3.3.6 Complete the Work by the required date of Substantial Completion. The Construction Manager shall submit an initial Construction Schedule by the date set forth on Project Specific Requirements form **Exhibit E**; a final Construction Schedule with each Guaranteed Maximum Price proposal; and revised Construction Schedules in accordance with the General Terms and Conditions. The Construction Schedule shall complement, and shall not conflict with, the design schedule.

3.3.7 Comply with Owner's policies, project management guides, and General Terms and Conditions applicable to this Agreement as referenced herein.

3.4 Pre-Construction Services. If required by the Project and initiated by the Owner, the Construction Manager shall provide the following Pre-Construction Services:

3.4.1 The Construction Manager shall familiarize itself with the approved Scope for the Project and actively and jointly participate with the Owner and the Professional in formation of the final Project design. The phasing of, and schedule for, design for each Project shall be set forth on the Project Schedule form **Exhibit D**.

3.4.2 Submit for Owner review within thirty (30) calendar days of the Owner's execution of this Agreement:

- (i) Project reporting procedures;
- (ii) Quality Control and Testing Program; and
- (iii) Safety Program.

3.4.3 The Professional is required, in accordance with schedule requirements, to provide design concepts, narratives, and drawings. At each phase of design, in keeping with the Owner's goals for the Project, the Construction Manager shall familiarize itself with these design documents and, in accordance with the Project Schedule (form **Exhibit D**), provide the Owner and Professional with a report detailing construction issues and concerns relating to the design, with detail appropriate to the phase of design. Without limitation of the foregoing, each construction report shall:

- (i) include an estimate of overall construction cost, with Construction Manager's contingency associated with the Cost of the Work at no greater percentages than the percentages set forth in the Project Specific Requirements (form **Exhibit F**), including a comparison of the estimate to Owner's budget for construction;
- (ii) identify conceptual decisions necessary to prepare accurate cost reports with the fewest assumptions, qualifications and exclusions;
- (iii) include an analysis and evaluation of jobsite management, site logistics, and schedule considerations;
- (iv) include an analysis and evaluation of the constructability of the design concepts, narratives, or drawings;
- (v) include an analysis and evaluation of the design concepts, narratives, or drawings in regard to the completeness of intended bid categories, conflicts or overlaps in the divisions of the Work, design details affecting construction including, without limitation, unusual or custom materials, value analysis, identification of long-lead materials affecting the Construction Schedule, availability of labor, and other factors affecting construction and, in the report provided during the Construction Documents Phase, suggestions for alternatives for matters which may delay the construction schedule;
- (vi) address problems, conflicts, defects or deficiencies in the design concepts and offer resolutions of same; and
- (vii) identify any other issues which Construction Manager reasonably believes may have a negative

impact on the Project schedule, budget or performance.

3.4.4 The Construction Manager and the Professional shall jointly schedule and attend regular meetings with the Owner and evaluate the preliminary design drawings. The Professional shall prepare and distribute minutes of these meetings, and the Construction Manager shall verify the accuracy and completeness of the minutes.

3.4.5 The Construction Manager shall develop a comprehensive jobsite management and logistics plan for the Owner's review. This plan shall be submitted no later than the date set forth the Project Specific Requirements (**form Exhibit F**).

3.4.6 The Construction Manager shall, in accordance with schedule requirements, assist the Professional with the resolution of all problems, conflicts, defects or deficiencies identified during the review and evaluation of the Construction Documents.

3.4.7 At each phase of design, the Construction Manager shall work with the Professional and/or the Owner's cost consultant to reconcile, and make recommendations on, the differences between the estimates each has prepared at that phase of design. If the final estimates of the Construction Cost by the Construction Manager and the Professional and/or the Owner's cost consultant differ materially, the Construction Manager and Professional and/or the Owner's cost consultant shall meet promptly to reconcile the discrepancies between their estimates so as to permit submission to the Owner of a final estimate of Construction Cost on which both the Professional and the Construction Manager agree.

3.4.8 If the Owner elects to phase and/or "fast track" portions of the construction (such portions being described in the Project Specific Requirements (**form Exhibit F**), multiple Guaranteed Maximum Price proposals will be required.

3.4.9 The Construction Manager understands and acknowledges the Owner's intent that the Project will be completed within the budget set by Owner for the Project. Accordingly, throughout the Pre-Construction Services phase, the Construction Manager shall keep Owner informed if it believes that the Project may not be completed within Owner's budget, the reasons why it cannot be, and the Construction Manager's proposed solutions therefor.

3.5 Guaranteed Maximum Price Proposal

3.5.1 At the time set forth in the Project Specific Requirements (**form Exhibit F**), which shall be prior to performance of Construction Services, the Construction Manager shall prepare and deliver to the Owner, with a copy to the Professional, a Guaranteed Maximum Price ("GMP") proposal. The Construction Manager shall, at a minimum, include in the GMP proposal:

- (i) a recital of the specific Construction Documents, including drawings, specifications, and all addenda thereto, used in preparation of the GMP proposal;
- (ii) the five (5) elements of the GMP:
 - a. Guaranteed Maximum Cost of the Work (hereinafter defined), detailed by each subcontract, trade, or bid division;
 - b. the Construction Manager's Contingency for the Work;
 - c. Guaranteed Maximum Construction Manager's Staffing Cost (hereinafter defined), detailed by expense category
 - d. Guaranteed Maximum General Conditions Cost (hereinafter defined), including bond & insurance costs, detailed by expense category; and
 - e. Guaranteed Maximum for Construction Manager's Overhead and Profit.
- (iii) a draft schedule of values;
- (iv) a description of all other inclusions to, or exclusions from, the GMP;

- (v) all assumptions and clarifications; and
- (vi) the final Construction Schedule.

3.5.2 The Construction Manager acknowledges that the Construction Documents may be incomplete at the time the Construction Manager delivers the GMP proposal, and that the Construction Documents may not be completed until after commencement of the Work. Nevertheless, the GMP proposal shall include all costs for the Work required by the completed Construction Documents, and if the GMP proposal is accepted by the Owner, the Construction Manager shall be entitled to no increase in the GMP if the Work required by the completed Construction Documents (i) is required by the Contract For Construction, (ii) is reasonably inferable from the incomplete documents, (iii) is consistent with the Owner's programmatic goals and objectives, (iv) is consistent with the Owner's Design and Construction Standards and the general industry standards for completion of the Work, (v) is not a substantial enlargement of the scope of Work or (vi) substantially conforms to the nature, type, kind or quality of Work depicted in the incomplete documents.

3.5.3 If the GMP proposal is unacceptable to the Owner, the Owner shall promptly notify the Construction Manager. Within fourteen (14) calendar days of such notification, the Owner, Professional and Construction Manager shall meet to discuss and resolve any differences, inconsistencies, or misunderstandings and to negotiate recommended adjustments to the Work and/or to the GMP.

3.5.4 The Owner may, at its sole discretion and based upon its sole judgment, (i) indicate its acceptance of a GMP proposal; (ii) reject a GMP proposal; (iii) terminate the Project; or (iv) proceed to construct the Project using a party or parties other than the Construction Manager.

3.5.5 If the Owner rejects a GMP proposal, neither party shall have any further obligation under the Contract for Construction.

3.5.6 If the Owner accepts a GMP proposal, the parties shall complete and execute a Notice to Proceed (form **Exhibit E**), and the Owner shall cause a Purchase Order to be initiated and issue a written Notice to Proceed to the Construction Manager, completion of the latter of which will establish the date construction is to commence (the "Commencement Date"). The Construction Manager shall not expend any monies for construction prior to receipt of such Authorization and Purchase Order without the written approval of the Owner.

