AIA® Document A201® – 2017

Modified General Conditions of the Contract for Construction

for the following PROJECT:
(Name and location or address)

RFQ No. 2024-031, Construction Manager at Risk for Pompey Park Recreation Center
1101 NW 2nd St, Delray Beach, FL 33444
City of Delray Beach Project No. 16-102

THE OWNER:
(Name, legal status and address)

The City of Delray Beach, Florida
A municipal corporation and a political subdivision of the State of Florida, its successors and assigns
100 NW 1st Avenue
Delray Beach, FL 33444

THE CONSTRUCTION MANAGER:
(Name, legal status, address, and other information)

CORE Construction Services of Florida, LLC
8027 Cooper Creek Blvd., Suite 110
University Park, FL 34201

THE OWNER'S REPRESENTATIVE:
(Name, legal status, address, and other information)

Keith and Associates, Inc.
301 E. Atlantic Blvd.
Pompano, FL 33060

THE A/E PROFESSIONAL:
(Name, legal status and address)

Justin Architects, P.A.
2400 E. Commercial Blvd., Suite 201
Fort Lauderdale, FL 33308

ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

For guidance in modifying this document to include supplementary conditions, see AIA Document A503™, Guide for Supplementary Conditions.

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TABLE OF ARTICLES

1 GENERAL PROVISIONS

2 OWNER

3 CONTRACTOR

4 CONTRACT ADMINISTRATION

5 SUBCONTRACTORS

6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

7 CHANGES IN THE WORK

8 TIME

9 PAYMENTS AND COMPLETION

10 PROTECTION OF PERSONS AND PROPERTY

11 INSURANCE AND BONDS

12 UNCOVERING AND CORRECTION OF WORK

13 MISCELLANEOUS PROVISIONS

14 TERMINATION OR SUSPENSION OF THE CONTRACT

15 CLAIMS AND DISPUTES

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

The Contract Documents are enumerated in the AIA A133-2019 Modified Agreement (the "Agreement") between the Owner and Contractor (referred to as "Construction Manager" throughout the A133) and consist of the Agreement and Exhibits thereto, these Modified General Conditions of the Contract, Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the A/E Professional and/or Owner's Representative. The Contract Documents also include the RFQ No. 2024-031 issued by Owner for this Project. Any of the Contract Documents not attached hereto are hereby incorporated by reference and shall be deemed to be of the same force and effect as if attached hereto. For purposes of the Agreement and these Modified General Conditions, the terms "Contractor" and "Construction Manager" shall be used interchangeably.

§ 1.1.2 The Contract

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the A/E Professional and/or Owner's Representative, or the A/E Professional's and/or Owner's Representative's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the A/E Professional and/or Owner's Representative, or the A/E Professional's and/or Owner's Representative's consultants, or (4) between any persons or entities other than the Owner and the Contractor, it being specifically understood and agreed that none of the Contractor's Subcontractors, Sub-subcontractors, materialmen and equipment suppliers shall be deemed to be a third-party beneficiary of this Contract. The A/E Professional and/or Owner's Representative shall, however, be entitled to

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performance and enforcement of obligations under the Contract intended to facilitate performance of the A/E Professional's and/or Owner's Representative's duties.

§ 1.1.3 The Work

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed and includes all Work that is reasonably inferable therefrom as being necessary to accomplish the intent of the Contract Documents and fully functioning systems and a fully functioning Project, all in accordance with and as required by all applicable federal, state and local building codes, laws, ordinances, rules and regulations. The Work includes all labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.4 The Project

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by Separate Contractors.

§ 1.1.5 The Drawings

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

§ 1.1.6 The Specifications

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 Instruments of Service

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the A/E Professional and/or Owner's Representative, and the A/E Professional's and/or Owner's Representative's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 Initial Decision Maker

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Owner's Representative as identified in the Agreement shall serve as the Initial Decision Maker. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.

§ 1.1.9 Knowledge

The terms "knowledge," "recognize," and "discover," their respective derivatives, and similar terms in the Contract Documents as used in reference to the Contractor shall be interpreted to mean that which the Contractor reasonably knows, reasonably recognizes, and reasonably discovers or should discover in exercising the reasonable care, skill, and diligence required by the Contract Documents in his capacity as a Contractor. Analogously, the expression "reasonably inferable" and similar terms in the Contract Documents shall be interpreted to mean reasonably inferable by a contractor familiar with the Project and exercising the reasonable care, skill, and diligence required of the Contractor by the Contract Documents.

§ 1.1.10 Words such as "provide," "furnish," furnish and install," "supply," "include," and similar terms shall, unless otherwise noted, be directions to Contractor to provide and pay for all labor, materials and services necessary for the proper execution and completion of the relevant Contractor's Work. The term "any" shall be interpreted as any and all whenever more than one item would be applicable for completion of the Work in accordance with the Contract Documents.

§ 1.2 Correlation and Intent of the Contract Documents

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

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§ 1.2.1.1 The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings. To the extent any conflict or discrepancy exists between the Contract Documents that cannot be resolved between the parties, interpretations will be based on the following priorities: (a) executed Modifications, if any, with those of a later date having precedence over those of an earlier date; (b) the Clarifications and Qualifications Exhibit to the Agreement to the extent approved by the Owner; (c) this Agreement; (d) the Modified General Conditions; (e) all Exhibits hereto, as modified; (f) Drawings and Specifications; and (g) any other Contract Documents. On the Drawings, given dimensions shall take precedence over scaled measurements, and large scale drawings over small scale drawings. Before ordering any materials or doing any Work, the Contractor shall verify measurements at the Project site and shall be responsible for the correctness of such measurements. The Contractor must call any such conflict or discrepancy between the Contract Documents and/or between the Contract Documents and applicable standards, codes and ordinances and/or between the Contract Documents and the existing Project it discovers to the Owner's attention, in writing, prior to proceeding with the Work. To the extent Contractor has sufficient information and access to do so, Contractor must verify all grades, elevations, dimensions, locations and quantities indicated on the Contract Drawings prior to the performance of Work. The Contractor shall, therefore, satisfy itself as to the accuracy of all grades, elevations, dimensions, locations and quantities. In all cases of interconnection of its Work with existing or other Work, it shall verify at the site all grades, elevations, dimensions, locations and quantities relating to such existing or other Work. Any errors due to the Contractor's failure to so verify all such grades, elevations, dimensions, locations and quantities shall be promptly rectified by the Contractor without any additional cost to the Owner. Any differences found shall be submitted to the A/E Professional and/or Owner's Representative for resolution before proceeding with the Work and in such time so as not to delay the progress of the Work. Whenever a product to be furnished by Contractor requires it to be in accordance with a Federal Specification, an ASTM Standard, an American National Standards Institute Specification or other Association Standard, including the requirement of compliance with any local certifications for products such as a Notice of Acceptance approving the product, the Contractor shall present an affidavit from the manufacturer when provided by the manufacturer and, when requested by the A/E Professional and/or Owner's Representative or Owner or as set forth in the Specifications certifying that the product complies with the particular Standard or Specification. When provided by the manufacturer and requested by the A/E Professional and/or Owner's Representative or Owner the specified support test data shall be submitted to substantiate compliance.

§ 1.3 Capitalization

Terms capitalized in these Modified General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles, or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 Interpretation

§ 1.4.1 In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.4.2 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents. Claims for additional costs or extensions of time because of the failure of Contractor to familiarize itself with conditions at the Project site will not be allowed. The Contractor shall be solely responsible for providing a safe place for the performance of the Work. The Owner shall not be required to make any adjustment in the Contract Sum or grant an extension to the Contract Time in connection with any failure by the Contractor to comply with the requirements of this Article.

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§ 1.5 Ownership and Use of Drawings, Specifications, and Other Instruments of Service

§ 1.5.1 To the extent set forth in the agreement between the Owner and the A/E Professional, the A/E Professional and the A/E Professional's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. 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 A/E Professional's or A/E Professional's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, A/E Professional, and the A/E Professional's consultants.

§ 1.5.3 Contractor shall maintain at the Project Site, and shall make available to Owner and A/E Professional and/or Owner's Representative, one record copy of the Drawings marked to indicate any deviations from the Contract Documents (the "As-Built Drawings") in good order, updated monthly. The As-Built Drawings shall be prepared and updated during the prosecution of the Work. The prints for As-Built Drawing use will be a set of black-line prints provided by A/E Professional to Contractor at the start of construction. Contractor shall maintain said set in good condition and shall use colored pencils to mark-up said set with "as-built information" in a legible manner to show: (i) deviations from the Drawings made during construction; (ii) details in the Work not previously shown; (iii) changes to existing conditions or existing conditions found to differ from those shown on any existing drawings; (iv) the actual installed position of equipment, piping, conduits, light switches, electric fixtures, circuiting, ducts, dampers, access panels, control valves, drains, openings and stub-outs; and (v) such other information as either Owner or A/E Professional and/or Owner's Representative may reasonably request. At the completion of the Work, Contractor shall deliver all As-Built Drawings in a format acceptable to the A/E Professional and/or Owner's Representative, Owner, and Agencies Having Jurisdiction (AHJ). Final payment and any retention shall not be due and owing to Contractor until the final As-Built Drawings required above are delivered to Owner.

§ 1.6 Notice

§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

§ 1.6.2 Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by electronic mail, certified or registered mail, or by courier providing proof of delivery.

§ 1.7 Digital Data Use and Transmission

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. If incorporated as a contract document in section 15.2 of the Agreement, the parties will use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

§ 1.9 Force Majeure Events

Force Majeure Events are those events beyond the control of both Contractor and Owner which render performance impracticable or commercially unreasonable, including but not necessarily limited to the events of war, floods, labor BE

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disputes, earthquakes, unforeseen government regulations and embargos, epidemics, adverse weather conditions not reasonably anticipated, and other acts of God.

ARTICLE 2 OWNER

§ 2.1 General

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the A/E Professional does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 2.1.2 Owner shall provide Contractor with a copy of the Notice of Commencement, as required by Florida law, that it will file for the Project.

§ 2.2 Omitted.

§ 2.3 Information and Services Required of the Owner

§ 2.3.1 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.3.2 The Owner has retained an A/E Professional and an Owner's Representative lawfully licensed to practice architecture or engineering, or an entity lawfully practicing architecture or engineering, in the jurisdiction where the Project is located. That person or entity is identified as the A/E Professional and/or Owner's Representative in the Agreement and is referred to throughout the Contract Documents.

§ 2.3.3 If the employment of the A/E Professional and/or Owner's Representative terminates, the Owner shall employ a successor to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the A/E Professional and/or Owner's Representative.

§ 2.3.4 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.3.5 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 Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.3.6 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.4 Owner's Right to Stop the Work

If upon seven (7) days' notice, the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the A/E Professional and/or Owner's Representative and the A/E Professional and/or Owner's Representative may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the BE

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extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the additional services of the A/E Professional and/or Owner's Representative made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the A/E Professional and/or Owner's Representative, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

ARTICLE 3 CONTRACTOR

§ 3.1 General

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the A/E Professional and/or Owner's Representative in the A/E Professional's and/or Owner's Representative's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.1.4 Prior to commencement of the Work, Contractor shall provide the Owner with copies of the above current licenses. Contractor further represents that it has read, examined and understands the pertinent Contract Documents and that it is qualified and able to perform this Work; that it has a sufficient number of qualified personnel to assure timely performance of this Work; that it has the proper tools and equipment to perform this Work; and that it is financially capable of fully performing the Work under this Contract.

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the A/E Professional and/or Owner's Representative and Owner any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the A/E Professional and/or Owner's Representative may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the A/E Professional and/or Owner's Representative any nonconformity discovered by or made known to the Contractor as a request for information in such form as the A/E Professional and/or Owner's Representative may require. The Contractor shall be liable for damage, loss or expense to the Owner, including, without limitation, delays and the cost of correcting defective construction, resulting from the Contractor's performing any construction activity which it knows or should know involves such errors, inconsistency, omission or variation.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the A/E Professional and/or Owner's Representative issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall not be entitled to any increase in Contract Price or Contract Time and shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations.

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§ 3.2.5 The Contractor represents and warrants that the construction means, methods, procedures and techniques necessary to perform the Work will be consistent with and conform to: (1) good and sound practices within the construction industry; (2) generally prevailing and accepted industry standards applicable to the Work; (3) requirements of any warranties applicable to the Work; and (4) applicable, laws, codes, orders and ordinances which bear upon the Contractor's performance of the Work.

§ 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and A/E Professional and/or Owner's Representative, and shall propose alternative means, methods, techniques, sequences, or procedures. The A/E Professional and/or Owner's Representative shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the A/E Professional and/or Owner's Representative objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work in accordance with the Contractor's approved Quality Control Plan.

§ 3.3.4 Contractor has the responsibility to ensure that all material and equipment suppliers, manufacturers, and Subcontractors, and their respective agents and employees adhere to the requirements of the Contract Documents, and that they order and provide all materials, equipment and supplies in a timely manner. Contractor shall coordinate its Work with that of all others under its control or Owner's control working on or supplying the Project. Contractor shall be responsible for coordination, locations, and routing of all material and equipment as designed by the Owner, A/E Professional, Engineers, and other consultants of the Owner. In areas and locations where the proper and most effective location and routing cannot be made as indicated or coordinated, Contractor shall contact Owner and A/E Professional and/or Owner's Representative in writing and meet with all others involved before proceeding with installations, to plan the most effective and efficient method of overall installation. Contractor shall pay all monthly utilities charges for construction until Substantial Completion.

§ 3.3.5 Contractor's Compliance with Contract Documents.

The Contractor shall give all notices required by the Contract Documents, and warrants and represents, except where it is the responsibility of the Owner, A/E Professional, Engineers, and other consultants of the Owner, that the Work when completed will be constructed in compliance with the Contract Documents and all applicable federal, state and local laws, codes, regulations, permits, decisions, orders, professional licenses, ordinances, and other legal requirements of the authorities have jurisdiction over the Project. Contractor shall bear responsibility for and bear all costs necessary to insure full compliance with the Contract Documents and all applicable laws, codes and ordinances, including the cost of removing existing Work, the cost of replacing any Work with Work conforming to the applicable requirements and 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 Section shall survive the completion and final payment or termination of this Contract.

§ 3.4 Labor and Materials

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

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§ 3.4.2 Except in the case of minor changes in the Work approved by the A/E Professional and/or Owner's Representative in accordance with Section 3.12.8 or ordered by the A/E Professional and/or Owner's Representative in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the A/E Professional and/or Owner's Representative and in accordance with a Change Order or Construction Change Directive. Any items expressly identified and described in the Clarifications and Qualifications Exhibit attached to this Agreement which otherwise would be considered substitutions will not require Owner's consent or substitution requests; provided, however, Contractor still will be required to comply with the submittal process with respect to all such items.

Notwithstanding the foregoing, Contractor may request substitution of materials, articles, pieces of equipment or any changes that reduce the Contract Price by making such request to the Owner in writing. If after attempting to acquire the materials from three (3) suppliers (and providing documentation of same), the specified item is not available and substitution results in additional cost, it shall be funded via Owner Contingency. No substitute will be allowed without a Change Order or CPEAM that adjusts the Contract Price or Contract Time. Contractor agrees to pay all Owner's expenses related to Owner's review of the request for substitution, unless the specified item is not available. Any substitution submitted by Contractor must meet the form, fit, function and life cycle criteria of the item proposed to be replaced and there must be a net dollar savings including Owner's expenses for review, unless the specified item is not available. Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute approved after award of the Contract, unless the specified material is not available. Subsequent requests will only be considered upon submittal of substantiated evidence of product unavailability, or that there is some unreasonable difficulty in obtaining it.

Substitutions will not be considered when indicated on shop drawings or product data submittals without a separate formal request, when requested directly by Subcontractor or supplier, or when acceptance will require substantial revision of the Contract Documents

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner and A/E Professional and/or Owner's Representative that the Work and materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. If required by the A/E Professional and/or Owner's Representative, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.5.2 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4.

§ 3.5.3 Warranty Forms.

The Contractor shall obtain warranties, for a minimum period of one (1) year from Substantial Completion, from all subcontractors in the form attached as Exhibit C to the Agreement. Contractor agrees that it shall secure Extended Warranties for all items having Extended Warranties from the applicable subcontractors, or equipment or material manufacturers, as set forth in the Exhibits to Agreement. Any warranties obtained by the Contractor which deviate from the forms attached hereto must be approved by Owner.

§ 3.5.4 Contractor shall provide to the Owner one (1) electronic copy of the following information:

.1 All Subcontractor warranties fully executed in the form approved by the Owner;

.2 All Extended Warranties required by the Contract Documents;

.3 The Contractor's warranty;

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.4 A list of all Subcontractors, Sub-subcontractors and suppliers who performed work on the Project or who furnished materials for use in the Project, such list to include the name, address, telephone number and responsible person at all such entities;

The delivery, endorsement or assignment of such warranties shall not release the Contractor from obligations pursuant to the Contract Documents.

§ 3.5.5 If the Contractor fails to commence to correct defective or nonconforming Work within five (5) business days from written notice to Contractor, the Owner may correct such defective or nonconforming Work. If the Contractor commences to correct such defective or nonconforming Work but fails to diligently and continuously work on such correction, the Owner may upon an additional three (3) business days' notice to Contractor, correct such item at Contractor's sole cost and expense. Owner may deduct such costs from any monies due Contractor. If the defective or nonconforming Work is discovered after final payment, then Contractor shall pay such cost and expense, including attorney's fees incurred. The Contractor shall bear all costs of correcting such defective Work.

§ 3.5.6 The warranty obligations of this Article shall survive completion and final payment or termination of this Contract for the Work performed to the date of termination.