3.5.7 Price Guarantees

- (i) Upon execution of a Notice to Proceed (form **Exhibit E**), the Construction Manager guarantees that the sum of (i) the actual Cost of the Work, (ii) Construction Manager's Contingency, (iii) Construction Manager's Staffing Costs, (iv) General Conditions Cost, and (v) Construction Manager's Overhead and Profit, shall not exceed the amount set forth in the agreed upon GMP. All costs or expenses that would cause this sum to exceed the GMP shall be borne by the Construction Manager unless adjusted by Owner approved change order.
- (ii) Upon execution of a Notice to Proceed (form **Exhibit E**), the Construction Manager guarantees that the actual Cost of the Work, Construction Manager's Staffing Costs, General Conditions Cost and Construction Manager's Overhead and Profit shall not exceed the guaranteed maximum for each such category and that all costs or expenses that would cause any of these individual categories to exceed the guaranteed maximum for each such category in the agreed upon GMP shall be borne by the Construction Manager unless adjusted by Owner approved change order.
- (iii) Upon execution of a Notice to Proceed (form **Exhibit E**), the Construction Manager certifies that all factual unit costs supporting the GMP proposal are accurate, complete and current at the time of negotiations; and that any other factual unit costs that may be furnished to the Owner in the future to support any additional amounts that may be authorized will also be accurate and complete. Payments to the Construction Manager shall be reduced if the Owner determines such amounts were originally included due to materially inaccurate, incomplete, or non-current factual unit costs.

- (iv) Upon execution of a Notice to Proceed (form **Exhibit E**), the Construction Manager guarantees that to the extent the accepted GMP includes contingency, use of contingency shall be approved by Owner by change order prior to expenditure by the Construction Manager.

3.6 Construction Services

3.6.1 Trade Contractor Selection Bidding and Negotiation

3.6.1.1 In accordance with Owner's policies on the subject in effect at the time Construction Manager commences construction, the Construction Manager shall prepare and assemble document packets for use in bidding subcontracts. Such packaging of the Work shall be broken down to maximize both competition and the involvement of local, small and diverse businesses.

3.6.1.2 The Construction Manager shall develop subcontractor and supplier interest, including local, small and diverse businesses, for each division of the Work. The Construction Manager shall pre-qualify proposed subcontractors using a pre-qualification form approved by the Owner, which shall include, at a minimum, proof of licensure where applicable.

3.6.1.3 For trade packages with a value of less than \$5,000, the Construction Manager, may negotiate with trade contractors to perform such Work by whatever means it deems appropriate, in its reasonable discretion. For trade packages with a value between \$5,000 and \$24,999, the Construction Manager shall, where competition is available and feasible, obtain two (2) verbal quotes. The amounts of the quotes and names of the trade contractor providing the same shall be documented in writing. For trade packages with a value between \$25,000 and \$49,999, the Construction Manager shall, where competition is available and feasible, obtain three (3) written quotes. For trade packages with a value between \$50,000 and \$199,999, the Construction Manager shall advertise the trade package at least once in the newspaper in general circulation in the applicable project area (e.g. the Gainesville Sun for the Gainesville, Florida area) at least seven (7) calendar days prior to the published due date, and accept written bids/proposals. For trade packages with a value of \$200,000 or more, the Construction Manager shall advertise the trade package at least once in the newspaper in general circulation in the applicable project area (e.g. the Gainesville Sun for the Gainesville, Florida area) at least twenty one (21) calendar days prior to the published due date, and accept written bids/proposals. All trade packages in excess of \$50,000 shall be procured in accordance herewith under a competitive process approved by the CRA Representative for the project. While a sealed bid or proposal process is generally desired and anticipated for such trade packages to ensure the Construction Manager is receiving the lowest price for such trade packages, there may be situations in which such process is not appropriate. Therefore, the Construction Manager may, with the approval of the CRA Representative, utilize an alternative competitive process to procure trade contractors. In all instances, Construction Manager shall select the lowest, responsive proposal, quote or bid, as applicable, it obtains.

3.6.1.4 The Construction Manager shall use its best efforts to obtain bids which are less than the final GMP estimates.

3.6.1.5 The Construction Manager shall conduct bid openings in the presence of the Owner's representative. The Construction Manager shall provide the Owner with a copy of its preliminary bid tabulation and copies of all bids.

3.6.1.6 The Construction Manager shall, for each subcontract, trade or bid division:

- (i) determine the final bid amounts, having reviewed and clarified the scope of Work in detail with bidders to determine which bids are the lowest bids and are complete but do not include duplicate scope items;
- (ii) prepare and furnish to the Owner a final bid tabulation summary which includes by subcontract, trade and/or bid division, the applicable final GMP estimate and the related final bid amount and the details of all scope clarifications for Owner's review and approval;

- (iii) if requested by Owner, provide a list of all potential Direct Purchase Materials (hereinafter defined);
- (iv) identify to the Owner in writing the subcontractors to which the Construction Manager recommends award of subcontracts; and
- (v) award and enter into a subcontract between itself and each subcontractor which it has recommended in accordance with this Agreement unless otherwise notified by the Owner.

3.6.1.7 No portion of the Work may be performed by the Construction Manager or its affiliates except with Owner's written approval in accordance with Owner's policies on the subject in effect at the time the Construction Manager commences construction.

3.6.1.8 The Construction Manager shall award Trade Contracts representing ninety percent (90%) of the Cost of the Work or more, within the timeframe outlined in the Notice to Proceed (form **Exhibit E**).

3.6.1.9 The Construction Manager shall promptly inform the Owner in writing of any proposed replacements to the list of subcontractors and suppliers in the final bid tabulation sheet provided to Owner, the reasons therefore, and the name(s) and qualification(s) of proposed replacement(s). The Owner shall have the right, in its reasonable discretion, to reject any proposed replacement if such proposed replacement fails to meet any criteria or requirements established for subcontractors performing such portion of, or for, the Work.

3.6.2 Construction Supervision

3.6.2.1 Commencing with the award of the first subcontract and terminating on the date of Final Completion, the Construction Manager shall provide the services described herein.

3.6.2.2 The Construction Manager shall, as the Owner's construction representative during construction, advise and consult with the Owner and the Professional, and provide administration of the Construction Documents.

3.6.2.3 The Construction Manager shall supervise and direct the Work at the Site. The Construction Manager shall, at a minimum, staff the Project Site with personnel who shall:

- (i) supervise and coordinate the Construction Manager's personnel and act as its primary liaison with the Owner and the Professional;
- (ii) coordinate trade contractors and suppliers, and supervise Site construction management services;
- (iii) be familiar with all trade divisions and trade contractors' scopes of Work, all applicable building codes and standards, and the Contract for Construction;
- (iv) check, review, coordinate and distribute shop drawings and check and review materials delivered to the Site, regularly review the Work to determine its compliance with the Construction Documents and the Contract for Construction, confer with the appropriate Owner's consultant(s) as necessary to assure acceptable levels of quality;
- (v) prepare and maintain Project records, including process documents and daily logs;
- (vi) schedule and conduct weekly progress meetings with subcontractors to review such matters as jobsite safety, job procedures, construction progress, schedule, shop drawing status and other information as necessary and provide notification of, and minutes from, such meetings to Owner and Professional;
- (vii) schedule and conduct weekly (or at an interval agreed upon) progress meetings with the Owner and Professional to review such matters as construction progress, schedule, shop drawing status, and other information as necessary;

- (viii) make provision for Project security to protect the Project site and materials stored off-site against theft, vandalism, fire and accidents as required by the General Terms and Conditions.
- (ix) promptly reject any Work which does not conform to the Construction Documents or which does not comply with any applicable law, statute, building code, rule or regulation of any public authority or agency of which it is aware, immediately notifying the Professional and the Owner in writing when it has rejected any Work;
- (x) comply with, and cause its subcontractors and suppliers to comply with, the Project Construction Schedule and applicable sub-schedules. The Construction Manager shall obtain and review schedules from subcontractors and suppliers, coordinate sub-schedules with the Construction Schedule, and enforce compliance with the all applicable schedules to insure timely completion of the Work. If at any time the Project is delayed, the Construction Manager shall immediately notify the Owner and the Professional of the probable cause(s) and possible alternatives and make recommendations to minimize expense and delay to the Owner; and
- (xi) provide documentation necessary to the Professional for, and otherwise assist the Professional with, the preparation of the final "as-built" or record drawings.

3.6.2.4 In accordance with Owner's agreement with the design professional working on the Project, the design professional will visit the Project Site at intervals appropriate to the stage of construction to familiarize itself with the progress and quality of the Work and to inspect the Work. The Construction Manager shall request that the Professional visit the Site at additional times as the Construction Manager deems necessary to attend meetings, inspect the Work, and render interpretations regarding the Work necessary for the proper execution of the Work. The Professional's interpretations and decisions shall be final regarding the Construction Documents and the Work.

3.6.3 Direct Purchase Program. The Owner may elect to implement a direct purchase program whereby it may purchase materials and equipment included in any Subcontractor's bid for a portion of the Work directly from the supplier of such materials or equipment in order to achieve sales tax savings. Such materials and equipment are referred to as "Direct Purchase Materials." If Owner elects to implement a direct purchase program, it shall so notify Construction Manager, and the terms of this paragraph shall govern, along with Owner's policies on the subject in effect at the time Construction Manager commences construction of the Project. Construction Manager shall obtain Construction Manager's Risk insurance on the Direct Purchase Materials naming Owner as the insured or an additional insured, provided Owner shall reimburse Construction Manager for the cost of such insurance as provided by this Agreement. Construction Manager shall be responsible for safeguarding all Direct Purchase Materials on the Project site on Owner's behalf.

3.6.4 Reporting. The Construction Manager shall provide a monthly report in searchable PDF format summarizing the progress of the Project to the Owner, Professional, and Owner's user group representatives, including information on the subcontractors' Work, percentage of completion of the Work, current estimating, subcontract buyouts, updated monthly Critical Path Method scheduling and Project accounting reports, including projected time to completion and estimated cost to complete the Work, LEED status, digital progress photographs, project directory, logs for Requests for Information, submittals and shop drawings, Change Orders, cost change proposals, field directives, safety meetings, deficiencies, weather conditions and meeting minutes.

3.6.5 Energy Rebate Program. Construction Manager shall gather product data and other information as needed to assist Owner with its application for energy rebates based on the materials and products installed in the facility.

ARTICLE 4. COMPENSATION OF CONSTRUCTION MANAGER

4.1 Payment for Pre-Construction Services. Should the need for Pre-Construction services be desired, the Owner agrees to pay the Construction Manager, and the Construction Manager shall accept as complete payment for performance of Pre-Construction Services, the fee set forth in the Project Specific Requirements (**form Exhibit F**), payable pursuant to the schedule set forth thereon.

4.2 Payment for Construction Services.

4.2.1 The Owner shall pay, and the Construction Manager shall accept, as full and complete payment for the Construction Services, only the sum of the following items, which sum shall not exceed the GMP:

- (i) the aggregate net cost directly paid by the Construction Manager to subcontractors pursuant to written subcontracts to perform the Work (the "Cost of the Work"), not to exceed the guaranteed maximum set forth on the Notice to Proceed (form Exhibit E);
- (ii) the compensation for the Construction Manager's provision of management services (the "Construction Manager's Staffing Costs"), not to exceed the guaranteed maximum set forth on the Project Schedule (form Exhibit D);
- (iii) the aggregate net cost of the Construction Manager's General Conditions (the "General Conditions Cost"), not to exceed the guaranteed maximum set forth on the Project Schedule (form Exhibit D); and
- (iv) Construction Manager's Overhead and Profit, not to exceed the guaranteed maximum set forth on the Project Schedule (form Exhibit D).

4.2.2 **Staffing Costs.** Construction Manager's Staffing Costs include and are limited to actual expenditures or negotiated amounts for the following items as authorized in the GMP Proposal approved by Owner:

- (i) The cost of its supervisory, technical, administrative and clerical personnel engaged in supervision and management of the Work on the Project Site;
- (ii) the cost of periodic site visits for supervisory, inspection, oversight, or management of the Project by specific "home office" personnel as agreed upon and identified in the GMP proposal;
- (iii) direct costs incurred in the Work with the exception of those specifically enumerated compensable as a General Conditions Cost or a Cost of the Work;
- (iv) expenses for transportation, meals, and lodging of principals and employees, when traveling in connection with services and duties specifically related to this Project and when authorized in writing by the Owner. Rates for transportation, meals and lodging are as set forth by the Owner, in accordance with state law;
- (v) expenses incurred for relocation and temporary living allowances of personnel required for the Work, if required by the Project; and
- (vi) any costs or expenses incurred by the Construction Manager, not included in the General Conditions Cost, for provision of management services necessary to complete the Project in an expeditious and economical manner consistent with the Contract for Construction and the best interests of Owner.

4.2.3 **General Conditions Costs.** General Conditions costs include and are limited to actual expenditures or negotiated amounts for the following items as authorized in the GMP Proposal approved by Owner:

- (i) costs, including transportation and 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; and cost (less salvage value) of such items if not fully consumed, whether sold to others or retained by the Construction Manager. Cost for items previously used by the Construction Manager shall mean fair market value;
- (ii) costs incurred to provide site safety;

- (iii) costs of removal of debris from the site;
- (iv) costs of document reproduction including bid sets, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office;
- (v) that portion of insurance and bond premiums directly attributable to this Contract for Construction. Premiums shall be net of trade discounts, volume discounts, dividends and other adjustments;
- (vi) sales, use, or similar taxes imposed by a governmental authority and paid by the Construction Manager, and directly related to the Work;
- (vii) fees and assessments for the building permit and for other permits, licenses and inspections for which the Construction Manager is required by the Contract for Construction to pay, including deposits lost for causes other than Construction Manager's fault;
- (viii) data processing costs directly related to the Work and as approved by Owner, in writing;
- (ix) the cost of obtaining and using all utility services required for the Work;
- (x) the cost of crossing or protecting any public utility, if required, and as directed by the Owner;
- (xi) all reasonable costs and expenditures necessary for the operation of the Site office, such as stationary, supplies, furniture, fixtures, office equipment and field computer services provided that quantity and rates are subject to Owner's prior written approval;
- (xii) the cost of secure off-site storage space or facilities approved in advance by Owner;
- (xiii) printing and reproduction of the Construction Documents;
- (xiv) rental charges for temporary facilities, and for machinery, equipment, and tools not customarily owned by construction workers; however any rental charge shall not exceed the purchase price of such facilities, machinery, equipment or tools;
- (xv) cost of surveys, measurements and layout work reasonably required for the execution of the Work or by the Construction Documents; and
- (xvi) other expenses or charges properly incurred and paid in the prosecution of the Work, with the prior written approval of the Owner, but specifically excluding legal costs and expenses, including, without limitation, attorneys' fees and court costs associated with the Project.

4.2.4 Construction Manager's Overhead and Profit. The Construction Manager's Overhead and Profit is a fixed percentage of the (i) Guaranteed Maximum Cost of the Work, (ii) Construction Manager's Contingency, (iii) Guaranteed Maximum Construction Manager Staffing Costs, and (iv) Guaranteed Maximum General Conditions Cost (excluding bond and insurance costs), as agreed upon in the Notice to Proceed (form Exhibit E). Overhead and Profit covers the costs of all of Construction Manager's overhead and expenses related to the Work, including home or branch office employees or consultants not at the Project Site (except those staffing costs paid pursuant to Section 4.2.2(ii)) and general operating expenses of the Construction Manager's principal and branch offices related to the Work (non-field offices), such as telephone service and long-distance and zone telephone charges, postage, office supplies, expressage, and other similar expenses.