§ 3.5.7 In the case of an emergency, Contractor, within twenty four (24) hours of written notice by Owner and/or A/E Professional and/or Owner's Representative, shall diligently and continuously pursue any necessary repairs or replacements of defects until corrected and will restore the Work to the condition required by the Contract Documents. Contractor shall restore surface, subsurface, collateral and primary conditions disturbed during warranty work to their prior condition. Contractor agrees that if Contractor fails to diligently pursue correction of any deficiency in a continuous and expeditious manner until completion, Owner may, in its sole discretion, correct such deficiencies at Contractor's sole and exclusive expense and that such action shall not invalidate any conditions of the Contract Documents. Contractor shall indemnify and hold Owner harmless from any claims, loss, damage or expense due to defects in the Work.

§ 3.5.8 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work which is not in accordance with the requirements of the Contract Documents without reimbursement from the Owner.

§ 3.5.9 If the Owner prefers to accept Work which is not in accordance with the requirements of the Contract Documents, the Owner may do so in writing instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

§ 3.5.10 Prior to Substantial Completion, Contractor shall obtain all required inspections or other required documentation by the suppliers and Manufacturers' representatives for equipment and supplies during the course of performing the Work and during the warranty period, in order to ensure that all Manufacturer warranties will be honored thorough out the Manufacturer's entire warranty period.

§ 3.6 Taxes

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect. If sales, consumer, use and similar taxes and/or tariffs which are not imposed and in effect at least 90 days prior to the approval and execution of the GMP Amendment, increase the cost and/or time of the Work, Owner hereby agrees to enter into a Change Order commensurate with said increase in the price of materials and/or time for the Work.

§ 3.7 Permits, Fees, Notices and Compliance with Laws

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

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§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 Concealed or Unknown Conditions

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the A/E Professional and/or Owner's Representative before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The A/E Professional and/or Owner's Representative will promptly investigate such conditions and, if the A/E Professional and/or Owner's Representative determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the A/E Professional and/or Owner's Representative determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the A/E Professional and/or Owner's Representative shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the A/E Professional's and/or Owner's Representative's determination or recommendation, that party may submit a Claim as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and A/E Professional and/or Owner's Representative. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 Allowances

§ 3.8.1 The Contractor shall include in the Contract Sum (Cost of the Work line item) all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

.1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;

.2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and

.3 whenever costs are more than or less than allowances or if they are deleted, the Contract Sum 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 Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness

§ 3.9 Superintendent

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 Contractor shall assign to the Project team the key employees ("Key Employees") including without limitation engineers, a superintendent, and a project manager, a list of which is attached as Exhibit A.3 to the Agreement, who shall not be replaced without the Owner's prior written consent, which shall not be unreasonably withheld. Unauthorized replacement of the Key Employees by the Contractor may be deemed to be a material breach of this BE

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Agreement. If it is necessary to replace the Key Employee(s), the Contractor shall so advise the Owner in writing and the replacement individual shall likewise be subject to the Owner's approval. The Owner may reply within fourteen (14) days of receipt of the information, stating whether the Owner or the Owner's Representative (1) has reasonable objection to the proposed superintendent or Key Employees or (2) requires additional time for review. Failure of the Owner to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent or Key Employees to whom the Owner or Owner's Representative has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and A/E Professional's and/or Owner's Representative's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project.

§ 3.10.2 The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the A/E Professional's and/or Owner's Representative's approval. The A/E Professional's and/or Owner's Representative's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the A/E Professional and/or Owner's Representative reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in strict accordance with the schedule in the GMP Amendment unless a revision to the schedule is approved in writing by the Owner.

§ 3.10.4 The original construction schedule and all subsequently submitted updated construction schedules shall be in a detailed precedence-style, resource loaded critical path method (CPM) type format satisfactory to the Owner and the A/E Professional and/or Owner's Representative which shall also: (1) provide a graphic representation of all activities and events that will occur during performance of the Work; (2) identify each phase of construction and occupancy; and (3) 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"). Contractor shall provide Owner with the original/planned (specifically, the GMP Amendment version), cost and resource loaded schedule electronic files in P6 native electronic files (. xer format). In connection with the Work, the requirements of a cost and resource loaded schedule are defined as follows: (1) The full cost of the Work anticipated per month for the length of the Agreement; and (2) as Subcontracts are executed, Subcontractor names assigned to each activity corresponding to the trade responsible for performing the Work described by the activity, with a separate responsibility code for each Subcontractor. Upon review and acceptance by the Owner and the A/E Professional and/or Owner's Representative of the Milestone Dates, the construction schedule shall be deemed part of the Contract Documents and attached to the Agreement as Exhibit A.1 to be incorporated in the Contract Documents. The Contractor shall monitor the progress of the Work for conformance with the requirements of the construction schedule and shall promptly advise the Owner of any delays or potential delays. The accepted construction schedule shall be updated one time each month to reflect actual conditions and Contractor shall provide Owner with a copy of the updated cost and resource loaded schedule, the electronic files in P6 native electronic files (.xer format), at the time Contractor submits its monthly Payment Application. In the event any progress report or schedule update indicates any delays, the Contractor shall propose an affirmative plan to correct the delay, including resequencing of the Work, overtime and/or additional labor, if necessary. In no event shall any progress report constitute an adjustment in the Contract Time, Milestone Dates, or the Contract Sum unless any such adjustment is agreed to by the Owner and authorized pursuant to properly executed written Change Order. Contractor shall maintain such progress schedule on a current basis in accordance with the provisions of this Section and shall keep proper records available to inspection by Owner to substantiate actual activity, duration and completion dates.

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§ 3.10.5 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, the Owner shall have the right to order the Contractor, in writing, to take corrective measures necessary to expedite the progress of construction, including, subject to Article 15 herein and other applicable provisions of the Contract Documents, (1) working additional shifts or overtime, (2) supplying additional manpower, equipment, and facilities, (3) re-sequencing the Work to avoid the effects of the potential delay; and (4) other similar measures utilizing the most cost effective and reasonable acceleration methods possible to avoid delays and liquidated damages. All such measures required to keep the Project on schedule and to avoid delays shall be a Cost of the Work but shall not be a basis to increase the Contract Sum, except to the extent that such delay is not the fault of the Contractor or those for whom the Contractor is responsible.

§ 3.10.6 All time limits and obligations are of the essence in the Contract Documents.

§ 3.10.7 The Owner may exercise the rights furnished the Owner under or pursuant to this Section as frequently as the Owner deems necessary to ensure that the Contractor's performance of the Work will comply with any Milestone Date and/or the Substantial Completion Date set forth in the Contract Documents. Alternatively, Owner may exercise termination rights as provided for in the Contract Documents.

§ 3.11 Documents and Samples at the Site

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the A/E Professional and/or Owner's Representative and Owner, and delivered to the A/E Professional and/or Owner's Representative for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.12 Shop Drawings, Product Data and Samples

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment, or workmanship, and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the A/E Professional and/or Owner's Representative is subject to the limitations of Section 4.2.7. Informational submittals upon which the A/E Professional and/or Owner's Representative is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the A/E Professional and/or Owner's Representative without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve, and submit to the A/E Professional and/or Owner's Representative, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the A/E Professional and/or Owner's Representative or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and A/E Professional and/or Owner's Representative that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

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§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been approved by the A/E Professional and/or Owner's Representative.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the A/E Professional's and/or Owner's Representative's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the A/E Professional and/or Owner's Representative of such deviation at the time of submittal and (1) the A/E Professional and/or Owner's Representative has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the A/E Professional's and/or Owner's Representative's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the A/E Professional and/or Owner's Representative on previous submittals. In the absence of such notice, the 's and/or Owner's Representative's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the A/E Professional and/or Owner's Representative will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design 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 the A/E Professional and/or Owner's Representative. The Owner and the A/E Professional and/or Owner's Representative shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and A/E Professional and/or Owner's Representative have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the A/E Professional and/or Owner's Representative will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

§ 3.12.10.2 If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the specifications, the Contractor shall furnish such certifications to the A/E Professional at the time and in the form specified by the A/E Professional.

§ 3.13 Use of Site

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment. If the Work requires the use of sidewalks, public ways or other areas outside of the Owner's Project site, the Contractor shall be responsible for obtaining all necessary approvals for such work, and Contractor shall pay for and obtain all necessary permits, including but not limited to road closure permits, as a Cost of the Work. The Contractor shall also arrange and pay for all local police and fire officers and personnel required to be present at or adjacent to the Project site in connection with the work, as a Cost of the Work. The Contractor must secure all materials and equipment that are stored on the Project site and shall take all safety precautions necessary to protect such materials and equipment. The Contractor shall be responsible, as a Cost of the Work included as part of the Contract Sum, for all measures to protect the Project site and property adjacent to the Project, from the Contractor's Work.

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§ 3.14 Cutting and Patching

§ 3.14.1 The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work.

§ 3.15 Cleaning Up and Repair

§ 3.15.1 The Contractor shall at all times keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall, at its sole cost and expense, remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the Owner shall be entitled to reimbursement from the Contractor or Owner may deduct the cost of cleanup from any amounts due Contractor.

§ 3.15.3 Contractor agrees to repair at its sole cost and expense, except as may be covered by an insurance policy or as may arise from causes beyond causes beyond the control of Contractor, the subcontractors, or any individual/entities for whom Contractor is responsible or has supervisory authority, all damages to the Property, including, but not limited to, any damages to real or personal property arising from or relating to Contractor's performance of the Work to the reasonable satisfaction of the Owner.

§ 3.16 Access to Work

The Contractor shall provide the Owner and A/E Professional and/or Owner's Representative with access to the Work in preparation and progress wherever located.

§ 3.17 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and A/E Professional and Owner's Representative harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or A/E Professional. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall promptly inform Owner and Architect/AE professional in writing.

§ 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the Owner, its officers, and its employees, from and against claims, liabilities, damages, losses and costs including but not limited to attorneys' fees (at the trial and appellate levels), arising out of or resulting from performance of the Work, to the extent caused by the acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.2 In any and all claims against the Indemnified Parties by any employee of the Contractor, or anyone for whose acts any of them may be liable, the indemnification obligation under this provision of this Contract shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or on behalf of the Contractor or any Subcontractor under Workers Compensation Acts, Disability Benefit Acts or other employee benefit acts.

§ 3.18.3 The Parties hereto acknowledge and agree that, to the extent any portion of the indemnification provisions contained herein is deemed void or unenforceable in any action or proceeding, then such portion shall be considered severed such that it will not affect the remaining portions of these indemnification provisions.

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§ 3.18.4 The Indemnitors' indemnity obligations under this Section shall also specifically include, without limitation, all claims, fines, penalties, damages, liability, costs, fees, expenses (including, without limitation, reasonable attorneys' fees and expenses), and punitive (if any arising out of, or in connection with or attributable to, any claims made against the Indemnified Parties for (i) bodily injury, sickness, disease, death, or destruction of tangible property caused by Contractor and/or any of its Subcontractors and/or Sub-subcontractors, (ii) violation of or failure to comply with any law, statute, ordinance, rule, regulation, code or requirement of a public authority that bears upon the performance of the Work by the Contractor, and/or any of the Indemnitors, or any person or entity for whom they are responsible, (iii) Contractor's failure to comply with Warranty obligations, and obligations to correct damaged and defective work.

§ 3.18.5 The Contractor shall indemnify and hold harmless the Indemnitee from and against any costs and expenses (including reasonable attorneys' fees for all trial and appellate levels) incurred by the Indemnitee in enforcing any of the Contractor's defense, indemnity and hold-harmless obligations under this Contract.

§ 3.18.6 To the extent commercially reasonable, the Contractor shall include in all Subcontracts provisions by which each Subcontractor agrees to defend, indemnify and hold harmless Contractor and the Indemnified Parties from and against liability, damages, losses and costs, including, but not limited to, reasonable attorneys' fees for all trial and appellate levels, arising out of, in connection with, or resulting from the performance of the Work or any Subcontractor's obligations under the Contract Documents to the same extent and in the same manner as the Contractor is liable to Owner pursuant to this provision.

§ 3.18.7 The provisions of this Section shall survive final completion and final payment or termination of this Contract.

ARTICLE 4 CONTRACT ADMINISTRATION

§ 4.1 General

§ 4.1.1 The Owner's Representative is the person or entity retained by the Owner to perform contract administration of this Agreement along with the A/E Professional to the extent specifically set forth in this Agreement.

§ 4.1.2 Duties, responsibilities, and limitations of authority of the Owner's Representative as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Contractor, and Owner's Representative. Consent shall not be unreasonably withheld.

§ 4.2 Administration of the Contract

§ 4.2.1 The Owner's Representative will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative with the authorities described herein during construction until the date the Owner's Representative issues the final Certificate for Payment. The Owner's Representative will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Owner's Representative will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Owner's Representative will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Owner's Representative will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

§ 4.2.3 On the basis of the site visits, the and/or Owner's Representative will keep the Owner, A/E Professional, and Contractor reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner and Contractor (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Owner's Representative will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Owner's Representative will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

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§ 4.2.4 Communications

The Owner and Contractor shall include the A/E Professional and Owner's Representative in all communications that relate to or affect the A/E Professional's and/or Owner's Representative's services or professional responsibilities. The Owner shall promptly notify the A/E Professional and Owner's Representative of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the A/E Professional's and/or Owner's Representative's consultants shall be through the A/E Professional and/or Owner's Representative. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

§ 4.2.5 Based on the Owner's Representative's evaluations of the Contractor's Applications for Payment, the Owner's Representative will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Owner, Owner's Representative, and A/E Professional have authority to reject Work that does not conform to the Contract Documents. Whenever the A/E Professional and/or the Owner's Representative considers it necessary or advisable, the A/E Professional and/or the Owner's Representative will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the A/E Professional and/or the Owner's Representative nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the A/E Professional and/or the Owner's Representative to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The A/E Professional and/or the Owner's Representative will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The A/E Professional's and/or the Owner's Representative's action will be taken in accordance with the submittal schedule approved by the A/E Professional and/or the Owner's Representative or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the A/E Professional's and/or the Owner's Representative's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The A/E Professional's and/or the Owner's Representative's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The A/E Professional's and/or the Owner's Representative's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The A/E Professional's and/or the Owner's Representative's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The A/E Professional and/or the Owner's Representative may prepare Change Orders and Construction Change Directives, and may order minor changes in the Work as provided in Section 7.4. Under no circumstances will Contractor be required to perform any Work subject to a Change Order and/or Construction Change Directive until Contractor receives a signed version from the Owner that accounts for any change in the Contract Time and/or Contract Sum, as applicable. Contractor shall be responsible however to provide written notice that the proposed minor changes in the Work will affect the Contract Sum or Contract Time. If any delay results from the inability to finalize any Change Order or Construction Change Directive, the Contract Time shall be adjusted commensurately with that delay. The A/E Professional and/or the Owner's Representative will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The A/E Professional and/or the Owner's Representative will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and the Owner's Representative agree, the Owner's Representative will provide one or more Project representatives to assist in carrying out the Owner's Representative's responsibilities at the site. The Owner

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shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.

§ 4.2.11 The A/E Professional and/or the Owner's Representative will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The A/E Professional and/or the Owner's Representative' response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the A/E Professional and/or the Owner's Representative will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the A/E Professional and/or the Owner's Representative will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 The A/E Professional's decisions on matters relating to aesthetic effect will be final if consistent with the Owner's intent expressed in the Contract Documents.

§ 4.2.14 The A/E Professional and/or Owner's Representative will review and respond to requests for information about the Contract Documents. The A/E Professional's and/or Owner's Representative's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the A/E Professional and/or Owner's Representative will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

§ 4.2.15 Should the Contractor request information, interpretations of Contract Documents, use of alternates, approval of samples (but not Shop Drawings) or make other similar requests (hereinafter "RFI" or "RFIs"), it shall do so in good faith, in writing, and in a reasonable time and fashion. The A/E Professional's response to RFIs will be made in writing and within five (5) business days except for emergencies which shall be within three (3) business days. The period shall be extended if the A/E Professional is not able to respond due to the failure of Contractor to provide adequate and accurate information to the A/E Professional. Furthermore, should the A/E Professional require compensation to review any Contractor requests which are abusive or unreasonable in number or timing (in excess of one original review and two re-reviews), the A/E Professional shall expedite its review of the RFIs provided Contractor agrees in writing to reimburse Owner for any architectural or engineering fees necessitated in responding to such RFIs. Contractor agrees that Owner may deduct any such architectural or engineering fees from any sums otherwise due Contractor.

§ 4.2.16 With regard to the submission and approval of Shop Drawings or other submittals, the period of time for response is as soon as reasonably possible, but no longer than ten (10) business days, except for emergencies which shall be reviewed by A/E Professional in three (3) business days. It is Contractor's responsibility to determine in advance the amount of time A/E Professional will take to review Shop Drawings or submittals and what information will be required for adequate review. Contractor is further responsible for submitting thorough and complete requests for review or approval in sufficient time so as not to cause any delay to the Contractor's Work. Contractor shall submit Shop Drawings in accordance with the submittal schedule. Contractor will not be entitled to an extension of the Contact Time or increase to the Contract Sum due to any delay on the part of A/E Professional, unless Contractor can demonstrate by clear and convincing documentation that Contractor properly submitted the request in accordance with the approved submittal schedule and A/E Professional failed, due to no fault of Contractor, to respond in accordance with the approved submittal schedule, and was in fact delayed, which delay could not have otherwise been avoided by Contractor.

§ 4.2.17 Notwithstanding any other provision to the Contract, the A/E Professional and/or the Owner's Representative or their consultant(s) do not have authority to authorize changes to the Contract Documents. Only Owner shall be authorized to execute Change Orders, or otherwise modify these Contract Documents. Should Contractor desire to change any materials, or equipment required by Construction Change Directives, Contractor must first notify the Owner and A/E Professional and/or the Owner's Representative of its intent to deviate from the Contract Documents by preparing a Construction Change Directive and obtain written approval for performance of any Work which changes or deviates from the Contract Documents. Failure to obtain said approval in writing will bar Contractor from any claim for additional compensation, delays or arguing that the A/E Professional and/or the Owner's Representative or their consultants directed the work.