4.2.5 Construction Manager's Contingency.

4.2.5.1 The Construction Manager's Contingency, established in the GMP, may be utilized, with the Owner's concurrence, for the following reasons:

- (i) Errors and omissions in the Construction Manager's bidding and scoping processes;
- (ii) reasonable schedule recovery;
- (iii) means, methods, and materials reasonably inferred from the Construction Documents;
- (iv) subcontractor non-performance or default;

- (v) Work not included in the Construction Documents which is necessary to cause the Project to conform to applicable building codes but was not identified as missing during the review of Construction Documents (through no fault of the Construction Manager), but expressly excluding any legal costs and expenses, including, without limitation, attorneys fees and costs, associated with the Project;
- (vi) other costs incurred by the Construction Manager that are not Cost of the Work, General Conditions Cost or Construction Manager Staffing Costs, but expressly excluding any legal costs and expenses, including, without limitation, attorneys fees and costs, associated with the Project; and
- (vii) costs and expenses incurred by the Construction Manager, not included in the General Conditions Cost, for provision of management services necessary to complete the Project in an expeditious and economical manner consistent with this Agreement and the best interests of Owner, but expressly excluding any legal costs and expenses, including, without limitation, attorneys fees and costs, associated with the Project.

4.2.5.2 If upon completion of 75% of the Work, the remaining amount of contingency exceeds one-half of the amount of the initial post-buyout contingency, such excess shall be returned via change order to the Owner.

4.2.6 Buyout Savings.

- (i) If Construction Manager receives bids for portions of the Work which are less than the amounts budgeted in the GMP proposal approved by Owner for such portions of the Work, such buyout savings shall first be utilized to offset shortfalls on other bid packages.
- (ii) If, after offsetting any shortfalls, buyout savings remain, at the time provided on the Notice to Proceed (form **Exhibit E**) for the award of subcontracts, all buyout savings shall be returned to the Owner via "no cost" change order.

4.2.7 Use of Buyout Savings/Sales Tax Savings. The net amount of buyout savings and savings from Owner's purchase of Direct Purchase Materials may be utilized by the Owner for the following or other reasons:

- (i) Customer or designer-requested changes;
- (ii) additive bid alternates and deductive credits;
- (iii) design errors or omissions in the Construction Documents which were not detected by the Construction Manager through no fault of Construction Manager, including Work necessary to cause the Project to conform to applicable building codes;
- (iv) differing/unforeseen existing conditions, as permitted in the General Terms and Conditions.

4.2.8 Compensation for Change Orders. Amounts owed by the Owner to the Construction Manager shall be adjusted by duly authorized change order in accordance herewith and the General Terms and Conditions.

4.2.8.1 Increase In Cost of Work. If the Cost of the Work is increased by change order, the Owner shall pay the Construction Manager the aggregate net cost directly paid by the Construction Manager to subcontractors or suppliers for the performance of the Work and the Construction Manager shall receive Overhead and Profit on such amount, as a percentage as set forth in the Project Specific Requirements (form **Exhibit F**), and an amount for any increased bond and insurance costs associated therewith.

4.2.8.2 Decrease in Cost of Work. If the Cost of the Work is decreased by change order, payment due from the Owner to the Construction Manager shall be reduced by the amount the Construction Manager is no longer obligated to pay subcontractors or suppliers for performance of the Work. Decreases in the Cost of the Work shall inure to the benefit of the Owner and shall not become part of the Construction Manager's Contingency.

4.2.8.3 **Change Order Disputed.** If the Construction Manager disputes a change order decision pursuant to the General Terms and Conditions, it must give the Owner its written notice of dispute, including the reasons therefore, within seven (7) calendar days of the disputed decision.

4.2.9 **Applications for Payment for the Work.** Applications for payment shall be submitted in detail sufficient for an audit thereof in accordance with Owner's policies on the subject in effect at the time Construction Manager commences construction. Within thirty (30) days of receipt of the Construction Manager's application for payment, properly prepared pursuant to Owner's policies on the subject, the Owner shall pay the Construction Manager the amount approved by Professional, less retainage, unless there is a dispute about the amount of compensation due to the Construction Manager.

4.3 **Labor Burden.** For purposes of calculating amounts due to Construction Manager under this Agreement for staffing, the parties agree that Construction Manager's labor burden for each employee staffing the Project shall be the labor burden approved by the Owner prior to, or upon execution of, this Agreement. For purposes hereof, labor burden means the actual cost of benefits and taxes that Construction Manager must pay or chooses to pay its employees and shall not include any profit, markup or expense unrelated to employee compensation. With respect to benefits Construction Manager chooses to pay, such benefits must be authorized by Owner under Owner's policy pertaining to labor burden in order to receive reimbursement from Owner.

ARTICLE 5. LIQUIDATED DAMAGES FOR DELAY

5.1 Inasmuch as failure to Substantially Complete the Work within the time fixed on the Notice to Proceed (form **Exhibit E**) will result in injury to the Owner, and as damages arising from such failure cannot be calculated with any degree of certainty, it is agreed that if the Work is not Substantially Completed within the time provided on the Notice to Proceed (form **Exhibit E**), or within such further time, if any, as shall be allowed for time extensions in accordance with the provisions of the Contract for Construction, the Construction Manager shall pay to the Owner as liquidated damages for such delay, and not as a penalty, the amount set forth in the Project Specific Requirements (form Exhibit F) for each calendar day elapsing between the date fixed for Substantial Completion and the date such Substantial Completion is fully accomplished. The parties agree that said liquidated damages are reasonable given existing circumstances, including, without limitation, the range of harm that is foreseeable and the anticipation that proof of damages would be costly and impractical.

5.2 The liquidated damages shall be payable in addition to any excess expenses or costs payable by the Construction Manager to the Owner under the General Terms and Conditions, and shall not preclude the recovery of damages by the Owner under other provisions of the Contract for Construction, except claims related to Construction Manager's delays in Substantial Completion. Owner's right to receive liquidated damages shall in no manner affect the Owner's right to terminate the Contract for Construction, as provided in the General Terms and Conditions or elsewhere in the Contract for Construction. The Owner's exercise of the right to terminate shall not release the Construction Manager from the obligation to pay said liquidated damages.

5.3 When the Owner reasonably believes (i) that Substantial Completion will be inexcusably delayed; or (ii) that the Construction Manager will fail to achieve Final Completion by the date of Final Completion, the Owner shall be entitled, but not required, to withhold from any amounts otherwise due the Construction Manager the daily amount specified for liquidated damages in this Article for each calendar day of the unexcused delay. If and when the Construction Manager overcomes the delay in timely achieving Substantial Completion or Final Completion, or any part thereof, for which the Owner has withheld payment, the Owner shall promptly release to the Construction Manager those funds withheld, but no longer applicable, as liquidated damages.

ARTICLE 6. INSURANCE AND BONDS

6.1 The Construction Manager shall carry the insurance and obtain the payment and performance bonds described in the General Terms and Conditions.

ARTICLE 7. AUDIT RIGHTS

7.1 Owner may, upon reasonable notice, audit the records of the Construction Manager and its subcontractors and suppliers during regular business hours, during the term of this Agreement and for a period of three (3) years after final payment is made by Owner to Construction Manager under this Agreement or longer, if required by law. Such audits may be performed by an Owner's representative or an outside representative engaged by Owner.

7.2 For purposes hereof, Construction Manager's "records" means any and all information, materials and data of every kind and character, whether hard copy or in electronic form, which may, in Owner's judgment have any bearing on or pertain to this Contract for Construction, including, without limitation, books, subscriptions, recordings, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, written policies and procedures, time sheets, payroll registers, payroll records, cancelled payroll checks, subcontract files (e.g., including proposals of successful and unsuccessful bidders, bid recap), original estimates, estimating work sheets, correspondence, change order files (including documentation covering negotiated settlements), back-charge logs and supporting documentation, invoices and related payment documentation, general ledgers, records detailing cash and trade discounts earned, insurance rebates and dividends, superintendent reports, drawings, receipts, vouchers and memoranda.

7.3 Owner's authorized representative shall have reasonable access to the Construction Manager's facilities, shall be allowed to interview all current or former employees to discuss matters pertinent to the Contract for Construction, shall be provided adequate and appropriate work space at Construction Manager's facilities, may count employees at the Site, may be present for the distribution of payroll and shall have such other rights of access as may be reasonably necessary to carry out an audit.

7.4 If an audit discloses overpricing or overcharges, Construction Manager shall refund the overpayment. If an audit discloses overpricing or overcharges of one percent (1%) of the total amount paid hereunder, but in any event more than \$200,000, whichever is less, in addition to making adjustments for the overcharges, the reasonable actual cost of the Owner's audit shall be reimbursed to the Owner by the Construction Manager. Any adjustments and/or payments that must be made as a result of any such audit or inspection of the Construction Manager's invoices and/or records shall be made within ninety (90) calendar days from presentation of Owner's findings to Construction Manager.

7.5 Construction Manager shall ensure notice of Owner's audit rights is provided to its subcontractors, suppliers and any other vendor providing services or materials for the Project and shall ensure that each agreement it enters into pursuant hereto includes the provisions of this Article 7.

ARTICLE 8. PERIOD OF SERVICE

8.1 This Agreement shall remain in force for an initial period of three (3) years.

8.2 This Agreement may be renewed at the Owner's option for two (2) additional one (1) year periods, based upon satisfactory performance of the Construction Manager as determined by Owner in its sole and absolute discretion. To renew this Agreement Owner shall so notify Construction Manager at least thirty (30) days prior to the date the original term or renewal term terminates, as applicable.

ARTICLE 9. TERMINATION OR SUSPENSION OF CONTRACT FOR CONSTRUCTION

9.1 Termination For Cause By Owner.

9.1.1 The Owner may terminate the Contract for Construction for cause if the Construction Manager materially breaches the Contract for Construction by:

- (i) refusing, failing or being unable to properly manage or perform on any Project;
- (ii) refusing, failing or being unable to supply the Project with sufficient numbers of workers, properly skilled workers, proper materials to maintain applicable schedules;

- (iii) refusing, failing or being unable to make prompt payment to subcontractors or suppliers;
- (iv) disregarding laws, ordinances, rules, regulations or orders of any public authority or quasi-public authority having jurisdiction over the Project;
- (v) refusing, failing or being unable to substantially perform in accordance with the terms of the Contract For Construction as determined by the Owner, or as otherwise defined elsewhere herein; or
- (vi) refusing, failing or being unable to substantially perform in accordance with the terms of any other agreement between the Owner and Construction Manager.

9.1.2 Upon the occurrence of any of the events described in Paragraph 9.1.1, the Owner may give written notice to the Construction Manager setting forth the nature of the default and requesting cure within seven calendar days from the date of notice. At any time thereafter, if the Construction Manager fails to initiate the cure or if the Construction Manager fails to expeditiously continue such cure until complete, the Owner may give written notice to the Construction Manager of immediate termination, and the Owner, without prejudice to any other rights or remedies, may take any or all of the following actions:

- (i) complete all or any part of the Work, including supplying workers, material equipment which the Owner deems expedient to complete the Work;
- (ii) contract with others to complete all or any part of the Work, including supplying workers, material and equipment which the Owner deems expedient to complete the Work;
- (iii) take such other action as is necessary to correct such failure;
- (vi) take possession of all materials, tools, construction equipment and machinery on the Site owned or leased by the Construction Manager;
- (v) directly pay the Construction Manager's subcontractors and suppliers compensation due to them from the Construction Manager;
- (vi) finish the Work by whatever method the Owner may deem expedient; and
- (viii) require the Construction Manager to assign the Construction Manager's right, title and interest in any or all of Construction Manager's subcontracts or orders to the Owner.

9.1.3 If the Owner terminates the Contract For Construction for cause, and the Owner takes possession of all materials, tools, construction equipment and machinery on the Site owned or leased by the Construction Manager, the Construction Manager's compensation shall be increased by fair payment, either by purchase or rental at the election of the Owner, for any materials, tools, construction equipment and machinery items retained, subject to the Owner's right to recover from the Construction Manager the Owner's damages resulting from the termination.

9.1.4 If the Owner terminates the Contract for Construction for cause, and it is subsequently determined by a court of competent jurisdiction that such termination was without cause, then in such event, said termination shall be deemed a termination for convenience as set forth in Paragraph 9.3.

9.2 Termination For Cause By Construction Manager.

9.2.1 The Construction Manager may terminate the Contract for Construction for cause if the Owner materially breaches the Contract for Construction by:

- (i) refusing, failing or being unable to make prompt payment to the Construction Manager without just cause;

- (ii) disregarding laws, ordinances, rules, regulations or orders of any public authority of quasi-public authority having jurisdiction over any Project; or refusing, failing or being unable to substantially perform in accordance with the terms of the Contract for Construction.

9.2.2 Upon the occurrence of any of the events described in Paragraph 9.2.1, the Construction Manager may give written notice to the Owner setting forth the nature of the default and requesting cure within seven calendar days from the date of notice. If the Owner fails to cure the default within thirty calendar days, the Construction Manager, without prejudice to any rights or remedies, may give written notice to the Owner of immediate termination.

Provided, however, that if the nature of the Event of Default is such that it cannot reasonably be cured within such 30 day period, then Owner's cure period shall be extended, so long as Owner has commenced to cure such default with said 30-day period and Owner diligently undertakes and pursues such cure to completion, and further provided that the Owner provides the Construction Manager with documentation evidencing that the Owner is diligently undertaking and pursuing such cure to the Construction Manager's reasonable satisfaction then the Owner may cure said default, precluding termination by the Construction Manager.

- 9.3 **Termination Or Suspension For Convenience.** The Owner may at any time give written notice to the Construction Manager terminating the Contract for Construction or suspending the Project, in whole or in part, for the Owner's convenience and without cause. If the Owner suspends the Project for convenience, the Construction Manager shall immediately reduce its staff, services and outstanding commitments in order to minimize the cost of suspension.

- 9.4 **Construction Manager's Compensation When Construction Manager Terminates For Cause Or Owner Terminates For Convenience.** If the Contract for Construction is (i) terminated by the Construction Manager pursuant to Paragraph 9.2; (ii) terminated by the Owner pursuant to Paragraph 9.3; or (iii) suspended more than three months by the Owner pursuant to Paragraph 9.3, the Owner shall pay the Construction Manager specified amounts due for Work actually performed prior to the effective termination date and reasonable costs associated with termination. The Owner may agree to additional compensation, if any, due to the Construction Manager. Absent agreement on the additional amount due the Construction Manager, the Owner shall pay the Construction Manager:

- (i) reasonable costs incurred in preparing to perform the terminated portion of the Work, and in terminating the Construction Manager's performance, plus a fair and reasonable allowance for overhead and profit thereon (such profit shall not include anticipated profit or consequential damages); provided, however, that if it appears that the Construction Manager would not have profited or would have sustained a loss if the Work had been completed, no profit shall be allowed or included, and the amount of compensation shall be reduced to reflect the anticipated rates of loss, if any; and

- (ii) reasonable costs of settling and paying claims arising out of the termination of subcontracts or supplier orders. These costs shall not include amounts paid in accordance with other provisions hereof.