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ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Separate Contractor or the subcontractors of a Separate Contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and A/E Professional and/or Owner's Representative of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the A/E Professional and/or Owner's Representative may notify the Contractor whether the Owner or the A/E Professional and/or Owner's Representative (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the A/E Professional and/or Owner's Representative to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or A/E Professional and/or Owner's Representative has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or A/E Professional and/or Owner's Representative has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or A/E Professional and/or Owner's Representative has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order and/or CPEAM process shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner or A/E Professional and/or Owner's Representative makes reasonable objection to such substitution.

§ 5.3 Subcontractual Relations

By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and A/E Professional and/or Owner's Representative. Each subcontract agreement shall preserve and protect the rights of the Owner and A/E Professional and/or Owner's Representative under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.3.1 Subcontract Agreements. Contractor hereby agrees that each subcontract agreement shall contain provisions granting the Contractor the right to terminate the subcontract at any time for the Contractor's convenience and without cause.

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§ 5.4 Contingent Assignment of Subcontracts

§ 5.4.1 The Contractor hereby assigns to the Owner an option to accept assignment of all of Contractor's contract rights with respect to Subcontractors and material and equipment suppliers that contracted to provide Work, materials and equipment to the Project in accordance with the Contract Documents, provided that Owner may elect in writing to exercise that option only after proper termination of the Contactor for Contractor's default. For those subcontract agreements which the Owner accepts by notifying the Subcontractors and Contractor in writing, the option shall include, but not be limited to, all Contractor's rights to make claims regarding quality of the Work and warranty claims. It is further agreed that all Subcontracts and material and equipment purchase contracts entered into by Contractor or its Subcontractors or material suppliers, to the extent commercially reasonable, shall contain a provision stating that, if after termination of Contractor for Contractor's default or completion of the Work, the Owner may bring any claim directly against any Subcontractor of Contractor, including any surety bond furnished for or on behalf of such Subcontractor, for breach of contract, warranty rights, quality of workmanship, and create third party beneficiary rights of Owner in said agreements. 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 Agreement with Contractor and may not be withdrawn. Subcontractor or equipment and material suppliers shall be notified of Owner's rights. Additionally, nothing contained in this Agreement shall constitute an assignment of Contractor's rights against the Owner or create any third party beneficiary rights in any Subcontractors or material and equipment suppliers of Contractor. The purpose of this provision is to allow the Owner, in addition to Contractor, 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. Additionally, this assignment is for the purpose of permitting Owner to require any such Subcontractor or materials and equipment suppliers to complete the unperformed obligations under such Subcontract, should the Contractor be in default or be terminated by Owner.

§ 5.4.2 Nothing in this Article or Agreement shall be deemed to create any contractual relationship between the Owner and any Subcontractor, material provider or supplier or to create any rights of any Subcontractor against the Owner for any actions, debts, obligations, responsibilities or liabilities occurring prior to any assignment executed pursuant to this Article.

§ 5.4.3 Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 Owner's Right to Perform Construction and to Award Separate Contracts

§ 6.1.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors. If commercially reasonable, such Separate Contractors will be retained under Conditions of the Contract (including, but not limited to conditions pertaining to Contract Time) substantially similar to those of this Contract. The Owner shall provide all such separate contracts to the Contractor.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement. Except with respect to any public companies or utility companies, to the extent commercially reasonable, such separate contracts shall include a requirement that the Contractor be named as an additional indemnified party and an additional insured with respect to Commercial General Liability Insurance, and the Owner shall provide all the related certificates of insurance and endorsements to the Contractor.

§ 6.1.3 The Contractor shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. To the extent that the Owner provided such separate contracts to the Contractor prior to the Contractor's submission of its GMP Proposal, the parties acknowledge that the Contractor's schedule has included time for all known separate Owner contractors to perform their work, based on Contractor's experience and knowledge. The Contractor shall review those portions of the Contract Documents to be performed by the Owner's separate contractors, if any, that may impact Contractor's performance of its Work, and that may be interrelated with the Work to be performed by the Contractor, and shall schedule those separate contractors' work so as to cause no delay to the Work.

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§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner or its Separate Contractors shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.

§ 6.1.5 If any part of the Work depends upon proper execution of work performed by Owner or Owner's separate contractors, the Contractor, its Subcontractors, and their respective Sub-subcontractors shall, prior to proceeding with the Work, inspect such Work and promptly report to Owner any apparent discrepancies or defects in such other Work. Failure of the Contractor, its Subcontractors, or their respective Sub-subcontractors to comply with these requirements shall bar any claims thereafter that defects in Contractor's Work, or delays in the schedule, are due to defects in the Work performed by others. Similarly, if any part of the work performed by Owner or Owner's separate contractors depends upon proper execution of Work performed by Contractor, its Subcontractors, and their respective Sub-subcontractors, Owner's separate contractors shall, prior to proceeding with the work, inspect such Work and promptly report to Contractor any apparent discrepancies or defects in such Work. Failure of Owner's separate contractors or utility contractors to comply with these requirements shall bar any claims thereafter that defects in Owner's separate contractors' work are due to defects in the Work performed by Contractor.

§ 6.1.6 Contractor shall provide Owner's separate contractors with a reasonable opportunity for the introduction and storage of their materials, equipment and execution of their work.

§ 6.2 Mutual Responsibility

§ 6.2.1 The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the A/E Professional and/or Owner's Representative of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the A/E Professional and/or Owner's Representative of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor as provided in Section 10.2.5.

§ 6.2.5 The Owner and each Separate Contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the A/E Professional and/or Owner's Representative will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

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§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor, and A/E Professional and/or Owner's Representative. A Construction Change Directive requires agreement by the Owner and A/E Professional and/or Owner's Representative and may or may not be agreed to by the Contractor. An order for a minor change in the Work may be issued by the A/E Professional and/or Owner's Representative alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work. The A/E Professional shall provide any modifications to the Contract Documents, as applicable, via a Request for Information (RFI) response or by Additional Supplemental Information (ASI) with a narrative of the changes on each drawing and/or specification and each modification shall be clouded.

§ 7.2 Change Orders

§ 7.2.1 A Change Order is a written instrument prepared by the A/E Professional and/or Owner's Representative and signed by the Owner, Contractor, and A/E Professional and/or Owner's Representative stating their agreement upon all of the following:

.1 The change in the Work;
.2 The amount of the adjustment, if any, in the Contract Sum; and
.3 The extent of the adjustment, if any, in the Contract Time.

§ 7.2.2 All Claims arising out of or relating to a Change Order shall be deemed waived unless expressly reserved in such Change Order. Contractor is specifically prohibited from unilaterally preserving Claims, including Claims for extension of the Contract Time. Notwithstanding any other provision to the Contract, the A/E Professional and/or Owner's Representative or their consultants will not have authority to authorize changes to the Contract Documents.

§ 7.2.3 Agreement on any Change Order shall constitute a final settlement of all matters which the Contractor knew or should have known relating to the change in the Work that is the subject of the Change Order, including but not limited to all direct and indirect costs associated with such change and all adjustments to the Contract Sum and Contract Time.

§ 7.2.4 Change Order requests shall not be considered unless and until submitted in writing to the Owner and the A/E Professional and/or Owner's Representative together with documentation detailing the change and supporting the requested increase or decrease in the Contract Sum and/or Contract Time. Such documentation must show: (i) all materials by quantity and price, (ii) all labor by unit price, (iii) insurance, (iv) permits, (v) payroll taxes and employee benefits, (vi) equipment by quantity and rate, (vii) , Subcontractors' percentage markup on Change Orders (and CPEAMs) for overhead and profit shall be reasonable, but in no event shall the aggregate of the Subcontractors' overhead and profit markups exceed ten percent (10%) of the net change to the Subcontractors' Cost of the Work, including any lower tier subcontractors. In the event Subcontractor is affiliated with the Construction Manager by common ownership or management, or is effectively controlled by the Construction Manager, no fee will be allowed on the Subcontractors' costs. In the event there is more than one level of Subcontractor, such as second and third tier Subcontractors, the sum of all the Subcontractors' including any tiered Subcontractors' percentage markups for overhead and profit shall not in the aggregate exceed twelve (12%) of the net change to the Subcontractors' Cost of the Work (viii) Contractor's Fee; (ix) a clear and concise statement of the basis for the claim, including dates and names of parties and people involved, with back up information, Contract Documents relied upon, including reference to sections of the Drawings and Specifications, daily reports, weather reports, meeting minutes, correspondence and the like; and (x) an updated schedule meeting the requirements of the Contract Documents, showing the impact of the Change to the agreed upon Project Schedule. Any requested increase to Contract Sum for the Contractor's General Condition costs shall be limited to actual on-site cost increases for General Conditions items incurred as a direct result of the change.

§ 7.2.5 In the event of any dispute between Owner and Contractor arising out or relating to the requirements of the Contract, any modification, or the terms of a pending Change Order, the Contractor shall continue to perform the Work, including any Work required by pending Change Orders, and Construction Change Directives and Owner shall continue to make payments of undisputed sums in accordance with the Contract Documents, pending final resolution of such dispute.

§ 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive is a written order prepared by the A/E Professional and/or Owner's Representative and signed by the Owner and A/E Professional and/or Owner's Representative, directing a change in

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the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

.1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
.2 Unit prices stated in the Contract Documents or subsequently agreed upon;
.3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
.4 As provided in Section 7.3.4.

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Owner's Representative shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Owner's Representative may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

.1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Owner's Representative;
.2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
.3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
.4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
.5 Costs of supervision and field office personnel directly attributable to the change.

§ 7.3.5 If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

§ 7.3.6 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Owner's Representative of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.7 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Owner's Representative. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Owner's Representative will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Owner's Representative determines, in the Owner's Representative's professional judgment, to be reasonably justified. The Owner's Representative's interim

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determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Owner's Representative concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Owner's Representative will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.4 Minor Changes in Work

The A/E Professional and/or Owner's Representative may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The A/E Professional's and/or Owner's Representative's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the A/E Professional and/or Owner's Representative and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, any adjustment to the Contract Sum or Contract Time will be addressed on the same basis as a Change Order or via CPEAM, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

ARTICLE 8 TIME

§ 8.1 Definitions

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the A/E Professional and/or Owner's Representative in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.2 Progress and Completion

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries impacting the Project, unavoidable casualties, or adverse weather conditions documented in accordance with Section 8.3.1.6 and Section 15.1.6.2, or other causes beyond the Contractor's control including, but not limited to, supply chain disruptions resulting from health crisis regardless of whether epidemic, pandemic or isolated to areas from which materials are supplied; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Owner's Representative determines, justify delay, then the Contract Time shall be extended for such reasonable time, and will include associated compensation, if applicable, in accordance with this Section 8.3 and Section 15.1.6.

§ 8.3.1.1 Non-Excusable Delay: Any delay which extends the completion of the Work or portion or the Work beyond the Contract Time and which is caused by the act, fault, or omission of the Contractor or any Subcontractor, materialman, supplier or vendor to the Contractor. Delays in obtaining permits caused by the Contractor's actions or lack of actions are Non-Excusable Delays. A Non-Excusable Delay shall not be cause for granting a Contract Time extension and shall subject the Contractor to Liquidated Damages.

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§ 8.3.1.2 Excusable Delay: An Excusable Delay may be compensable or non-compensable. The Contractor shall be entitled to additional General Conditions and General Requirements per day of delay, based on the estimated amounts of applicable costs included in the GMP Amendment for Compensable Excusable delay. When the Work is extended beyond the Contract Time due to an Excusable Delay, a Change Order or a CPEAM must authorize an extension of the Contract Time. When the Excusable Delay is caused by authorized changed Work, the cost of the changed Work and the Excusable delay shall be included in the same Change Order or CPEAM.

§ 8.3.1.4 Compensable Excusable Delay

§ 8.3.1.4.1 The Delay is caused by circumstances beyond the control of the Contractor or its Subcontractors, materialmen, suppliers or vendors, and

§ 8.3.1.4.2 Caused solely by fraud, bad faith or active interference, not merely negligence, on the part of the Owner, its consultants or its agents, and caused solely by the acts and omissions of the Owner's Separate Contractors.

§ 8.3.1.4.3 The Delay is not concurrent with a Non-Compensable Delay.

§ 8.3.1.5 Non-Compensable Excusable Delay:

§ 8.3.1.5.1 The Contractor shall be entitled only to a time extension and no further compensation for Non-Compensable Excusable Delay.

§ 8.3.1.5.2 Non-Compensable Excusable Delay may be caused by circumstances beyond the control of the Contractor, its Subcontractors, materialmen, suppliers and vendors, and is also caused by circumstances beyond the control of the owner, Owner's Representative or A/E Professional, such as delay(s) caused by the permitting agencies, to the extent that such delays were not caused by the Contractor, or

§ 8.3.1.5.3 Non-Compensable Excusable Delay may be caused by jointly or concurrently (and in such case, any equitable adjustment to Contract Time shall be made based on the percentage of such concurrency attributed to each party) by the Contractor or its Subcontractors, materialmen, suppliers or vendors and by the Owner, Owner's Representative, or A/E Professional, or

§ 8.3.1.5.4 Non-Compensable Excusable Delay may be caused by performance of unit price Work that extends the Contract Time.

§ 8.3.1.6 Weather may be grounds for Non-Compensable Excusable Delay when rains or other inclement weather conditions or weather-related adverse soil conditions result in Contractor being unable to work the normal workday on Critical Path activities identified on the accepted updated progress schedule.

§ 8.3.1.6.1 During such periods of time as are designated by the United States Weather Bureau as being a tropical storm watch or warning or a hurricane watch or warning, the Contractor, at no cost to the Owner, shall take all precautions necessary to secure the Project site in response to all threatened storm events, regardless of whether the Owner has given notice of same.

§ 8.3.1.6.2 Compliance with any specific tropical storm or hurricane watch or warning precautions will not constitute additional Work.

§ 8.3.1.8 Nothing in this Contract shall be construed as waiving Owner's right to Liquidated Damages for delays due to failure of Surety, delays as a result of the Contractor's failure to carry out the instructions of the Owner, or for any other Delays not specifically deemed to be Excusable Delay.

§ 8.3.1.9 Reconciliation of Contract Time. Concurrent with each request of an extension of Contract Time for Excusable Delay, Contractor shall provide to the Owner and Owner's Representative, documentation supporting such request for an extension of Contract Time, including a Time Impact Analysis ("TIA") addressing the effects of such Excusable Delay on the Project's critical path. Upon the Project's Substantial Completion, the Owner and Owner's Representative will prepare a reconciliation of time impacts to the Project, which will compare any Owner-approved extensions of Contract Time for Excusable Delay against the Contract Time. If this reconciliation determines that Contractor's approved extensions of Contract Time for Excusable Delay exceeded available schedule float (the "Net

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Impact Days"), the Contractor shall be entitled to additional General Conditions and General Requirements per Net Impact Day, based on the estimated amounts of applicable costs included the GMP Amendment.

§ 8.3.2 Adjustments in the Contract Time will be permitted for a delay only to the extent such delay (1) is not caused, in whole, by the Contractor, or its Subcontractors and material suppliers; (2) could not be limited or avoided by the Contractor's timely notice to the Owner of the delay; (3) is of a duration not less than one (1) Business day; (4) impacts the critical path of the Project and (5) was mitigated by the Contractor to the maximum extent practicable without additional cost to the Contractor. Contractor shall use best efforts to submit in writing to Owner all requests for extensions of time other than those associated with changes in the Work, within fourteen (14) calendar days and in no event later than twenty-one (21) calendar days of the event giving rise to the delay. Failure to so request an extension will constitute a waiver of any right for an extension of time.

§ 8.3.3 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.4 In entering into the Contract, the Contractor represents and warrants that it has considered all impacts and potential impacts associated with the following: (1) COVID-19 and any other worldwide pandemics known at the time of execution of the Agreement ("Pandemics") and (2) the current military conflicts involving Russia and the Ukraine and Israel and Hamas ("Military Conflicts"). Contractor further represents and warrants that in entering into this Contract, it has accounted for any and all labor or material shortages, delivery lead time, or price increases that may be caused by local and or national conditions from the Pandemics and the Military Conflicts. Contractor also represents and warrants that in determining time requirements for procurement, installation, and construction completion, Contractor has taken into account the impacts of the Pandemics and the Military Conflicts, and has included all of those factors in the Construction Schedule and Contract Sum.

§ 8.3.4.1 Contractor will not seek any price increases or time extensions relating to or arising from any impacts of the Pandemics or the Military Conflicts.

§ 8.3.4.2 The Owner shall not be required to make any adjustment in the Contract Sum or grant an extension to the Contract Time in connection with any failure by the Contractor to comply with the requirements of this Section 8.3.4.

§ 8.4 Owner's Delay and Entitlement to Liquidated Damages

§ 8.4.1 The Contractor acknowledges that the Contract Time for the Substantial Completion of the Work requires that the Substantial Completion of the entire Work occur on or before specified date(s) as provided in the Agreement, subject to any extensions of the Contract Time. The Contractor acknowledges and agrees that the Owner will suffer financial loss in the event of delay and Owner shall be entitled to liquidated damages as provided in the Contract Documents. Liquidated damages are set forth in the Agreement.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

§ 9.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 9.2 Schedule of Values

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Owner's Representative before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Owner's Representative. This schedule, unless objected to by the Owner's Representative, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Owner's Representative and supported by such data to substantiate its accuracy as the Owner's Representative may require, and unless objected to by the Owner's Representative, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

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§ 9.3 Applications for Payment

§ 9.3.1 At least twenty (20) days before the date established for each progress payment, the Contractor shall submit to the Owner's Representative an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Owner's Representative require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents. Applications for Payment may be submitted via electronic mail.