- 9.5 **Construction Manager's Compensation When Owner Terminates For Cause.** If the Contract for Construction is terminated by the Owner for cause pursuant to Paragraph 9.1, no further payment shall be made to the Construction Manager until Final Completion of the Project. At such time, the Construction Manager shall be paid the remainder of the Construction Price less all costs and damages incurred by the Owner as a result of the default of the Construction Manager, including liquidated damages applicable thereto. The Construction Manager shall additionally reimburse the Owner for any additional costs or expenses incurred.

- 9.6 **Limitation On Termination Compensation.** Irrespective of the reason for termination or the party terminating, the total sum paid to the Construction Manager shall not exceed Construction Price, as properly adjusted, reduced by the amount of payments previously made and penalties or deductions incurred pursuant to any other provision of the Contract for Construction, and shall in no event include duplication of payment.

- 9.7 **Construction Manager's Responsibility Upon Termination.** Irrespective of the reason for termination or the party terminating, if the Contract for Construction is terminated, the Construction Manager shall, unless notified otherwise by the Owner,
- (i) immediately stop work;
 - (ii) terminate outstanding orders and subcontracts;
 - (iii) settle the liabilities and claims arising out of the termination of subcontracts and orders; and
 - (iv) transfer title and deliver to the Owner such completed or partially completed Work, and, if paid for by the Owner, materials, equipment, parts, fixtures, information and such contract rights as the Construction Manager has.
- 9.8 **Lack Of Duty To Terminate.** The right to terminate or suspend the Work shall not give rise to a duty on the part of either the Owner or the Construction Manager to exercise that right for the benefit of the Owner, the Construction Manager or any other persons or entities.
- 9.9 **Limitation On Termination Claim.** If the Construction Manager fails to file a claim within one year from the effective date of termination, the Owner shall pay the Construction Manager only for services actually performed and expenses actually incurred prior to the effective termination date.

ARTICLE 10. DISPUTE RESOLUTION

- 10.1 **Mutual Discussion.** In case of any dispute, claim, question or disagreement arising from or relating to the Project or arising out of the Contract for Construction or the breach thereof, the parties shall first attempt resolution through mutual discussion.
- 10.2 **Facilitative Mediation.** If the parties cannot resolve any dispute, claim, question, or disagreement arising from or relating to the Project or arising out of the Contract for Construction or the breach thereof through mutual discussion, as a condition precedent to any litigation or administrative action, the parties shall in good faith participate in private, non-binding facilitative mediation seeking a just and equitable solution satisfactory to all parties.
- 10.2.1 All parties to a mediation shall promptly provide all other parties to the mediation with copies of essential documentation relevant to the support or defense of the matter being mediated.
 - 10.2.2 The parties shall not be required to mediate for a period greater than ninety-one calendar days unless otherwise agreed to in writing by the parties. The parties shall share equally any administrative costs and fees of such proceedings, but shall each be responsible for their own expenses otherwise incurred.
 - 10.2.3 In the event that the statute of limitations would run during the required mediation period, either party may institute litigation so as to avoid the running of such statute upon the condition that such party immediately seek a stay of such litigation pending the conclusion of the mediation period.
 - 10.2.4 During the course of mediation, any party to the mediation may apply for injunctive relief from any court of competent jurisdiction until the mediation period expires or the dispute is otherwise resolved.
 - 10.2.5 The Owner, the Professional, the Construction Manager, and any other parties involved in any way in the design or construction of the Project are bound, each to each other, by this requirement to mediate prior to commencement of any litigation or administrative action, provided that they have signed the Contract For Construction Management Services or an agreement that incorporates the Contract For Construction by reference or signed any other agreement which binds them to

mediate. Each such party agrees that it may be joined as an additional party to a mediation involving other parties under any such agreement. In the case where more than one mediation is begun under any such agreement and any party contends that the mediations are substantially related, the mediations may be conducted by the mediator selected in the first mediation which was commenced.

10.2.6 The mediation shall be conducted in Alachua County, Florida.

10.3 **Conflicting Dispute Resolution Provisions.** Neither party to the Contract for Construction shall enter into any contract with regard to the Project which directly or indirectly gives the right to resolve any dispute with, involving, or affecting the other to any other person or legal entity which is in conflict with the dispute resolution procedures required by this Article.

10.4 **Arbitration Preclusion.** In case of a dispute relating to the Project, or arising out of the Contract for Construction, no party to the Contract for Construction shall be required to participate in or be bound by, any arbitration proceedings.

10.4.1 **Performance During Dispute Resolution.** The Owner and the Construction Manager agree that pending the resolution of any dispute, controversy, or question, the Owner and the Construction Manager shall each continue to perform their respective obligations without interruption or delay, and the Construction Manager shall not stop or delay the performance of the Work.

ARTICLE 11. DAMAGES AND REMEDIES

11.1 **Construction Manager's Repair.** The Construction Manager shall, at its expense, promptly correct, repair, or replace all goods, products, materials, systems, labor and services which do not comply with the warranties and guarantees set forth in the Contract for Construction, or any other applicable warranty or guarantee.

11.2 **Construction Manager's Reimbursement.** The Construction Manager shall promptly reimburse the Owner for any expenses or damages incurred by the Owner as a result of (i) the Construction Manager's failure to substantially perform in accordance with the terms of the Contract for Construction; (ii) deficiencies or conflicts in the Construction Documents attributable to the Construction Manager or of which the Construction Manager was or should have been aware; (iii) breach of the warranties and guarantees set forth in the Contract for Construction or any other applicable warranty or guarantee; or (iv) other acts or omissions of the Construction Manager.

11.3 **General Indemnity.** To the fullest extent permitted by law, the Construction Manager shall secure, defend, protect, hold harmless, and indemnify the Owner from and against any and all liability, loss, claims, demands, suits, costs, fees and expenses (including actual fees and expenses of attorneys, expert witnesses, and other consultants), by whomsoever brought or alleged, and regardless of the legal theories upon which premised, including, but not limited to, those actually or allegedly arising out of bodily injury to, or sickness or death of, any person, or property damage or destruction (including loss of use), which may be imposed upon, incurred by or asserted against the Owner allegedly or actually arising out of or resulting from the Construction Manager's services, including without limitation any breach of contract or negligent act or omission (i) of the Construction Manager; or (ii) of the Construction Manager's subcontractors or suppliers, or (iii) of the agents, employees or servants of the Construction Manager or its subcontractors or suppliers.

11.4 **Intellectual Property Indemnity.** To the fullest extent permitted by law, the Construction Manager shall defend, protect, hold harmless, and indemnify the Owner from and against any and all liability, loss, claims, demands, suits, costs, fees and expenses (including actual fees and expenses of attorneys, expert witnesses, and other consultants), by whomsoever brought or alleged, for infringement of patent rights, copyrights, or other intellectual property rights, except with respect to designs, processes or products of a particular manufacturer expressly required by the Owner or Professional(s) in writing. If the Construction Manager has reason to believe the use of a required design, process or product is an infringement of a patent, the Construction Manager shall be responsible for such loss unless such information is promptly given to the Owner.

- 11.5 **Non-Exclusivity Of Owner's Remedies.** The Owner's selection of one or more remedies for breach of the Contract for Construction contained herein shall not limit the Owner's right to invoke any other remedy available to the Owner under the Contract for Construction or by law.
- 11.6 **Waiver Of Damages.** The Construction Manager shall not be entitled to, and hereby waives any monetary claims for or damages arising from or related to, lost profits, lost business opportunities, unabsorbed overhead or any indirect consequential damages.

ARTICLE 12. MISCELLANEOUS PROVISIONS

- 12.1 The Owner and Construction Manager respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither Owner nor Construction Manager shall assign this Agreement without the written consent of the other.
- 12.2 The Contract for Construction shall be governed by, and construed under, the laws of the State of Florida, without regard to its choice of law provisions and venue shall lie in the courts in Alachua County, Florida.
- 12.3 The Construction Manager represents and warrants that it has not employed or retained any company or person (other than a bona fide employee working solely for the Construction Manager) to solicit or secure this Agreement, and that it has not paid or agreed to pay any person, company, corporation individual or firm (other than a bona fide employee working solely for the Construction Manager) any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement.
- 12.4 This Agreement may be unilaterally terminated by the Owner for refusal by the Construction Manager to allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by the Construction Manager in conjunction herewith.
- 12.5 The obligations of the Owner as to any funding required pursuant to this Agreement shall be limited to an obligation in any given year to budget and appropriate from legally available funds, after monies for essential Owner services have been budgeted and appropriated, sufficient monies for that funding that is required during that year. Notwithstanding the foregoing, the Owner shall not be prohibited from pledging any legally available non-ad valorem revenues for any obligations heretofore or hereafter incurred, which pledge shall be prior and superior to any obligation of the Owner pursuant to this Agreement.
- 12.6 The Construction Manager warrants that it is not on the convicted vendor list for a public entity crime committed within the past thirty six (36) months. The Construction Manager further warrants that it will neither utilize the services of, nor contract with, any supplier, subcontractor, or consultant for an amount in excess of \$15,000.00 in connection with this Project if the supplier, subcontractor or consultant has been placed on the convicted vendor list within the past thirty six (36) months.
- 12.7 All capitalized terms used herein but not defined herein shall have the meaning ascribed thereto in the General Terms and Conditions.
- 12.8 Owner is an equal opportunity institution and, as such, encourages the use of small businesses, including women and minority-owned small businesses in the provision of construction related services. Small businesses should have a fair and equal opportunity to compete for dollars spent by the The City of Gainesville to procure construction-related services. Competition ensures that prices are competitive and a broad vendor base is available. Construction Manager shall use good faith efforts to ensure opportunities are available to small businesses including women and minority-owned businesses on the Project.
- 12.9 The Contract for Construction represents the entire and integrated agreement between the Owner and the Construction Manager, and supersedes all prior negotiations, representations or agreements, either written or oral, for the Project. The Agreement for Construction Management Services may be amended only by written instruments signed by both the Owner and the Construction Manager.

- 12.10 Construction Manager is an independent contractor to Owner.
- 12.11 All exhibits referenced herein are attached hereto and incorporated herein by reference.
- 12.12 If any provision of the Contract for Construction, or application thereof, is determined to be invalid or unenforceable, the remainder of that provision and all other provisions shall remain valid and enforceable.
- 12.13 No provision of the Contract for Construction may be waived except by written agreement of the parties. A waiver of any provision on once occasions shall not be deemed a waiver of that provision on any subsequent occasion, unless specifically stated in writing. A waiver of any provision shall not affect or alter the remaining provisions of the Contract for Construction.
- 12.14 No failure of the Owner to insist upon strict compliance by the Construction Manager with any provision of the Contract for Construction shall operate to release, discharge, modify, change or affect any of the Construction Manager's obligations.
- 12.15 The Contract for Construction shall inure solely to the benefit of the parties hereto and their successors and assigns, and, except as otherwise specifically provided in the Contract for Construction, nothing contained in the Contract for Construction is intended to or shall create a contractual relationship with, or any rights or cause of action in favor of, any third party against either the Owner or the Construction Manager.
- 12.16 In consideration for the Contract for Construction the Construction Manager conveys, sells, assigns and transfers to the Owner all of its right, title and interest in and to any and all causes of action it may now have or may hereafter acquire under the antitrust laws of the United States and the State of Florida for price fixing, relating to the goods and services purchased or acquired by the Owner under the Contract for Construction.
- 12.17 If required pursuant to 440.102(15), Florida Statutes, Construction Manager shall implement, and cause its applicable subcontractors to implement, a drug-free workplace program.
- 12.18 All provisions of the Contract for Construction which contain continuing obligations shall survive its expiration or termination.
- 12.19 Construction Manager shall maintain records sufficient to document completion of the scope of work established by the Contract for Construction. These records shall be subject at all reasonable time to review, inspect, copy and audit by persons duly authorized by the Owner. These records shall be kept for a minimum of three (3) years after completion of the scope of work or termination of the Contract for Construction, whichever first occurs. Records which relate to any litigation, appeals or settlements of claims arising from performance under the Agreement shall be made available until a final disposition has been made of such litigation, appeals or claims.
- 12.20 Nothing in the Contract for Construction shall be interpreted as a waiver of the Owner's sovereign immunity as set forth in Section 768.28, Florida Statutes.

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IN WITNESS WHEREOF, the parties have affixed their signatures, effective on the date first written above.

FOR THE CONSTRUCTION MANAGER:

ATTEST:



(NAME, TITLE AND CORPORATE SEAL)

AS WITNESSED BY:



CHARLES PERRY PARTNERS, INC.

BY: 

MATTHEW WEBSTER
VICE PRESIDENT, DIVERSIFIED PROJECTS DIVISION

DATE: 11/06/2012

FOR THE OWNER:

THE CITY OF GAINESVILLE

AS WITNESSED BY:

Helen Harris

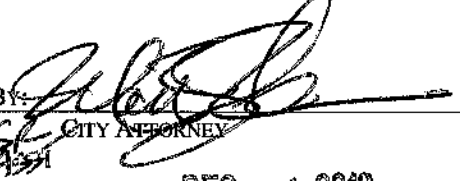
Karen E. Pruss

BY: 

RUSS BLACKBURN, CITY MANAGER

DATE: 12-5-12

APPROVED AS TO FORM AND LEGALITY

BY: 

CITY ATTORNEY
DATE: DEC - 4 2012

EXHIBIT A
CONSTRUCTION MANAGER'S PERSONNEL

1.2 Project Team

[Insert Construction Manager's Personnel Chart for Duration of Agreement]