§ 9.3.1.1 Along with the Contractor's Application for Payment, Contractor shall submit to Owner and Owner's Representative the following;

.1 a sworn and certified progress payment affidavit which recites that all laborers, material suppliers and subcontractors dealing with the Contractor have been paid in full up through the last period for which the Owner has paid the Contractor;

.2 partial releases of lien from Contractor, material suppliers and subcontractors and any lienors serving a Notice to Owner as required by this section 9.3, and evidence of proof of payment of any indebtedness incurred with respect to the Work of Contractor as may be required by Owner;

.3 evidence that all Work has been fully performed as required pursuant to the Contract Documents up to the time of the request for payment, and the Work has been inspected and accepted by the Owner's Representative and any governmental authorities required to inspect the Work, and such other evidence that the Owner may reasonably require;

.4 an updated construction schedule;

.5 updated red-lined as-built drawings;

.6 narrative progress report;

.7 as applicable, a consent of the surety as to release of final payment or release of retainage; and

.8 Any other documents or information required elsewhere in the Contract Documents as a condition precedent to payment.

§ 9.3.1.2 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Owner's Representative, but not yet included in Change Orders.

§ 9.3.1.3 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.

§ 9.4 Certificates for Payment

§ 9.4.1 The Owner's Representative will, within seven days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Owner's Representative determines is properly due, and notify the Contractor and Owner of the Owner's Representative's reasons for

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withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Owner's Representative's reason for withholding certification in whole as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Owner's Representative to the Owner, based on the Owner's Representative's evaluation of the Work and the data in the Application for Payment, that, to the best of the Owner's Representative's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Owner's Representative. However, the issuance of a Certificate for Payment will not be a representation that the Owner's Representative has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Owner's Representative or Owner may withhold or reject a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Owner's or Owner's Representative's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Owner's Representative is unable to certify payment in the amount of the Application, the Owner's Representative will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Owner's Representative cannot agree on a revised amount, the Owner's Representative will promptly issue a Certificate for Payment for the amount for which the Owner's Representative is able to make such representations to the Owner. The Owner's Representative may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Owner's Representative's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- .7 failure to carry out the Work in accordance with the Contract Documents;
- .8 failure to provide releases of lien for each Application for Payment in accordance with the Contract Documents; or
- .9 failure of the Work to progress satisfactorily or according to schedule; or
- .10 any other failure to perform a material obligation contained in the Contract Documents.

§ 9.5.2 When either party disputes the Owner's Representative's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15.

§ 9.5.3 When the reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.6 Progress Payments

§ 9.6.1 After the Owner's Representative has issued a Certificate for Payment, the Owner shall make payment in the agreed to means and within the time provided in the Contract Documents and shall so notify the Owner's Representative.

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the BE

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Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Owner's Representative will not furnish to a Subcontractor information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Owner's Representative and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven (7) days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid, but will include Contractor in any such communications with the Subcontractors and Suppliers. Neither the Owner nor Owner's Representative shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

§ 9.6.5 The Contractor's payments to suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner.

§ 9.6.8 Owner may, in its discretion, make all or any portion of any progress payment by check payable jointly to the order of Contractor and any lienor giving timely notice, and deduct said sum from the balance then due Contractor. However, such payment, if made, shall not create any third party beneficiary or other rights in such lienor. In making such payments to lienors/subcontractors, the Owner shall require such lienor to execute the waiver of lien form in accordance with §713.06, Fla. Stat.

§ 9.6.9 Payments to Subcontractors by the Owner.

§ 9.6.9.1 If the Owner fails to approve an application for payment for a cause which is the fault of the Contractor and not the fault of a particular subcontractor, or if the Contractor fails to make a payment which is properly due to a particular subcontractor, the Owner may after ten (10) calendar days' written notice to Contractor, pay such subcontractor and Contractor jointly, less the amount to be retained under his subcontract.

§ 9.6.9.2 The Owner shall have no obligation to pay, or to see to the payment of, any monies to any subcontractor. Nothing contained in herein shall be deemed to create any contractual relationship between the Owner and any subcontractor or to create any rights in any subcontractor against the Owner.

§ 9.6.10 No payments made under this Contract shall be evidence of performance of this Contract, either wholly or in part, and no payment including final payment shall be construed to be an acceptance of defective Work or improper materials, nor shall use of the Work by the Owner constitute acceptance of the Work hereunder or any part thereof or a waiver of any of the Owner's claims.

§ 9.6.11 If the Owner is entitled to reimbursement or payment from the Contractor or Surety under or pursuant to the Contract Documents, such payment shall be made promptly upon written demand by the Owner. Notwithstanding anything contained in the Contract Documents to the contrary, if the Contractor or Surety fail to promptly make any undisputed payment due the Owner after such written notice, the Owner shall have an absolute right to offset such amount against the Contract Sum and may, in the Owner's reasonable discretion, elect either to: (1) deduct an amount equal to that which the Owner is entitled from any payment then or thereafter due the Contractor from the Owner; or (2) issue a written notice to the Contractor reducing the Contract Sum by an amount equal to that which the Owner is entitled. Nothing contained herein shall be deemed an admission of liability by Contractor nor limit Contractor's right to contest same. Nothing contained in this Section requires consent of Surety or notice to surety of Owner's intent to take such action.

§ 9.6.12 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and BE

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litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

§ 9.7 Failure of Payment

If the Owner's Representative does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor all undisputed amounts within thirty (30)days after the date established in the Contract Documents, the amount certified by the Owner's Representative or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' notice to the Owner and Owner's Representative, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work, or Phase (as described in AIA, Section 1.1.4.3). or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use and obtain all permits, licenses, and certificates required for such use. Specifically, and in addition to the foregoing, in order to achieve Substantial Completion for the Work, or Phase Contractor must achieve the following additional, minimum requirements:

1. Site cleanup and restoration of all exterior elements including roof surfaces, ledges, gutters, windows, exterior facades (including without limitation removal of all excess materials, debris, supplies, equipment, temporary structures, ladders, scaffolding, staging and/or trailers) has been completed;

2. All parking areas, all landscaping, all exterior building finishes, all interior building finishes, all interior spaces, all structural, mechanical, and technical systems required by the Contract Documents, all fire and life safety systems, are completed and ready for use or occupancy;

3. The Work is ready for occupancy, completed in accordance with the Drawings and Specifications and the Contract Documents including, but not limited to: (1) low voltage system, if any; (2) MEP trim out, if any; (3) security systems, if any; (4) finish painting, if any; (5) designated flooring, if any; (6) millwork, if any; and (7) cabinets, if any; all as applicable, are complete.

4. The Work is ready for occupancy, completed in accordance with the Plans and Specifications and the Contract Documents and, to the extent it is within the Contractor's scope of Work, all persons or entities having jurisdiction over the Project have issued the appropriate permits, and authorizations for the construction and use of the Work and the Work has received a temporary or final Certificate of Occupancy; and

5. Contractor has complied with the turnover obligations set forth in **§ 9.9** (including subparts) below.

§ 9.8.2 When the Contractor considers that the Work, Phase, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the A/E Professional and Owner's Representative a comprehensive list of items to be completed or corrected prior to Final Completion of each Phase, or portion thereof. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Owner A/E Professional and/or Owner's Representative will perform inspections to determine whether the Phase or designated portion thereof is substantially complete. Following this inspection, the A/E Professional and Owner's Representative will prepare a Punch List within fourteen (14) calendar days. The Owner shall deliver the Punch List to Contractor within five (5) calendar days of its development. If the Punch List is not provided to the Contractor by the agreed date for delivery of the Punch List, the Contract Time for

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completion shall be extended by the number of days that the Owner exceeded the delivery date, and the Contractor shall be reimbursed for any related cost impacts.

§ 9.8.4 When the Work, Phase, or designated portion thereof is determined to be substantially complete, the A/E Professional and/or Owner's Representative will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion date for each Phase, or portion thereof, and will include Contractor's list of items to be completed or corrected, as well as the Punch List generated by the Owner, A/E Professional, and Owner's Representative. The Punch List of each Phase, or designated portion of the Project, shall include the estimated cost to complete each such item, which is required to render complete, satisfactory, and acceptable the Work of the Contractor. The Certificate of Substantial Completion shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance. All items identified in Contractor's list to complete, and including A/E Professional's and Owner's Representative's Punch List shall be completed within sixty (60) days following the Substantial Completion date established for the Community Center and forty-five (45) days following the substantial completion date for all other Phases. The Final Completion date of each Phase, or designated portion thereof, shall be sixty (60) days following the Substantial Completion date established for the Community Center and forty-five (45) days following the Substantial Completion date for all other Phases. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of each Phase or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the Phase or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.9 Partial Occupancy or Use or Turnover

§ 9.9.1 The Contractor shall be responsible for operating and maintaining the Work and all systems and equipment that are part of the Work until Substantial Completion of a Phase, or designated portion thereof, as defined in AIA, Section1.1.4.3, and AIA A201 Modified General Conditions above or until a mutually agreed upon earlier Turnover as set forth herein.

§ 9.9.2 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use or turnover is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor 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 correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a Punch list to the A/E Professional and Owner's Representative as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the A/E Professional and/or Owner's Representative.

§ 9.9.2 Prior to such partial occupancy or use or turnover, the Owner, Contractor, and A/E Professional and Owner's Representative shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use or turnover of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.9.4 Following Substantial Completion of each Phase, or designated portion thereof, and prior to the time of Final Completion of each phase, the following minimum requirements must be met by Contractor and submitted to Owner, as applicable:

1. Contractor's installers and operation and regular maintenance personnel have met with Owner's representative and the property manager(s) for the Project or other individuals as may be designated by Owner, at the Project site, to provide complete instructions and training needed for proper start-up, operation, shut-down and maintenance of that part of Work. Instructions

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by manufacturer's representatives are required where installers are not experts in operating/maintenance procedures, or as specified in the Construction Documents. For operational equipment, installers shall demonstrate startup, shut-down, emergency operations, noise and vibration adjustments, safety, economy/efficiency adjustments, and other applicable operations, and shall review maintenance and operating instructions which are required to be performed in order to maintain in force applicable warranties, guaranties and bonds;

2. Contractor has provided Owner with Three (3) heavy duty, bound, hard-cover books and one (1) electronic copy of same, properly identified on both the front and the spine of each binder and indexed, in suitable sets of manageable size, containing the following information related to all equipment and systems on the Project:

    1. Training, maintenance and operating manual information;
    2. emergency instructions;
    3. spare part listings;
    4. wiring diagrams;
    5. recommended "turn around" cycles;
    6. inspections procedures;
    7. shop drawings, product data, and any other applicable information;
    8. detailed information and records for maintenance performed on all equipment and systems on the Project, operated and maintained by Contractor prior to Substantial Completion

3. Contractor has provided Owner with Three (3) heavy duty, bound, hard-cover books and one (1) electronic copy of same, properly identified on both the front and the spine of each binder and indexed, in suitable sets of manageable size, containing the following information:

    1. All Subcontractor warranties fully executed in the form approved by the Owner;
    2. All Extended Warranties required by the Contract Documents;
    3. The Contractor's warranty; and
    4. A list of all Subcontractors, Sub-subcontractors and suppliers who performed Work on the Project or who furnished equipment or materials for use in the Project, such list to include the name, address, email address, and telephone number of the responsible person at all such entities.

4. Contractor has provided Owner all Red Line/ As-built drawings in formats as required by the Contract Documents, and/or Authorities Having Jurisdiction.

§ 9.9.5 The delivery, endorsement or assignment of such warranties shall not release the Contractor from obligations pursuant to the Contract Documents.

§ 9.10 Final Completion and Final Payment
§ 9.10.1 Statutory Requirements for Final Payment:
§ 9.10.1.1 As described in Sections 9.8.3 and 9.8.4, upon receipt of written notice from Contractor that the Phase or designated portion thereof, is ready for inspection and acceptance, the Owner, A/E Professional and Owner's Representative, will promptly make the inspection and shall prepare a Punch List

§ 9.10.1.4 All items in the Punch List shall be completed by the Contractor within sixty (60) calendar days after Contractor's receipt of the Certificate of Substantial Completion for the Community Center phase of the Project and forty-five (45) days after every other phase of the Project.

§ 9.10.1.5 Notwithstanding anything to the contrary contained in any Contract Documents or any attachment thereto, the Owner may withhold from payments to Contractor a sum equal to one hundred and fifty percent (150%) of the cost of the items on Punch Lists developed for each Phase of Work (the "Punch List Balance").

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§ 9.10.1.6 Within twenty (20) business days after the Punch List for the last Phase of work is created, the Owner shall pay the Contractor any remaining contract balance, including all retainage previously withheld, excluding an amount equal to the Punch List Balance as set forth in Section 9.10.1.3.

§ 9.10.1.7 The failure to include any corrective work or pending items not yet completed on the Punch List does not alter the responsibility of the Contractor to complete all the construction services purchased pursuant to the Agreement. All items that require correction under the Contract Documents, which are identified after the preparation and delivery of the Punch List remain the obligation of the Contractor as defined by the Contract Documents.

§ 9.10.1.8 Upon Contractor's completion of the Punch Lists developed for all Phases of Work, Contractor may submit to the Owner a final Application for Payment requesting the Punch List Balance set forth in Section 9.10.1.5.

§ 9.10.1.9 If Owner finds the Work acceptable, the requisite documents have been submitted and the requirements of the Contract Documents fully satisfied, and all conditions of the permits and regulatory agencies have been met, a Final Certificate of Payment shall be issued, stating that the requirements of the Contract Documents have been performed and the Work is ready for acceptance under the terms and conditions thereof.

§ 9.10.1.10 If a good faith dispute exists as to whether one or more items identified on the Punch List have been completed in accordance with the Contract Documents, Owner may continue to withhold up to 150% of the total cost to complete such item.

§ 9.10.1.11 Owner is not required to pay or release any amounts to Contractor that are the subject of a good faith dispute made in writing pursuant to the Agreement.

§ 9.10.1.12 Retainage. Five percent (5%) of all monies earned by Contractor shall be retained by Owner until twenty (20) business days after creation of the Punch List for the last Phase of Work as set forth this section. Within twenty (20) business days after the Punch List for the last Phase of Work is created, the Owner shall pay the Contractor any remaining contract balance, including all retainage previously withheld, with the exception of an amount equal to 150% of the estimated cost to complete the items identified on Punch Lists developed for all Phases of Work,, as set forth herein.

§ 9.10.1.13 This Agreement is intended to comply with the requirements of Sections 218.735 and 255.073-079, Florida Statutes, as applicable. If this Article or Agreement contains any provision found to be unlawful under Sections 218.735 and 255.073-079, Florida Statutes, the same shall be deemed to be of no effect and shall be deemed stricken from this Agreement without affecting the binding force of this Agreement as it shall remain after omitting such provision.

§ 9.10.2 Final payment, including any remaining retention shall not become due until the Contractor satisfies the requirements of the Contract Documents. As used in the Contract Documents, "Final Completion" shall mean such time after Substantial Completion of each Phase of Work, as defined in AIA, A133 Section 1.1.4.3 and the following express conditions precedent to Final Payment have been met:

.1 the A/E Professional and/or Owner's Representative has issued a Certificate of Final Completion for each Phase of Work;

.2 all "punch list" items have been fully completed to the reasonable satisfaction of Owner and A/E Professional and/or Owner's Representative, unless the failure of the same to issue is not due to the failure of Contractor to complete its scope of Work;

.3 the final certificate of occupancy and all final governmental and utility authority permits have been issued, unless the final certificate of occupancy is delayed for reasons that are beyond the control of the Contractor and those for whom the Contractor is responsible;

.4 Contractor has fully cleaned and restored the site with respect to all the punch list work; and

.5 all temporary utilities are disconnected;

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§ 9.10.3 In addition to the above, Contractor shall have performed and or submitted (as applicable) to the A/E Professional and/or Owner's Representative and Owner the following:

.1 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, or shall be paid out of Contractor's final payment;

.2 consent of surety, if any, to final payment;

.3 documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties;

.4 all previously undelivered manufacturer and Subcontractor guarantees, warranties and manuals and documents;

.5 final and or conditional releases of lien, waivers of claim, satisfactions of liens or claims, and such other affidavits as may be reasonably required by the Owner to assure a lien-free and claim-free completion of the Work; Where Contractor is in a dispute with a Subcontractor and or supplier, consent of surety to Final Payment is acceptable.

.6 To the extent A/E Professional in missing any shop drawings and or submittals, Contractor will provide any such items requested in writing;

.7 evidence that all temporary utilities have been disconnected;

.8 the Contractor has fully cleaned and restored the site, including removal of all rubbish and construction debris;

.9 all final governmental permits for which Contract is responsible under the Contract Documents have been issued and all permits have been closed out,

.10 Contractor has complied with all partial occupancy or Turnover obligations set forth in the AIA A201 Modified General Conditions above; and

.11 Contractor has complied with all other requirements of the Contract Documents.

§ 9.10.4 The Contractor's obligation to complete all Work in accordance with the Contract Documents shall not be deemed waived, excused, or otherwise satisfied by any failure of any person or entity to include, discover, or identify any incomplete or defective Work in any punch list, completion list, or inspection report, including without limitation the Substantial Completion Punch List, or any further punch lists.

§ 9.10.5 Final payment may be withheld on account of (1) defective Work not remedied, (2) claims or liens filed, (3) failure of the Contractor to make payments properly to subcontractors or for labor, materials, or equipment, (4) failure to provide waivers of lien for all lienors giving notices, (5) damage to the Owner's property caused by Contractor, its subcontractors or anyone working for Contractor, in which case a reasonable estimated amount of such damages shall be withheld from Contractor's payment until such damages are satisfactorily corrected, (6) failure to carry out the Work in accordance with the Contract Documents.

§ 9.10.6 If, after Substantial Completion of each Phase of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the A/E Professional and/or Owner's Representative so confirms, the Owner shall, upon application by the Contractor and certification by the A/E Professional and/or Owner's Representative, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the A/E Professional and/or Owner's

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Representative prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

§ 9.10.7 The making of final payment shall constitute a waiver of Claims by the Owner, except those arising from

.1 liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;
.2 failure of the Work to comply with the requirements of the Contract Documents;
.3 terms of special warranties required by the Contract Documents;
.4 audits performed by the Owner, if permitted by the Contract Documents, after final payment; or
.5 any pending Claims, previously made in writing and identified as unsettled at the time of final Application for Payment.

§ 9.10.8 Acceptance of final payment by the Contractor, a Subcontractor, or a 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.

§ 9.10.9 Prior to final payment, Contractor shall (1) organize maintenance and operating manual information into suitable sets of manageable size, and bind into individual binders properly identified and indexed; (2) include as applicable emergency instructions, spare part listing, warranties, guarantees or wiring diagrams, recommended "turn around" cycles, inspections procedures, shop drawings, product data, and any other applicable information; (3) Bind each manual of each set in heavy-duty, three-ring vinyl cover binders, and include pocket folders for folded sheet information; and (4) mark identification on both the front and the spine of each binder.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 Safety of Persons and Property

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

.1 employees on the Work and other persons who may be affected thereby;
.2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and
.3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with, and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property or their protection from damage, injury, or loss.

§ 10.2.3 The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to the acts or omissions of the Owner or A/E Professional or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable

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to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 Any damage to adjacent property or improvements shall be promptly repaired by the Contractor (other than damage or loss insured under property insurance required by the Contract Documents), if caused in whole or in part by Contractor or its Subcontractors, any Sub-subcontractor or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. The foregoing is not intended to prevent the Contractor from making claim against any insurance that may provide coverage to the Contractor.

§ 10.2.7 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents and theft. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and A/E Professional and/or Owner's Representative.

§ 10.2.8 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.9 Injury or Damage to Person or Property

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 Hazardous Materials and Substances

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and A/E Professional and/or Owner's Representative of the condition.

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and A/E Professional and/or Owner's Representative the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the A/E Professional and/or Owner's Representative will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or A/E Professional and/or Owner's Representative has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the A/E Professional and/or Owner's Representative have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

§ 10.3.3 The Owner shall indemnify and hold harmless the Contractor, Subcontractors, A/E Professional and/or Owner's Representative, their respective consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner

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shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall reimburse the Contractor for all cost and expense thereby incurred.

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7. Within ten (10) days of executing the Agreement, the Contractor shall furnish a hurricane preparedness plan to secure the site and prevent damage to the Project, which shall be attached as an exhibit to the Agreement as Exhibit D.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Insurance and Bonds

§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the RFQ No. 2024-031 and reflected in Exhibit B and Exhibit B.1 to the Agreement. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located and having an A.M. BEST's rating of "A-X" or better. The Owner, the Owner's Representative, A/E Professional, and A/E Professional's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

§ 11.1.2 The insurance required by Section 11.1 shall be the primary insurance and shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater and shall name Owner, the Owner's Representative, and A/E Professional as additional insureds covering bodily injury, death, property damage and personal injury and Owner as an additional insured for claims to the extent caused by the Contractor's negligent acts or omissions during the Contractor's completed operations. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment except for completed operations coverage, which shall be maintained for two (2) years after the completion of the Project.

§ 11.1.3 The Contractor shall not commence any portion of the Work under the Contract until it has obtained all insurance required under this Article 11 or the Agreement and, except for completed operations insurance or except as otherwise provided herein.

§ 11.1.4 The deductible on all insurance required of Contractor under this Article 11 or the Agreement, except for Builder's Risk insurance shall in all events be the responsibility of Contractor and paid by the Contractor, subject to any applicable limitation under the Contract Documents.

§ 11.1.5 Certificates of insurance and Additional Insured Endorsements shall be delivered to the Owner prior to commencement of the Work, followed by actual copies of the Insurance Policies in accordance with this Article upon receipt by the Contractor, and thereafter upon renewal or replacement of each required policy of insurance, and the certificates of insurance and endorsements are attached hereto as an exhibit to be incorporated in the Contract Documents. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 60 days' prior written notice has been given to the Owner. Contractor shall not commence Work and shall not be entitled to any payments under the Contract Documents until the required policies have been delivered to Owner and reviewed by Owner's insurance professional and found to be in compliance with the Contract Documents.

§ 11.1.6 An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Article 9 and thereafter upon BE

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renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.

§ 11.1.7 Contractor's failure to provide and maintain the insurance required by this Contract shall be grounds for termination, and Contractor shall be liable for all losses, damages, costs and expenses associated with the failure to maintain the required insurance.

§ 11.1.8 Except to the extent covered by and paid by insurance, the Contractor shall be responsible for all loss or damage Contractor or its Subcontractors cause to the Work, including the Contractor's materials delivered to site for incorporation therein and all property issued to the Contractor by the Owner for use or incorporation in the Work.

§ 11.1.9 The Contractor shall secure, pay for, and maintain whatever insurance they may deem necessary for protection against loss of owned or rented capital equipment and tools, including any tools owned by mechanic, any tools, equipment, stagings, towers and forms owned or rented by its subcontractors or agents under this Contract. Failure of the Contractor to secure such insurance or to maintain adequate levels of coverage shall not obligate the Owner or its agents and employees for any losses of owned or rented equipment or for any Work damaged. If the Contractor secures such insurance, the insurance policy shall include a waiver of subrogation as follows: "It is agreed that in no event shall this insurance company have any right of recovery against the Owner." The Contractor agrees to cooperate fully with the insurance company or companies in carrying out the provisions and conditions of all policies applicable to Work to be done, as well as all rules and recommendations of such company or companies in regard to accident prevention, reports and audits. The Contractor further agrees that notice of every accident will not only be reported immediately to the Owner, and also to such insurance company or companies.

§ 11.2 Owner's Insurance and Builder's Risk Insurance

§ 11.2.1 The Owner shall be responsible for maintaining the Owner's usual liability insurance and the Contractor shall provide Builder's Risk coverage.

§ 11.2.2 The Contractor's Builder's Risk insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until Certificate of occupancy is obtained for the Project, at which time coverage will be provided by the Owner's permanent property insurance.

§ 11.2.4 Notice of Cancellation or Expiration of Required Property Insurance. Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Owner : (1) the Owner , upon receipt of notice from the Contractor, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Contractor waives all rights against the Owner to the extent any loss to the Contractor would have been covered by the insurance had it not expired or been cancelled. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide required insurance.

§ 11.3 Waivers of Subrogation for Builder's Risk/Property Insurance

§ 11.3.1 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

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§11.5 Adjustment and Settlement of Insured Loss

§ 11.5.1 To the extent applicable, a loss insured under the property insurance required by the Agreement shall be adjusted by the Contractor and made payable to the Contractor for the insureds, as their interests may appear. The Contractor shall pay the Architect and Owner their just shares of insurance proceeds received by the Contractor, and by appropriate agreements the Architect and Owner shall make payments to their consultants and subcontractors in similar manner.

§ 11.5.2 Prior to settlement of an insured loss, the Contractor shall notify the Owner of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Owner shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Owner does not object, the Contractor shall settle the loss and the Owner shall be bound by the settlement and allocation. Upon receipt, the Contractor shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Owner objects timely to either the terms of the proposed settlement or the allocation of the proceeds, the Contractor may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

§ 11.6 Performance Bond and Payment Bond

§ 11.6.1 If required by the terms of RFQ No.2024-031, Contractor shall furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in RFQ No. 2024-031.

§ 11.6.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

§ 11.6.3 To the extent required by RFQ No. 2024-031, Contractor shall provide the Owner with a 100% performance bond in the amount of the Contract Sum utilizing the form provided with these Contract Documents which shall incorporate the obligation of Surety referenced in this Contract and an unconditional payment bond in accordance with Fla. Stat. § 713.23 in the amount of the Contract Sum covering the faithful performance of the Contract and payment of all obligations thereunder. The bonds shall be executed by a surety that is licensed in Florida and shall remain in effect as required by law and the Contract Documents. The bonds shall be effective as of the Commencement Date as defined in the Contract and shall cover all Work and obligations under the Contract Documents.

§ 11.6.4 The Contractor shall, upon approval of the bonds by the Owner, record the bonds with the County Clerk's Office of the county in which the work is to be performed and promptly furnish the Owner with a certified copy of the recorded bonds.

§ 11.4.5 Both the payment bond and the performance bond under this Article shall display the Surety's bond number, and attach a rider containing the following provisions:

.1 Surety hereby agrees that it consents to and waives notice of any addition, alteration, omission, change, or other modification of the Contract Documents. Any other addition, alteration, change, extension of time, backcharge, or other modification of the Contract Documents, or forbearance on the part of either Owner or Contractor to the other, shall not release Surety of its obligations hereunder, and notice to the surety of such matters is hereby waived.

.2 Surety hereby stipulates and agrees that the obligation of said Surety and its bond shall be in no way impaired or affected by any extension of time, modification, omission, addition, or change in or of the said Contract or the Work to be performed thereunder, or by any payment thereunder before the time required therein, or by any waiver of any provisions thereof, or by any assignment, subletting or other transfer thereof or of any part thereof, or of any Work to be performed or any moneys to become due thereunder. Surety expressly consents to the payment provisions as provided in this Contract. In any event, even if the Surety fails to include such language in its bond, by incorporating this Contract into the Payment and Performance Bonds furnished for this Project, Surety agrees to the provisions of this Article and the provisions of § 11.4.4.

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.3 Surety hereby agrees that if, after the 14 day Notice to the Contractor and Surety, the Contractor and Surety do not cure the default as provided in this Section, then the Surety, in addition to the Contractor, without the need to terminate the Contractor, shall be liable to Owner for any damages the Owner may sustain and be entitled to pursuant to the Contract and the bonds. No further Notices shall be required by Owner.

§ 11.4.6 Should Contractor fail to perform any of its obligations under this Contract, the Owner shall give the Contractor and Surety a fourteen day (14) Notice of Default. After receipt of the 14 day Notice provided herein, the Contractor and Surety shall have the right and opportunity to cure the default(s). If, after the 14 day Notice, the Contractor and Surety do not cure the default as provided in this Section, then the Surety, in addition to the Contractor, without the need to terminate the Contractor, shall be liable to Owner for any damages the Owner may sustain and be entitled to pursuant to this Contract and the bonds. No further Notices shall be required by Owner.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

§ 12.1.1 If a portion of the Work is covered contrary to the A/E Professional's and/or Owner's Representative's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the A/E Professional and/or Owner's Representative, be uncovered for the A/E Professional's and/or Owner's Representative's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the A/E Professional and/or Owner's Representative has not specifically requested to examine prior to its being covered, the A/E Professional and/or Owner's Representative may request to see such Work and it shall be uncovered by the Contractor. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

The Contractor shall promptly correct Work rejected by the A/E Professional and/or Owner's Representative or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the A/E Professional's and/or Owner's Representative's services and expenses made necessary thereby (including attorneys' fees), shall be at the Contractor's expense. The obligations of this Section shall survive completion and final payment or termination of the Agreement.

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under the Agreement, if, within one (1) year after the date of Substantial Completion of each Phase of the Work, or any longer period provided in an Extended Warranty, is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so. The Owner shall give such notice promptly after discovery of the condition. If the Contractor fails to commence correction of nonconforming Work within five (5) business days after receipt of prior reasonable notice by the Owner, the Owner may correct the nonconforming Work in accordance with the Agreement. Contractor is obligated to reimburse Owner for all corrective costs and damages incurred as a result of Contractor's failure to correct nonconforming Work. This obligation shall survive completion and final payment or termination of the Contract.

§ 12.2.2.2 The one-year period for correction of Work or any longer period provided in an Extended Warranty shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The one-year period for correction of Work or any longer period provided in an Extended Warranty shall be extended for corrected Work performed by the Contractor pursuant to this Section 12.2, but such extended period shall not exceed a total of eighteen (18) months.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

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§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or Separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made. If payments due to the Contractor are insufficient to cover the adjustment, Contractor shall pay the difference to the Owner.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

The Agreement and the Contract Documents shall be governed by the law of the State of Florida without regard to conflicts of law provisions.

§ 13.2 Successors and Assigns

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.3 Rights and Remedies

§ 13.3.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

§ 13.3.2 No action or failure to act by the Owner, A/E Professional and/or Owner's Representative, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed upon in writing. The invalidity of any part or provisions of the Contract Documents shall not affect the validity or enforceability of any other part of the Contract Documents. Any waiver by the Owner of any breach of the Contract Documents shall not be held to be a waiver of any other or subsequent breach, and any waiver by the Owner of any right to terminate the Contract shall not be held to be a waiver of any breach of the Contract Documents, but the Owner retains all its rights to recover damages therefor.

§ 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the A/E Professional and/or Owner's Representative timely notice of when and where tests and inspections are to be made so that the A/E Professional and/or Owner's Representative may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 13.4.2 If the A/E Professional and/or Owner's Representative, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the A/E Professional and/or Owner's Representative will, upon written authorization from the Owner, BE

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instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the A/E Professional and/or Owner's Representative of when and where tests and inspections are to be made so that the A/E Professional and/or Owner's Representative may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures, additional testing, and compensation for the services and expenses of the A/E Professional, A/E Professional's consultants, Owner's consultants, including special and threshold inspectors or other engineers, shall be at the Contractor's expense. Owner may deduct such amounts from the balance due the Contractor.

§ 13.4.4 Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the A/E Professional and/or Owner's Representative.

§ 13.4.5 If the A/E Professional and/or Owner's Representative is to observe tests, inspections, or approvals required by the Contract Documents, the A/E Professional and/or Owner's Representative will do so promptly and, where practicable, at the normal place of testing.

§ 13.4.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.5 Interest

Payments due and unpaid under the Contract Documents shall bear interest as provided in the Agreement.

§ 13.6 Time Limits on Claims

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract within the time period specified by applicable law.

§ 13.7 It shall be incumbent upon the A/E Professional to have permit revisions issued and executed by the Building Department in a timely manner so as not to delay the construction process, and the Owner shall bear the cost of such revisions. It shall be the Contractor's responsibility to expeditiously communicate to the A/E Professional any information needed to make permit revisions so as not to delay the construction process.

§ 13.8 The Construction work Saturdays, Sundays or after normal hours, if approved, shall be at no additional cost to the Owner, unless such work hours are needed due to delays which are not the fault of the Contractor or those for whom it is responsible.

§ 13.9 Maintenance

Various materials and finishes of materials exposed to the Florida environment will begin to deteriorate over time. Materials such as rooftop equipment, piping, conduits, etc., as well as finishes for stainless steel, wood, aluminum, etc. are all subject to deterioration. The Contractor is to provide the Owner all maintenance manuals for various products on the project., as defined in the Contract Documents. All maintenance required prior to Substantial Completion or partial occupancy, or Turnover will be performed by Contractor as part of the Work. Contractor shall not be responsible for maintenance following Substantial Completion or partial occupancy or Turnover.

§ 13.10 Maintenance Records

After Substantial Completion (but before Final Payment) or upon occupancy, the Contractor shall meet with and arrange for each installer of parts of Work requiring regular maintenance to meet with Owner's representative and the property manager(s) for the Project or other individuals as may be designated by Owner, at the Project site, to provide basic instructions needed for proper operation and maintenance of that part of Work. Instructions by manufacturer's representatives are required where installers are not experts in operating/maintenance procedures, or as specified in the Construction Documents. For operational equipment, installers shall demonstrate startup, shut-down, emergency operations, noise and vibration adjustments, safety, economy/efficiency adjustments, and other applicable operations, and shall review maintenance and operating instructions which are required to be performed in order to maintain in

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force applicable warranties, guaranties and bonds. Completion of all training is an express condition precedent to Final Payment.

§ 13.11 No Agency Relationship

It is understood that Contractor is not herein appointed the agent of Owner but is and shall remain an independent contractor. Accordingly, all aspects of Contractor's performance of the Agreement, except as specifically provided in the Agreement, shall be under the direction and control of Contractor.

§ 13.12 Third Parties

No provision in the Agreement shall create or give to third parties any claim or right of action against Owner.

§ 13.13 Place of Work

Contractor, under regulations prescribed by Owner, shall use only established roadways, and such temporary roadways as may be approved by Owner. When materials or equipment are transported in performance of the Work, vehicles shall not be loaded beyond the load limit as established by federal, state or local law regulations. When it is necessary to cross curbing and/or sidewalks, protection against damage shall be provided by Contractor, and any damage caused will be immediately repaired by Contractor, at Contractor's cost, and if not repaired by Contractor within five days after notice in writing, Owner may make such repairs and charge the amount of such repairs to the Contractor. All existing sidewalks, curbs and pavements disturbed, broken, removed, or otherwise damaged by Contractor, during the performance of the Work under the Agreement, shall be replaced by the Contractor at its sole expense. Replaced or repaired sidewalks, curbs, and pavements shall be constructed of similar materials and by similar methods to the original construction. Replaced or repaired sidewalks, curbs and payment shall be smoothly blended into the existing Work and shall not present depressions or humps and shall be acceptable to Owner.