FIELD OPERATIONS - DPD

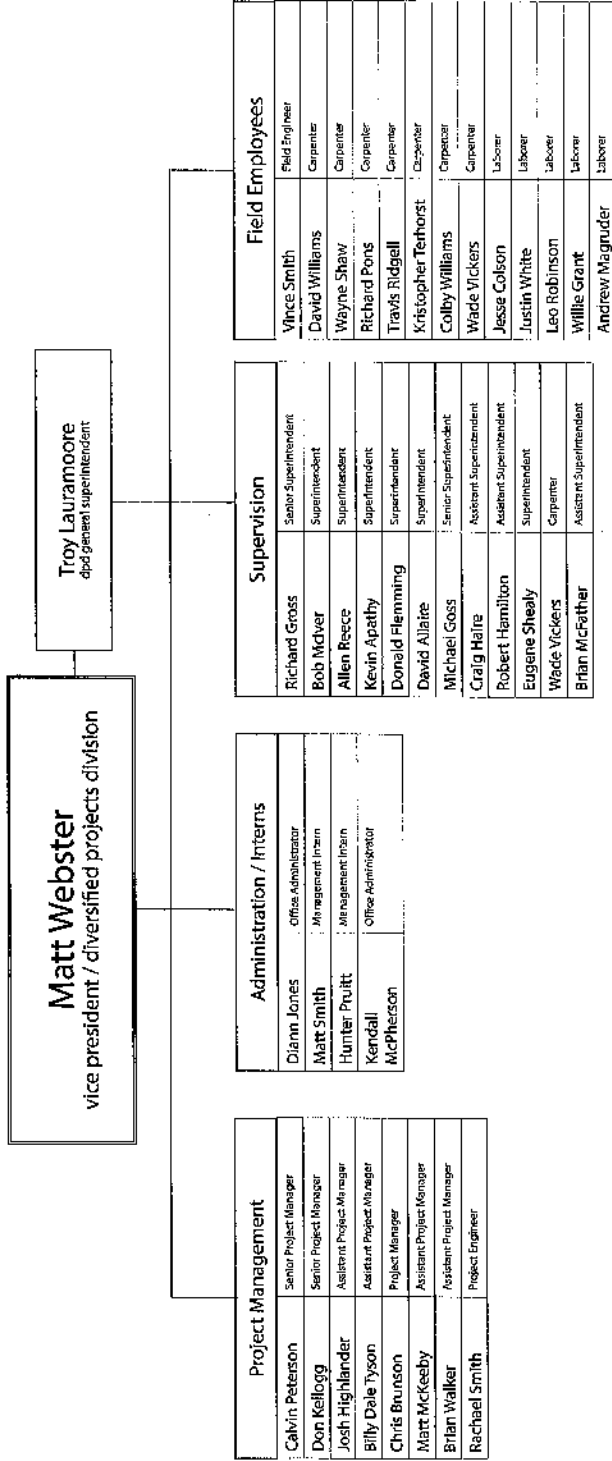


EXHIBIT B
COVER SHEET FOR GENERAL TERMS AND CONDITIONS

The "General Terms and Conditions for Agreement for Construction Management Services" revised October 2012, is incorporated by reference and made a part hereof as if set forth in full.

**EXHIBIT C
INDIVIDUAL PROJECT DESCRIPTION
AND APPLICABLE DOCUMENTS AND GUIDELINES**

Description of Project

Owner Project No: _____
Owner Project Name: _____
Location/Address: _____
Description: _____ Project Scope, dated: _____

1.5/3.3 Documents and Guidelines

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____

**EXHIBIT D
PROJECT DESIGN AND CONSTRUCTION SCHEDULE**

1.2/3.4 Project Design and Construction Schedule*

PHASE	START DATE	END DATE
Pre-Design Phase	00 00 0000	00 00 0000
Pre-Design Program Development	00 00 0000	00 00 0000
Pre-Design Budget & Program Verification	00 00 0000	00 00 0000
Concept Schematic Design (CSD)	00 00 0000	00 00 0000
CSD Construction Cost Estimate	00 00 0000	00 00 0000
Advanced Schematic Design (ASD)	00 00 0000	00 00 0000
ASD Construction Cost Estimate Report	00 00 0000	00 00 0000
Design Development (DD)	00 00 0000	00 00 0000
DD Construction Cost Estimate Report	00 00 0000	00 00 0000
60% Construction Documents (CDs)	00 00 0000	00 00 0000
60% CDs Construction Cost Estimate Report	00 00 0000	00 00 0000
Early bid packages (Site Utilities/Foundation)	00 00 0000	00 00 0000
Early bid packages ()	00 00 0000	00 00 0000
Early bid packages ()	00 00 0000	00 00 0000
100% Construction Documents (CDs)	00 00 0000	00 00 0000
Guaranteed Maximum Price (GMP) Proposal	00 00 0000	00 00 0000
Conformed Bid Documents	00 00 0000	00 00 0000
Notice to Proceed/Purchase Order	00 00 0000	00 00 0000
Perform Construction	00 00 0000	00 00 0000
Substantial Completion	00 00 0000	00 00 0000
Final Completion	00 00 0000	00 00 0000

*REFERENCE ARTICLE 16. SCHEDULE REQUIREMENTS IN THE GENERAL TERMS AND CONDITIONS

**EXHIBIT E
NOTICE TO PROCEED**

Pursuant to the Agreement between the The City of Gainesville ("Owner") and Name of CM Firm ("Construction Manager"), for the construction of [name of project], the Owner and the Construction Manager hereby execute this **NOTICE TO PROCEED** and further agree as set forth below.

[Optional: Whereas, the Project is being performed in phases as permitted by the Contract for Construction; and Whereas, Owner desires to authorize Construction Manager to commence the [] phase of the Project.]

- 1 Construction Manager shall commence [Optional: the ___ phase] of the Work within ten (10) calendar days after the date indicated on the Notice to Proceed. The date of Substantial Completion for the Project shall be: **Month Date, Year.**
- 2 The date of Final Completion for the Project shall be **forty-five (45)** days after the date of Substantial Completion.
- 3 The Construction Manager's Guaranteed Maximum Price ("GMP") proposal dated **Month date, Year** [Optional: for ____ phase] attached hereto and incorporated herein, is accepted by the Owner.
- 4 In accordance with Section 3.6.1.8 of the Agreement for Construction Management Services, the Construction Manager shall award Trade Contracts representing ninety percent (90%) or more of the Cost of the Work within **thirty (90)** days of issuance of the Notice to Proceed for Construction Services.
- 5 The Guaranteed Maximum Price is \$

FOR THE OWNER:
THE CITY OF GAINESVILLE

FOR THE CONSTRUCTION MANAGER:
INSERT LEGAL NAME OF THE CM

BY: RUSS BLACKBURN, CITY MANAGER

BY: NAME, TITLE

DATE:

DATE:

**EXHIBIT F
PROJECT SPECIFIC REQUIREMENTS AND PRE-CONSTRUCTION SERVICES FEE**

- 3.3.4 **LEED Certification.** The LEED Certification level is established at ~~GOLD~~ level.
- 3.3.6 **Initial Construction Schedule Deadline**
 With Advanced Schematic Design submittal or
 With GMP submittal
- 3.4.3 **Construction Manager's Contingency** shall be no greater, as a percentage of the estimated Cost of the Work, than the following at each of the following phases:
ten percent (**10 %**) at Conceptual Schematic Design
eight percent (**8 %**) at Advanced Schematic Design
six percent (**6 %**) at Design Development
five percent (**5 %**) at (**60 %**) Construction Documents
three percent (**3 %**) at the time the GMP proposal is submitted
two percent (**2%**) at the time that Construction Manager has bought out Trade Contracts representing ninety percent (90%) of the Cost of Work or more.
- 3.4.5 **Jobsite Management and Logistics Plan**
 with Design Development phase submittal or
 no later than month dd, yyy
- 3.4.8 **Phased or "Fast-Track" Construction**
 describe or state "none"
- 3.5.1 **GMP Proposal Submittal Deadline**
 upon completion of sixty percent (**60 %**) of the Construction Documents.
 thirty (30) days after completion of the Construction Documents.
 no later than Month , 0000.
 Describe or delete this line

4.1 **Pre-Construction Services Fee (if required)**

PHASE	FEE
Pre-Design Phase	\$
Conceptual Schematic Design	\$
Advanced Schematic Design	\$
Design Development	\$
60% Construction Documents	\$
100% Construction Documents	\$
Total:	\$

- 4.2 **Overhead & Profit.** The Construction Manager's Overhead & Profit percentage shall not exceed 0 % for the base GMP and % for any Change Orders.
- 4.2.2 **Mileage Rate.** The mileage rate for authorized travel shall be set by Owner in accordance with state law, as same may be amended or revised from time to time.
Lodging Rate. The maximum reimbursable rate for lodging shall be set by Owner in accordance with state law, as same may be amended or revised from time to time.
Meals. The maximum reimbursable rates for meals shall be set by Owner in accordance with state law, as same may be amended or revised from time to time.
- 5.1 **Liquidated Damages:** ~~\$500~~ per day

EXHIBIT G
PROJECT-SPECIFIC MODIFICATIONS

8.12 Modifications to the Contract for Construction
[Insert modifications or Write "None"]