§ 13.14 179D Energy-Efficient Commercial Buildings Tax Deduction

Unless otherwise agreed to in writing, the Parties hereby agree the Contractor shall retain all rights to claim any and all tax deductions, refunds, and credits available as a result of the design, engineering, and construction of the proposed building whether available at the time of this Agreement or made available at a future time. Such tax deductions, refunds, and credits may include, but shall not be limited to, the 179D Energy-Efficient Commercial Buildings Tax Deduction, the Research and Development Tax Credit, and similar local, state, or federal incentive programs.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

§ 14.1.1 The Contractor may terminate or suspend the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:

.1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;

.2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped; or

.3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents so long as Contractor provides Owner with written notice to cure such within fourteen (14) days of such notice and Owner fails to cure.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination, and damages.

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§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .3 disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority;
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents;
- .5 admits in writing its inability to pay its debts generally as they become due, or if the Contractor makes a general assignment for the benefit of its creditors, or if a receiver, liquidator, trustee or assignee is appointed on account of its bankruptcy or insolvency;
- .6 submits an Application for Payment, sworn statement, waiver of lien, affidavit or document that is intentionally falsely filed

§ 14.2.2 When any of the reasons described in Section 14.1.1 exist, and upon certification by the Owner's Representative and/or A/E Professional that sufficient cause exists to justify such action, the Owner, may, without prejudice to any other remedy it may have and after giving the Contractor and the Contractor's surety seven (7) day's written notice and an opportunity to cure, terminate the Agreement and take possession of the site and all materials, tools, equipment and machinery thereon owned by the Contractor and may finish the Work by whatever reasonable method the Owner may deem expedient.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.1.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 The Owner's right to terminate the Contract, pursuant to this Section, shall be in addition to and not in limitation of any rights or remedies existing hereunder or pursuant thereto or at law or in equity.

§ 14.3 Suspension by the Owner for Convenience

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work, in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.2.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1 that performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 Termination by the Owner for Convenience

§ 14.4.1 The Owner may, within seven (7) calendar day's prior written notice, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed including Contractor's Fee thereon; costs incurred by reason of the termination, including costs

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attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement. In the event of Termination for Convenience, the Owner shall not be liable to the Contractor for lost profits and Contractor's fee on any Work not performed, home office overhead, or any other type of consequential, special or indirect damages and Contractor hereby waives same. All costs of performance claimed by Contractor must be fully supported by the Contractor's invoices and other documentation acceptable to the Owner, and shall be subject to the Owner's audit. The Contractor shall make its records available at reasonable times and places for the Owner's audit. Payments to the Contractor shall be reduced by any setoffs, damages, claims to which the Owner is entitled under this Contract.

§ 14.4.4 The Owner's right to terminate the Contract shall be in addition to and not in limitation of any rights or remedies existing hereunder or pursuant thereto or at law or in equity.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents. Submittal of a request for Change Order shall not be considered notice of a Claim required by this Article. However, for any Claim pertaining to Contractor's request for Change Order, the time for Contractor to assert such Claim pursuant to Section 15.1.3.1 shall commence to run upon the date that Owner rejects such Change Order request.

§ 15.1.2 Time Limits on Claims

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

§ 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the A/E Professional, if the A/E Professional is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.3.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party. In such event, no decision by the Initial Decision Maker is required.

§ 15.1.4 Continuing Contract Performance

§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

§ 15.1.4.2 The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Owner's Representative will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

§ 15.1.5 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

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§ 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions had an adverse effect on the scheduled construction. These time extensions are justified only when adverse weather conditions or weather-related adverse soil conditions prevent Construction Manager from productivity performing critical path activities, identified on the accepted GMP schedule or updates, resulting in the Construction Manager being unable to work the normal workday on Critical Path activities. Adverse weather delays will be considered Excusable but Non-compensable.

§ 15.1.7 Mutual Waiver of Claims for Consequential Damages

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This waiver includes

.1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and

.2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work.

This waiver is applicable, without limitation, to all consequential damages due to Owner's termination of Contractor in accordance with the Contract Documents. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 Initial Decision

§ 15.2.1 Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Owner's Representative will serve as the Initial Decision Maker. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner. Contractor must continue with its Work when a Claim is pending before the Initial Decision Maker.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished, or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

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§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the A/E Professional, if the A/E Professional is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision is not binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, is subject to binding dispute resolution.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 Either party may, within 30 days from the date of receipt of an initial decision, demand in writing that the other party file for mediation. If such a demand is made and the party receiving the demand fails to file for mediation within 30 days after receipt thereof, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 15.3 Mediation

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 Such mediation shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. The written agreement to mediate shall be filed with the person or entity administering the mediation. If the mediation process is initiated concurrently with the filing of binding dispute resolution, including litigation, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

§ 15.3.3 Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.

§ 15.3.4 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 15.3.5 Litigation

Litigation of Claims, disputes or other matters in question between the Owner and Contractor arising out of or relating to this Contract or breach thereof, which are not resolved by mediation, shall be subject to and decided by litigation exclusively in the state courts of Palm Beach County, Florida. Contractor and Owner consent to the venue of the State Courts of Palm Beach County, Florida and specifically recognize and acknowledge the waiver of any right to remove any action to federal court on the basis of diversity jurisdiction or on any other basis.

§ 15.3.6 In the event of any litigation arising out of or relating to this Agreement or the Contract Documents, the prevailing party shall recover from the non prevailing party, all reasonable attorney's fees, paralegal fees and Court costs incurred by the prevailing party.

§16 Miscellaneous

§ 16.1 Modification

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No change or modification of the Contract shall be valid unless in writing and signed by all parties hereto, excluding Construction Change Directives which do not require the signature of the Contractor. No waiver of any of the provisions of this Contract shall be valid unless in writing and signed by the party against whom it is sought to be enforced.

§ 16.2 Rights and Remedies

The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not in limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. All indemnities, representations, and waivers made by Contractor in favor of Owner shall survive completion of the Work, the making of final payment, and any termination of the Agreement.

§ 16.4 Severability and Waiver

The partial or complete invalidity of any one or more provisions of this Contract or any portion of the Contract Documents shall not affect the validity or continuing force and effect of any other provision. 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 the Contract, 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.

[SIGNATURE PAGE TO FOLLOW]

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IN WITNESS WHEREOF, the Owner and the Construction Manager executed this Agreement as of the day and year first above written.

ATTEST:

Alexis Givings, City Clerk

OWNER/CITY OF DELRAY BEACH

By: _____
Thomas F. Carney, Jr., Mayor

CITY OF DELRAY BEACH SEAL FLORIDA

Approved as to form and legal sufficiency:

Lynn Gelin, City Attorney

Construction Manager

By: _____

Print Name: Brent R Elliott

Title: Vice President

(SEAL)

STATE OF Florida

COUNTY OF Manatee

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 15th day of May, 2025 by Brent R. Elliott (name of person), as Vice President (type of authority) for CORE Construction Services of Florida, LLC (name of party on behalf of whom instrument was executed).

Personally known X OR Produced Identification

Type of Identification Produced _____

ELIZABETH HOUGHTON-BROWN
Notary Public, State Of Florida
Commission No. HH 234294
My Commission Expires: 2/28/2026

Notary Public – State of Florida

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AIA® Document A133™ – 2019

Exhibit B

Insurance and Bonds

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Construction Manager, dated the « » day of « » in the year « »

TABLE OF ARTICLES

B.1 GENERAL

B.2 OWNER'S INSURANCE

B.3 CONSTRUCTION MANAGER'S INSURANCE AND BONDS

B.4 SPECIAL TERMS AND CONDITIONS

ARTICLE B.1 GENERAL

The Owner and Construction Manager shall purchase and maintain insurance, and provide bonds, as set forth in this Exhibit. As used in this Exhibit, the term General Conditions refers to AIA Document A201™–2017, General Conditions of the Contract for Construction.

ARTICLE B.2 OWNER'S INSURANCE

§ B.2.1 General

Prior to commencement of the Work, the Owner shall secure the insurance, and provide evidence of the coverage, required under this Article B.2 and, upon the Construction Manager's request, provide a copy of the property insurance policy or policies required by Section B.2.3. The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements.

§ B.2.2 Liability Insurance

The Owner shall be responsible for purchasing and maintaining the Owner's usual general liability insurance.

§ B.2.3 Required Property Insurance

§ B.2.3.1 The Construction Manager shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, a builder's risk "all-risks" completed value or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The builder's risk 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. The builder's risk insurance shall be maintained until a Certificate of Occupancy is obtained for the Project. This insurance shall include the interests of the Owner, Construction Manager, Subcontractors, and Sub-subcontractors in the Project.

§ B.2.3.1.1 Causes of Loss. The insurance required by this Section B.2.3.1 shall provide coverage for direct physical loss or damage, and shall not exclude the risks of fire, explosion, theft, vandalism, malicious mischief, collapse, earthquake, flood, or windstorm. The insurance shall also provide coverage for ensuing loss or resulting damage from error, omission, or deficiency in construction methods, design, specifications, workmanship, or materials.

ADDITIONS AND DELETIONS: The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document is intended to be used in conjunction with AIA Document A201™–2017, General Conditions of the Contract for Construction. Article 11 of A201™–2017 contains additional insurance provisions.

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§ B.2.3.1.2 Specific Required Coverages. The insurance required by this Section B.2.3.1 shall provide coverage for loss or damage to falsework and other temporary structures, and to building systems from testing and startup. The insurance shall also cover debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and reasonable compensation for the Architect's and Construction Manager's services and expenses required as a result of such insured loss, including claim preparation expenses.

§ B.2.3.1.3 Upon receipt of a Certificate of Occupancy for the Project, the Owner shall replace the insurance policy required under Section B.2.3.1 with property insurance written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 12.2.2 of the General Conditions.

§ B.2.3.1.4 Deductibles and Self-Insured Retentions. If the insurance required by this Section B.2.3 is subject to deductibles or self-insured retentions, the Owner shall be responsible for all loss not covered because of such deductibles or retentions.

§ B.2.3.2 Occupancy or Use Prior to Substantial Completion. The Owner's occupancy or use of any completed or partially completed portion of the Work prior to Substantial Completion shall not commence until the insurance company or companies providing the insurance under Section B.2.3.1 have consented in writing to the continuance of coverage. The Owner and the Construction Manager shall take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of insurance, unless they agree otherwise in writing.

§ B.2.3.3 Insurance for Existing Structures
If the Work involves remodeling an existing structure or constructing an addition to an existing structure, the Owner shall purchase and maintain, until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, "all-risks" property insurance, on a replacement cost basis, protecting the existing structure against direct physical loss or damage from the causes of loss identified in Section B.2.3.1, notwithstanding the undertaking of the Work. The Owner shall be responsible for all co-insurance penalties.

§ B.2.4 Optional Extended Property Insurance.
The Owner shall purchase and maintain the insurance selected and described below:

«N/A »

§ B.2.5 Other Optional Insurance.
The Owner shall purchase and maintain the insurance selected below.

«N/A »

ARTICLE B.3 CONSTRUCTION MANAGER'S INSURANCE AND BONDS
§ B.3.1 General
§ B.3.1.1 Certificates of Insurance. The Construction Manager shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article B.3 at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. An additional certificate evidencing continuation of commercial liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the periods required by Section B.3.2.1 and Section B.3.3.1.

§ B.3.1.2 Deductibles and Self-Insured Retentions. The Construction Manager shall disclose to the Owner any deductible or self- insured retentions applicable to any insurance required to be provided by the Construction Manager.

§ B.3.1.3 Additional Insured Obligations. As per the attached Exhibit B.1 – Construction Manager's Provided Insurance.

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§ B.3.2 Construction Manager's Required Insurance Coverage

§ B.3.2.1 The Construction Manager shall purchase and maintain the types and limits of insurance and Property Insurance as per the attached Exhibit B.1 – Construction Manager's Provided Insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.

§ B.3.2.2 Commercial General Liability

§ B.3.2.2.1 Commercial General Liability insurance for the Project written on an occurrence form with policy limits as per the attached Exhibit B.1 – Construction Manager's Provided Insurance.

« »

§ B.3.4 Performance Bond and Payment Bond

The Construction Manager shall provide surety bonds, from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located, as follows:
(Specify type and penal sum of bonds.)

Type	Penal Sum ($0.00)
Payment Bond	100% of the GMP Amount.
Performance Bond	100% of the GMP Amount.

Payment and Performance Bonds shall be AIA Document A312™, Payment Bond and Performance Bond per the attached forms.

ARTICLE B.4 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Insurance and Bonds Exhibit, if any, are as follows:

«The Contractor shall deliver the required bonds to the Owner within ten (10) days of the fully executed GMP Amendment to this Contract. »

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NON-COLLUSION AFFIDAVIT

STATE OF _____
COUNTY OF _____

Before me, the undersigned authority, personally appeared _____, who, after being by me first duly sworn, deposes and says of his/her personal knowledge that:

a. He/She is _____ of _____, the Proposer that has submitted a Proposal to perform work for the following:

RFQ No.: _____ Title: _____

b. He/She is fully informed respecting the preparation and contents of the attached Request for Qualifications, and of all pertinent circumstances respecting such solicitation.

Such Proposal is genuine and is not a collusive or sham Proposal.

c. Neither the said Proposer nor any of its officers, partners, owners, agents, representatives, employees, or parties in interest, including this affiant, has in any way colluded, conspired, connived, or agreed, directly or indirectly, with any other Proposer, firm, or person to submit a collusive or sham Proposal in connection with the solicitation and contract for which the attached Proposal has been submitted or to refrain from proposing in connection with such solicitation and contract, or has in any manner, directly or indirectly, sought by agreement or collusion or communication or conference with any other Proposer, firm, or person to fix the price or prices in the attached Proposal or any other Proposer, or to fix any overhead, profit, or cost element of the Proposal price or the Proposal price of any other Proposer, or to secure through any collusion, conspiracy, connivance, or unlawful agreement any advantage against the City or any person interested in the proposed contract.

d. The price or prices quoted in the attached Proposal are fair and proper and are not tainted by any collusion, conspiracy, connivance, or unlawful agreement on the part of the Proposer or any of its agents, representatives, owners, employees, or parties in interest, including this affiant.

_____
Signature

Subscribed and sworn to (or affirmed) before me this _____ day of _____ 20__, by _____, who is personally known to me or who has produced _____ as identification.

SEAL

Notary Signature_____
Notary Name: _____
Notary Public (State): _____
My Commission No: _____
Expires on: _____

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TRUTH – IN – NEGOTIATION CERTIFICATE

The undersigned warrants (i) that it has not employed or retained any company or person, other than bona fide employees working solely for the undersigned, to solicit or secure the Agreement and (ii) that it has not paid or agreed to pay any person, company, corporation, individual, or firm other than its bona fide employees working solely for the undersigned or agreed to pay any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of the Agreement.

The undersigned certifies that the wage rates and other factual unit costs used to determine the compensation provided for in the Agreement are accurate, complete, and current as of the date of the Agreement.

Name: _____

Title: _____

Date: _____

Signature: _____

(The remainder of this page is intentionally left blank)

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SCRUTINIZED COMPANY CERTIFICATION

This certification is required pursuant to Florida State Statute Section 287.135.

As of July 1, 2011, a company that, at the time of bidding or submitting a proposal for a new contract or renewal of an existing contract, is on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List is ineligible for, and may not bid on, submit a proposal for, or enter into or renew a contract with an agency or local governmental entity for goods or services of $1 million or more.

Companies must complete and return this form with its response.

Company: _____ FID or EIN No.: _____

Address: _____

City: _____ State: _____ Zip: _____

I, _____, as a representative of _____ certify and affirm that this company is not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List.

_____ _____
Signature Title

_____ _____
Printed Name Date

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CONDITIONS OF PURCHASE

1. **ACCEPTANCE:** This order is for the purchase of goods and/or services (herein referred to as "the Articles" described on the front side herein). The Buyer's offer to the Seller and the Seller's acknowledgment to the Buyer shall constitute Seller's acceptance of such order including all of the terms and conditions herein set out. In the absence of such acknowledgement, commencement of delivery of the Articles and/or services and acceptance of such deliveries by Buyer shall constitute a firm contract on the terms and conditions hereof. This order is subject to the following terms and conditions and no others unless there is a signed agreement between the parties providing otherwise. In the event of a conflict, Buyer's terms and conditions prevail.
2. **WARRANTY-PRODUCT:** The Seller expressly warrants that the Articles shall be merchantable within the meaning of Articles 2-314 (2) of the Uniform Commercial Code as provided by Florida Law and in effect on the date of this order. In addition to all warranties which may be prescribed by law the Articles shall conform to specifications, drawing, and description and shall be free from defects in materials and workmanship. Seller also warrants that the extent the Articles are not manufactured pursuant to detailed designs furnished by Buyer, that they will be free from defects in design. Such warranties, including warranties prescribed by law shall run to Buyer, its successor, assigns, and customers, and to users of the Articles for a period of one (1) year after delivery unless otherwise stated.
3. **INDEMNITY AND INSURANCE:** (a) Seller shall defend, indemnify and hold Buyer, its employees, its customers and users of the purchased Articles, harmless from any property damage, personal injuries, or death arising out of Seller's (or its subcontractor's) work or performance hereunder and shall procure and maintain liability insurance, including contractual liability coverage, with minimum limits of $300,000 combined single limits to be effective during period of warranty with such higher limits as Buyer shall reasonably request of Seller. Seller shall on or before delivery of the Articles purchased hereunder, furnish to Buyer a Certificate of Insurance evidencing the foregoing coverage and limits. (b) Seller shall defend, indemnify and hold Buyer harmless from the assessments by any third party of any liquidated damages or proven actual damages arising out of the failure of Seller to timely deliver the Articles purchased hereunder. (c) Seller shall defend, indemnify and hold harmless Buyer, its officers, directors, agents and employees from and against any and all damages, charges, losses, (including the cost of any Articles lost by libel, condemnation, or voluntary recall) actions, and proceedings brought by the United States of America, or any State government or any agency or instrumentality thereof against Buyer, its officers, directors, agents and/or employees or assigns on such Articles by reason of any claim or findings by and said public authority that any such Articles are not as herein guaranteed.
4. **TERMINATION:** (a) Buyer may terminate this order, in whole or in part without liability to Buyer, if deliveries are not made at the time and in the quantities specified or in the event of a breach or failure of any of the other terms or conditions hereof. (b) Buyer may terminate this order in whole or in part, at any time for its convenience, by noticing to Seller in writing. On receipt by Seller of such notice, Seller shall, and to the extent specified therein, stop work hereunder and stop the placement of subcontractors, terminate work under subcontracts outstanding hereunder, and take any necessary action to protect property in Seller's possession in which Buyer has or may acquire an interest. Any termination claim **must** be submitted to Buyer within sixty (60) days after the effective date of the termination. (c) Any termination by Buyer, whether for default or otherwise, shall be without prejudice to any claims for damages or other rights of Buyer against Seller. (d) Buyer shall have the right to audit all elements of any termination claim and Seller shall make available to Buyer on request all books, records, and papers relating thereto.
5. **COMPLIANCE WITH LAWS:** Seller guarantees to Buyer that the Articles comply with all federal, state, and local laws, regulations, declarations, interpretations, and orders issued thereunder.

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6. **CONTROLLING LAW:** This order and the performance of the parties hereunder shall be controlled and governed by the law of the State of Florida, and the venue shall be in Palm Beach County, Florida.
7. **GENERAL:** All warranties shall be construed as conditions as well as warranties. No waiver of a breach or any provision of this order shall constitute a waiver of any other breach or provision. No modification or change in, or departure from, or waiver of the provisions of this order shall be valid or binding unless approved by Buyer in writing. This order shall constitute the entire agreement between the parties. The Seller expressly agreed that any terms or conditions contained on any form or agreement other than this agreement, unless specifically agreed to otherwise by Seller and Buyer, which are not in full accord with the above stated agreement and its terms, shall be null and void.
8. **ALLOCATION OF RISK:** This risk for any damage to or destruction of the goods shall be borne by the Seller at all times until delivery to the control of the Buyer, which shall be the point at which the Buyer actually receives the goods for use and has accepted such.
9. **COURSE OF PERFORMANCE:** The fact that a party may accept or acquiesce in a course of performance under this agreement does not affect the meaning of this agreement even though the accepting/acquiescing party knows of the nature of the performance and has an opportunity to object to it. (With respect to this course of performance provision. any time an individual attempts to perform under the contract in a manner which is not in accord with the terms of the contract, the City **must** promptly object to the manner of performance.)
10. **PAST PRACTICES:** The previous customs and practices of the parties hereto shall not be deemed a waiver or modification of the terms hereof.
11. **REPAIRS - NON ACCEPTANCE:** If any of the goods are delivered in a defective or non-working condition, efforts of the Buyer to correct such defect shall not constitute an acceptance where commercially reasonable in extent and cost, so that the Buyer may still reject the goods where the attempt to repair has proved unsuccessful.
12. **PLACE OF DELIVERY:** The goods shall be delivered to the City of Delray Beach, Florida, at address as stated on front.
13. **INSPECTION GOODS:** The Buyer shall have the right to inspect all goods before accepting delivery or making payment therefore. If rejected, the goods will be returned at Seller's risk, and all handling and transportation expenses, both ways, will be borne by and assumed by Seller. When material has been rejected by Buyer and returned for replacement it is essential that Seller receive new shipping instructions from Buyer before making the replacement. Inspection and approval for acceptance shall be made by the appropriate user department. The expense of inspection shall be borne by the Buyer except as to goods which are properly rejected as non-conforming. Inspection shall be made within fourteen (14) calendar days of the delivery of goods.
14. **NOTICE OF DEFECTS:** It is expressly agreed that all claims for alleged damages or defective goods, shortage, or other cause shall be deemed waived unless made in writing and sent by Buyer within twenty (20) calendar days after Buyer learns of the alleged defect, damage, shortage, or other cause giving rise to the claim, provided, however, that any defects incapable of discovery shall not be deemed waived by the provisions herein, and, provided further, that this provision shall not be deemed a waiver of any warranties set forth herein or in any modification to this agreement.
15. **FITNESS FOR PARTICULAR PURPOSE:** Buyer makes no warranties except as set forth herein, provided, however, that notwithstanding any other provisions to the contrary herein, Buyer may have sought the expertise of Seller with respect to the fitness for a particular purpose of the subject goods and in purchasing said goods, may have relied upon the representations of Seller as an expert with respect to the use of such goods. In that event, Seller hereby agrees that any document exhibiting a request by Buyer for goods for a particular purpose, a reliance by Buyer upon the expertise of Seller with respect to the use of the goods, or any other similar such request or reliance shall constitute a modification to the terms of this agreement which shall effect a warranty of fitness for a particular purpose.

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16. **CONSEQUENTIAL DAMAGE:** Seller acknowledges that Buyer has informed him that the goods are to be used by Buyer and that failure of Seller to fulfill the terms of this contract may result in consequential damages to Buyer because of the intended use to be made of the goods to the Buyer.
17. **TAX EXEMPTION:** The City of Delray Beach is exempt from Federal Excise Taxes. Where tax applies invoice **must** show gross, price, amount of tax, net price. Exemption certificate will be signed upon request.

Name: _____

Title: _____

Date: _____

Signature: _____

(The remainder of this page is intentionally left blank)

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SAMPLE PERFORMANCE BOND FORMAT

KNOW ALL MEN BY THESE PRESENTS: that -_____

_____,

(Insert full name and address or legal title of awarded Bidder)

as Principal, hereinafter called Contractor, and _____,
(Name of Insurer)
as Surety, hereinafter called Surety, are held and firmly bound unto the City of Delray Beach, Palm Beach County, Florida.

As Obligee, hereinafter called the City, in the amount of _____, ($_____), for the payment whereof, Contractor and Surety bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severably, firmly by the presents.

WHEREAS, Contractor has by written agreement dated _____, 20_, entered into Contract No._____ with the City in accordance with the Solicitation specifications prepared by the City, which Contract is by reference made a part hereof and is hereinafter referred as the Contract, for the performance of the following Work:

_____

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Contractor shall promptly and faithfully perform said Contract, then this obligation shall be null and void; otherwise, it shall remain in full force and effect.

The Surety hereby waives notice of any alteration or extension of time made by the City.

Whenever Contractor shall be and declared by the City to be in default under the Contract, the City having performed City's obligations thereunder, the Surety may promptly remedy the default or shall promptly:

a. Complete the Contract in accordance with its terms and conditions; or

b. Obtain a Bid or Bids for completing the Contract in accordance with its terms and conditions, and upon determination by Surety of the most responsible Bidder, or if the City elects, upon determination by the City and the Surety jointly of the most responsible Bidder, arrange for a Contract between such Bidder and the City, and make available as work progresses (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of

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the contract price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "balance of the contract price", as used in this paragraph, shall mean the total amount payable by the City to Contractor under the contract and any amendments thereto, less the amount properly paid by the City to the Contractor.

Any suit under this bond must be instituted before the expiration of twenty-five (25) months from the date on which final payment under the Contract falls due.

No right of action shall accrue on this bond to or for the use of any person or corporation other than the City named herein or the heirs, executors, administrators, or successors of the City.

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

_____
(Principal) (Seal)

_____ _____
(Witness) (Title)

_____
(Name of Insurer) Surety (Seal)

_____ By: _____
(Witness) (Attorney-in-Fact)

(The remainder of this page is intentionally left blank)

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SAMPLE PAYMENT BOND FORMAT

KNOW ALL MEN BY THESE PRESENTS: that -_____

_____,

(Insert full name and address or legal title of awarded Bidder)

as Principal, hereinafter called Contractor, and _____,

(Name of Insurer)

as Surety, hereinafter called Surety, are held and firmly bound unto the City of Delray Beach, Palm Beach County, Florida.

As Obligee, hereinafter called the City, in the amount of _____,

($_____), for the payment whereof, Contractor and Surety bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by the presents.

WHEREAS, Contractor has by written agreement dated _____, 20_, entered into Contract No._____ with the City in accordance with the Solicitation specifications prepared by the City, which Contract is by reference made a part hereof and is hereinafter referred as the Contract, for the performance of the following Work:

_____

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if said Contractor and all subcontractors to whom any portion of the work provided for in said Contract is sublet and all assignees of said Contract and of such subcontractors shall promptly make payments to all persons supplying him or them with labor, products, services, or supplies for or in the prosecution of the work provided for in such Contract, or in any amendment or extension of or addition to said Contract, and for the payment of reasonable attorney's fees, incurred by the claimants in suits on this bond, then the above obligation shall be void; otherwise, it shall remain in full force and effect.

HOWEVER, this bond is subject to the following conditions and limitations:

a) Any person, firm or corporation that has furnished labor, products, or supplies for or in the prosecution of the work provided for in said Contract shall have a direct right of action against the Contractor and Surety on this bond, which right of action shall be asserted in a proceeding, instituted in the county in which the work provided for in said Contract is to be performed or in any county in which Contractor or Surety does business. Such right of action shall be asserted in proceedings instituted in the name of the claimant or claimants for his or their use and benefit against said Contractor and Surety or either of them (but not later than one year after the final settlement of said Contract) in which action such claim or claims shall be adjudicated and judgment rendered thereon.

b) The Principal and Surety hereby designate and appoint _____ BE

_____as the agent of each of them to

receive and accept service of process or other pleading issued or filed in any proceeding instituted on this bond and hereby consent that such service shall be the same as personal service on the Contractor and/or Surety.

c) In no event shall the Surety be liable for a greater sum than the penalty of this bond, or subject to any suit, action or proceeding thereon that is instituted later than one year after the final settlement of said Contract.

d) This bond is given pursuant to and in accordance with the provisions of Florida Statutes, and all the provisions of the law referring to this character of bond as set forth in any sections or as may be hereinafter enacted, and these are hereby made a part hereof to the same extent as if set out herein in full.

Any suit under this bond must be instituted before the expiration of twenty-five (25) months from the date on which final payment under the Contract falls due.

No right of action shall accrue on this bond to or for the use of any person or corporation other than the City named herein or the heirs, executors, administrators, or successors of the City.

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

_____
(Principal) (Seal)

_____ _____
(Witness) (Title)

_____
(Name of Insurer) Surety (Seal)

_____ By: _____
(Witness) (Attorney-in-Fact)

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SAMPLE LETTER OF CREDIT FORMAT

LETTER OF CREDIT NO.: _____
_____ ISSUANCE DATE:
_____

APPLICANT:
{Name of Corporation} _____
{Address}_____
{City, State, Zip} _____

BENEFICIARY:
CITY OF DELRAY BEACH
100 N.W. 1ST AVENUE
DELRAY BEACH, FLORIDA 33444

FOR U.S.D. $_____
DATE OF EXPIRATION:_____

WE HEREBY ESTABLISH OUR IRREVOCABLE LETTER OF CREDIT NO. _____ IN FAVOR OF THE BENEFICIARY, THE CITY OF DELRAY BEACH, FLORIDA (HEREINAFTER "CDB") FOR THE ACCOUNT OF THE ABOVE-REFERENCED APPLICANT, AVAILABLE BY YOUR DRAFTS DRAWN ON (Insert name of Bank) PAYABLE AT SIGHT FOR ANY SUM OF MONEY NOT TO EXCEED A TOTAL OF (Insert the amount of money), THE AMOUNT REFERENCED ABOVE.

DEMANDS OF THE LETTER OF CREDIT MUST BE ACCOMPANIED BY A STATEMENT FROM THE CITY MANAGER OF THE CITY OF DELRAY BEACH CERTIFYING EITHER: (1) THAT SAID LETTER OF CREDIT IS ABOUT TO EXPIRE AND HAS NOT BEEN RENEWED, OR (2) THAT WORK HAS NOT BEEN COMPLETED IN ACCORDANCE WITH THE PLANS, SPECIFICATIONS, AND AGREEMENTS (INCLUDING ANY AMENDMENTS THEREOF) FOR THE FOLLOWING PROJECT: **{Name of Project}**
_____ (THE 'PROJECT').

IT IS A CONDITION OF THIS LETTER OF CREDIT THAT IT WILL BE AUTOMATICALLY EXTENDED FOR PERIODS OF ONE YEAR FROM EXPIRY DATE HEREOF, OR ANY FUTURE EXPIRATION DATE, WITHOUT ANY AMENDMENT, UNLESS THIRTY (30) DAYS BUT NO MORE THAN SIXTY (60) DAYS PRIOR TO ANY EXPIRATION DATE WE SHALL NOTIFY CDB IN WRITING BY CERTIFIED MAIL RETURN RECEIPT REQUESTED, OR BY COURIER VIA HAND DELIVERY AT THE ABOVE-LISTED ADDRESS, THAT WE ELECT NOT TO CONSIDER THIS LETTER OF CREDIT RENEWED FOR ANY SUCH ADDITIONAL PERIOD.

WE HEREBY AGREE WITH THE DRAWERS, ENDORSERS, AND BONA FIDE HOLDERS OF ALL DRAFTS DRAWN UNDER AND IN COMPLIANCE WITH THE TERMS OF THE CREDIT THAT SUCH DRAFTS WILL BE DULY HONORED UPON PRESENTATION TO **{Name of Bank}** _____ (THE 'BANK'), WHICH IS DULY AUTHORIZED TO CONDUCT BUSINESS IN THE STATE OF FLORIDA IN ACCORDANCE WITH THE TERMS HEREOF. IF A DRAFT, AS DESCRIBED IN THIS LETTER OF CREDIT, IS

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PRESENTED PRIOR TO THE EXPIRATION DATE AND IN CONFORMITY WITH THE TERMS OF THIS LETTER OF CREDIT AND UPON

PRESENTATION IT IS WRONGFULLY DISHONORED BY THE BANK, THE BANK AGREES TO PAY REASONABLE ATTORNEYS FEES AND COSTS, INCLUDING FEES AND COSTS ON APPEAL, INCURRED BY THE CITY OF DELRAY BEACH TO ENFORCE THIS LETTER OF CREDIT SHOULD CDB PREVAIL.

DOCUMENTS MUST BE PRESENTED FOR PAYMENT TO:

{Name of Bank Branch} _____

{Address}_____

{City, State, Zip} _____

ATTN: **{Department}** _____

ALL DRAWINGS UNDER THIS LETTER OF CREDIT MUST BE ACCOMPANIED BY THE ORIGINAL LETTER OF CREDIT INSTRUMENT WHICH WILL BE RETURNED TO THE BENEFICIARY AFTER ENDORSING THE BACK OF SAME WITH THE AMOUNT OF EACH DRAWING BY US.

PARTIAL DRAWINGS ARE PERMITTED.

THE AMOUNT OF ANY DRAFT DRAWN UNDER THIS CREDIT MUST BE ENDORSED ON THE REVERSE OF THE ORIGINAL CREDIT. ALL DRAFTS MUST BE MARKED "DRAWN UNDER **{Name of Bank}**

_____ LETTER OF CREDIT NUMBER _____

DATED

_____, 20__."

THIS CREDIT IS SUBJECT TO THE "UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS, (2007 REVISION), INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 600", AND TO THE PROVISIONS OF FLORIDA LAW. IF A CONFLICT BETWEEN THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS AND FLORIDA LAW SHOULD ARISE, FLORIDA LAW SHALL PREVAIL. IF A CONFLICT BETWEEN THE LAW OF ANOTHER STATE OR COUNTRY AND FLORIDA LAW SHOULD ARISE, FLORIDA LAW SHALL PREVAIL. VENUE FOR ANY DISPUTES RELATING TO THE ENFORCEMENT OF THIS LETTER OF CREDIT SHALL BE PALM BEACH COUNTY, FLORIDA.

{Name of Bank} _____

BY: _____

{Name}_____

{Title}_____

To be provided following receipt of the Notice of Proceed for Construction

END OF SECTION 6

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SECTION 7: SAMPLE AGREEMENT FORMAT

REFER TO EXHIBITS B-1 and B-2

END OF SECTION 7

(The remainder of this page is intentionally left blank)

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SECTION 8: EXHIBITS

8.1 EXHIBITS

A. Exhibit A – SF 330

B. Exhibit B-1 – Sample Agreement (redline version)

C. Exhibit B-2 – Sample Agreement (clean version)

D. Exhibit C – Technical Specifications

E. Exhibit D – Construction Plans

F. Permits for this project are herein incorporated into this solicitation as:

Exhibit E-1 – Florida Department of Health Palm Beach County (Potable Water)
Exhibit E-2 – Lake Worth Drainage District Letter
Exhibit E-3 – Palm Beach County Traffic Performance Standards Letter
Exhibit E-4 – South Florida Water Management District Environmental Resource Permit
Note: A State of Florida Department of Health permit for the pools is currently pending.

The CMAR will be required to obtain additional permits as summarized below:

Agency	Prior to Construction	During Construction
City of Delray Beach Building Division (Building)	X	
City of Delray Beach Building Division (Site Work and Utilities)	X	
Florida Dept of Environmental Protection National Pollution Discharge System (Exhibit H – Application Form)	X	
South Florida Water Management District – Dewatering	X	
Bi-Directional Amplifier System		X
Florida Green Building Coalition Certification		X
Federal Aviation Administration (FAA)		X

G. Exhibit F – Geotechnical Report

H. Exhibit G – Asbestos Report

I. Exhibit H – ADT Commercial Security Scope of Work Pompey Park

J. Exhibit I – City of Delray Beach Hurricane Plan (Public Works)

K. Exhibit J – National Pollution Discharge Elimination System (NPDES) Application Form

END OF SECTION 8

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SECTION 9: GENERAL TERMS AND CONDITIONS

1. *DEFINITIONS*
   a. *Proposal: any offer(s) submitted in response to this Request for Proposal.*
   b. *Proposer: person or firm submitting a response to this Request for Proposal.*
   c. *Solicitation or Request for Proposal: this Solicitation documentation, including any and all addenda.*
   d. *Proposal Submittal forms: describes the goods or services to be purchased and must be completed and submitted with the Proposal.*
   e. *City: shall refer to the City of Delray Beach, Florida.*
   f. *Contract or Agreement: Request for Proposal, all addenda issued thereto, all affidavits, the signed agreement, and all related documents that comprise the totality of the contract or agreement between the City and the Proposer.*
   g. *Contractor: selected Proposer that is awarded a contract to provide the goods or services to the City.*
   h. *Purchasing and Contract Administration Division: Purchasing and Contract Administration Division of the City of Delray Beach, Florida.*
   i. *Responsible Proposer: Proposer that has the capability in all respects to perform in full the contract requirements, as stated in the Request for Qualifications, and the integrity and reliability that will assure good-faith performance.*
   j. *Responsive Proposer: Proposer whose Proposal conforms in all material respects to the terms and conditions included in the Request for Qualifications.*

2. *CONE OF SILENCE*
   Pursuant to Section 2-355 of the Palm Beach County Ordinance No. 2011-039, and the purchasing policies of the City of Delray Beach, all Solicitations, once advertised and until the appropriate authority has approved an award recommendation, are under the "Cone of Silence". This limits and requires documentation of communications between potential Proposers and/or Proposers on City Solicitations, the City's professional staff, and the City Council members.

3. *ADDENDUM*
   The Purchasing and Contract Administration Division may issue an addendum in response to any inquiry received, prior to the due date for Proposals, which changes, adds, or clarifies the terms, provisions, or requirements of the Solicitation. The Proposer should not rely on any representation, statement, or explanation, whether written or verbal, other than those made in the Solicitation document or in the addenda issued. Where there appears to be a conflict between the Solicitation and any addenda, the last addendum issued shall prevail. It is the Proposer's responsibility to ensure receipt of all addenda and any accompanying documentation. The Proposer is required to submit with its Proposal a signed "Acknowledgment of Addenda" form, when any addenda have been issued.

4. *LEGAL REQUIREMENTS*
   This Solicitation is subject to all legal requirements contained in the applicable City Ordinances and Resolutions, as well as all applicable City, State, and Federal Statutes. Where conflict exists between this Solicitation and these legal requirements, the authority shall prevail in the following order: Federal, State, and local.

5. *CHANGE OF PROPOSAL*
   Prior to the scheduled due date for Proposals, a Proposer may change its Proposal by submitting a new Proposal (as indicated on the cover page) with a letter on the firm's letterhead, signed by an authorized agent stating that the new Proposal replaces the original Proposal. The new submittal shall contain the letter and all information as required for submitting the original Proposal. No changes to a Proposal will be accepted after Proposals have been opened.

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6. *WITHDRAWAL OF PROPOSAL*

A Proposal shall be irrevocable unless the Proposal is withdrawn as provided herein. Only a written letter received by the Purchasing and Contract Administration Division prior to the due date for Proposals may withdraw a Proposal. A Proposal may also be withdrawn ninety (90) days after the Proposal has been opened and prior to award, by submitting a letter to the Purchasing and Contracts Director. The withdrawal letter must be on company letterhead and signed by an authorized agent of the Proposer.

7. *CONFLICTS WITHIN THE SOLICITATION*

Where there appears to be a conflict between the General Terms and Conditions, Special Conditions, the Scope of Services, and/or Description of Items, the Proposal Submittal forms, or any addendum issued, the order of precedence shall be: the last addendum issued, the Proposal Submittal forms, the Scope of Services and/or Description of Items, the Special Conditions, and then the General Terms and Conditions.

8. *PROMPT PAYMENT TERMS*

It is the policy of the City of Delray Beach that payment for all purchases by City departments shall be made in a timely manner. The City will pay the selected Proposer upon receipt and acceptance of the goods or services by a duly authorized representative of the City. In accordance with Florida Statutes, Section 218.74, the time at which payment shall be due from the City shall be forty-five (45) days from receipt of a proper invoice. The time at which payment shall be due to small businesses shall be thirty (30) days from receipt of a proper invoice. Proceedings to resolve disputes for payment of obligations shall be concluded by final written decision of the City Manager or designee, not later than sixty (60) days after the date on which the proper invoice was received by the City.

9. *DISCOUNTS (PROMPT PAYMENTS)*

The Proposer may offer cash discounts for prompt payments; however, such discounts will not be considered in determining the selected Proposer during the evaluation period. Proposers are requested to provide prompt payment terms in the space provided on the Proposal submittal forms signature page of the Solicitation.

10. *PREPARATION OF PROPOSALS*

a. *The Proposal submittal forms define requirements of the services to be performed or the items to be purchased and must be completed and submitted with the Proposal. Use of any other forms will result in the rejection of the Proposal. The Proposal submittal forms must be legible. Proposers shall use typewriter, computer, or ink. All changes must be crossed out and initialed in ink. Failure to comply with these requirements may cause the Proposal to be rejected.*

b. *An authorized agent of the Proposer's firm must sign the Proposal submittal forms where indicated.* ***Failure to sign the Signature Page of the Proposal shall render the Proposal non-responsive.***

c. *The Proposer must identify any exceptions it takes to the terms and conditions of the Solicitation and contract. Exceptions will not automatically result in the Proposer being deemed non-responsive; however, such a determination is at the discretion of the City. Proposers are cautioned that they may be considered non-responsive if Proposals are conditioned to modifications, changes, or revisions to the terms and conditions of this Solicitation.*

d. *The Proposer may submit alternate Proposal(s) for the same Solicitation provided that such offer is allowable under the terms and conditions. The alternate Proposal must meet or exceed the minimum requirements and be submitted as a separate Proposal marked "Alternate Proposal".*

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e. *When there is a discrepancy between the unit prices and any extended prices, the unit prices will prevail.*

f. *Late Proposals will not be accepted and will be returned to the sender unopened. It is the Proposer's responsibility to ensure timely delivery by the due date and time, and at the place stated in this Solicitation. No exceptions will be made due to weather, carrier, traffic, illness, or other issues.*

11. *CANCELLATION OF SOLICITATION*
The City of Delray Beach reserves the right to cancel, in whole or in part, any Requests for Proposals when it is in the best interest of the City.

12. *AWARD OF CONTRACT*

a. *This contract may be awarded to the responsive and responsible Proposer meeting all requirements as set forth in the Solicitation. The City reserves the right to reject any and all Proposals, to waive irregularities or technicalities, and to re-advertise for all or any part of this Solicitation as deemed in its best interest. The City shall be the sole judge of its best interest.*

b. *The City reserves the right to reject any and all Proposals if it is determined that prices are excessive, best offers are determined to be unreasonable, or it is otherwise determined to be in the City's best interest to do so.*

c. *The Proposer's prior performance as a prime contractor or subcontractor on previous City contracts shall be taken into account in evaluating the Proposal received for this Solicitation.*

d. *The City will provide a copy of the ranking and scores to all Proposers responding to this Solicitation.*

e. *Award of this Proposal may be predicated on compliance with and submittal of all required documents as stipulated in the Solicitation.*

f. *The City reserves the right to request and evaluate additional information from any Proposer after the due date for Proposals, as the City deems necessary.*

13. *CONTRACT EXTENSION*
The City reserves the right to automatically extend any agreement for a maximum period not to exceed one hundred and eighty (180) calendar days in order to provide City departments with continual service and supplies while a new agreement is being solicited, evaluated, and/or successful.

14. *WARRANTY*
All warranties express and implied shall be made available to the City for goods and services covered by this Solicitation. All goods furnished shall be fully guaranteed by the selected Proposer against factory defects and workmanship. At no expense to the City, the selected Proposer shall correct any and all apparent and latent defects that may occur within the manufacturer's standard warranty.

15. *ESTIMATED QUANTITIES*
Estimated quantities or dollars are for Proposer's guidance only: (a) estimates are based on the City's anticipated needs and/or usage; and (b) the City may use these estimates to determine the selected Proposer. No guarantee is expressed or implied as to quantities or dollars that will be used during the contract period. The City is not obligated to place any order for the given amount subsequent to the award of this contract.

16. *NON-EXCLUSIVITY*
It is the intent of the City to enter into an agreement with the selected Proposer that will satisfy its needs as described herein. However, the City reserves the right as deemed in its best interest to perform, or cause to be performed, the work and services, or any portion thereof, herein

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described in any manner it sees fit, including but not limited to, award of other contracts, use of any contractor, or perform the work with its own employees.

17. *CONTINUATION OF WORK*

Any work that commences prior to and will extend beyond the expiration date of the current contract period shall, unless terminated by mutual written agreement between the City and the selected Proposer, continue until completion at the same prices, terms, and conditions.

18. *PROTEST*

a. *A recommendation for contract award or rejection of award may be protested by a Proposer. The Proposer may file a written protest with the City Clerk's office. The Proposer shall file its written protest with the City Clerk, Monday through Friday, between the hours of 8:00 a.m. and 5:00 p.m., excluding legal holidays. Protests shall contain the name, address, and phone number of the petitioner, name of the petitioner's representative (if any), and the title and Proposal number of the Solicitation. The protest shall specifically describe the subject matter, facts giving rise to the protest, and the action requested from the City.*

b. *The written protest must be received within three business days from the time of the initial posting of the intended award. Notice of Intent to Award shall be posted in Periscope S2G. Failure to file a timely formal written protest within the time period specified shall constitute a waiver by the Proposer of all rights of protest under this procedure (Purchasing Policies and Procedure Manual)* https://www.delraybeachfl.gov/home/showpublisheddocument/12270/638140626086330000..

c. *The letter of protest shall be accompanied by a non- refundable protest application fee in an amount equal to one percent (1%) of the protestor's bid or five thousand dollars ($5,000.00), whichever is less. The protest application fee must be a cashier's check, a certified check, or an attorney's trust account check made payable to the City of Delray protest application fee must be a cashier's check, a certified check, or an attorney's trust account check made payable to the City of Delray protest. Within seven (7) days (excluding Saturdays, Sundays and legal holidays) of receipt of the formal written protest, the Purchasing Director and the City Attorney shall attempt to settle or resolve the dispute, with or without a hearing at the City Attorney's sole discretion. A decision will be rendered in writing and shall: (1) state the reasons for the action taken; and (2) inform the protestor of its right to appeal as provided herein. A copy of the decision of the Purchasing Director and the City Attorney shall be mailed or otherwise furnished immediately to the protestor.*

19. *LAWS AND REGULATIONS*

The selected Proposer shall comply with all laws and regulations applicable to provide the goods or services specified in this Solicitation. The Proposer shall be familiar with all federal, state, and local laws that may affect the goods and/or services offered.

20. *LICENSES, PERMITS AND FEES*

The selected Proposer shall hold all licenses and/or certifications, obtain and pay for all permits and/or inspections, and comply with all laws, ordinances, regulations, and building code requirements applicable to the work required herein. Damages, penalties, and/or fines imposed on the City or a selected Proposer for failure to obtain and maintain required licenses, certifications, permits, and/or inspections shall be borne by the selected Proposer.

21. *SUBCONTRACTING*

Unless otherwise specified in this Solicitation, the selected Proposer shall not subcontract any

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portion of the work without the prior written consent of the City. The ability to subcontract may be further limited by the Special Conditions. Subcontracting without the prior consent of the City shall constitute a material breach of the agreement and may result in termination of the contract for default.

22. *ASSIGNMENT*
The selected Proposer shall not assign, transfer, hypothecate, or otherwise dispose of this contract, including any rights, title, or interest therein, or its power to execute such contract to any person, company, or corporation without the prior written consent of the City. Assignment without the prior consent of the City may result in termination of the contract for default.

23. *SHIPPING TERMS*
Unless otherwise specified in the Solicitation, prices quoted shall be F.O.B. Destination. Freight shall be included in the proposed price.

24. *RESPONSIBILITIES AS EMPLOYER*
The employee(s) of the selected Proposer shall be considered to be at all times its employee(s), and not an employee(s) or agent(s) of the City or any of its departments. The selected Proposer shall provide physically competent employee(s) capable of performing the work as required. The City may require the selected Proposer to remove any employee it deems unacceptable. All employees of the selected Proposer shall wear proper identification.

It is the selected Proposer's responsibility to ensure that all its employees and subcontractors comply with the employment regulations required by the US Department of Homeland Security. The City shall have no responsibility to check or verify the legal immigration status of any employee of the selected Proposer.

25. *INDEMNIFICATION*
The selected Proposer shall indemnify and hold harmless the City and its officers, employees, agents, and instrumentalities from any and all liability, losses, or damages, including attorney's fees and costs of defense, which the City or its officers, employees, agents, or instrumentalities may incur as a result of claims, demands, suits, causes of actions, or proceedings of any kind or nature arising out of, relating to, or resulting from the performance of the agreement by the selected Proposer or its employees, agents, servants, partners, principals, or subcontractors. The selected Proposer shall pay all claims and losses in connection therewith, and shall investigate and defend all claims, suits, or actions of any kind or nature in the name of the City, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may be incurred thereon. The selected Proposer expressly understands and agrees that any insurance protection required by this contract agreement or otherwise provided by the selected Proposer shall in no way limit the responsibility to indemnify, keep and save harmless, and defend the City or its officers, employees, agents, and instrumentalities as herein provided.

26. *COLLUSION*
A Proposer recommended for award as the result of a competitive Solicitation for any City purchase of supplies, materials, and services (including professional services, other than professional architectural, engineering, and other services subject to Sec. 287.055 Florida Stats.), purchase, lease, permit, concession, or management agreement shall, within five (5) business days of the filing of such recommendation, submit an affidavit under the penalty of perjury, on a form provided by the City stating either that the contractor is not related to any of the other parties proposing in the competitive Solicitation or identifying all related parties; and attesting that the Proposal is genuine and not a sham or collusive or made in the interest or on behalf of any person not therein named, and that the Proposer has not, directly or indirectly, induced or solicited any other Proposer to put in a sham Proposal, or any other person, firm, or

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corporation to refrain from proposing, and that the Proposer has not in any manner sought by collusion to secure to the Proposer an advantage over any other Proposer. In the event a recommended Proposer identifies related parties in the competitive Solicitation, its Proposal shall be presumed to be collusive and the recommended Proposer shall be ineligible for award unless that presumption is rebutted to the satisfaction of the City. Any person or entity that fails to submit the required affidavit shall be ineligible for contract award.

27. *MODIFICATION OF CONTRACT*
The contract may be modified by mutual consent, in writing, through the issuance of a modification to the contract, a supplemental agreement, purchase order, or change order, as appropriate.

28. *TERMINATION FOR CONVENIENCE*
The City, at its sole discretion, reserves the right to terminate any contract entered into pursuant to this Request for Qualifications (RFQ) with or without cause immediately upon providing written notice to the selected Proposer. Upon receipt of such notice, the selected Proposer shall not incur any additional costs under the contract. The City shall be liable only for reasonable costs incurred by the selected Proposer prior to the date of the notice of termination. The City shall be the sole judge of "reasonable costs."

29. *TERMINATION FOR DEFAULT*
The City reserves the right to terminate this contract, in part or in whole, or place the vendor on probation in the event the selected Proposer fails to perform in accordance with the terms and conditions stated herein by providing written notice of such failure or default and by specifying a reasonable time period within which the selected Proposer must cure any such failure to perform or default. If the selected Proposer fails to cure the default within the time specified, the City may then terminate the subject contract by providing written notice to the selected Proposer. The City further reserves the right to suspend or debar the selected Proposer in accordance with the appropriate City ordinances, resolutions, and/or policies. The vendor will be notified by letter of the City's intent to terminate. In the event of termination for default, the City may procure the required goods and/or services from any source and use any method deemed in its best interest. All re-procurement costs shall be borne by the incumbent Proposer

30. *FRAUD AND MISREPRESENTATION*
Any individual, corporation, or other entity that attempts to meet its contractual obligations with the City through fraud, misrepresentation, or material misstatement, may be debarred for up to five (5) years. The City, as a further sanction, may terminate or cancel any other contracts with such individual, corporation, or entity. Such individual or entity shall be responsible for all direct or indirect costs associated with termination or cancellation, including attorney's fees.

31. *ACCESS AND AUDIT OF RECORDS*
The City reserves the right to require the selected Proposer to submit to an audit by an auditor of the City's choosing at the selected Proposer's expense. The selected Proposer shall provide access to all of its records, which relate directly or indirectly to this contract, at its place of business during regular business hours. The selected Proposer shall retain all records pertaining to this contract, and upon request, make them available to the City for three (3) years following expiration of the contract. The selected Proposer agrees to provide such assistance as may be necessary to facilitate the review or audit by the City to ensure compliance with applicable accounting and financial standards.

32. *OFFICE OF THE INSPECTOR GENERAL*
Palm Beach County has established the Office of the Inspector General, which is authorized and empowered to review past, present, and proposed County programs, contracts, transactions, accounts and records. The Inspector General (IG) has the power to subpoena witnesses, administer

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oaths, require the production of records, and monitor existing projects and programs. The Inspector General may, on a random basis, perform audits on all City contracts.

33. *PRE-AWARD INSPECTION*
The City may conduct a pre-award inspection of the Proposer's premises or hold a pre-award qualification hearing to determine if the Proposer is capable of performing the requirements of this Solicitation.

34. *PROPRIETARY/CONFIDENTIAL INFORMATION*
Proposers are hereby notified that all information submitted as part of, or in support of, Proposal submittals will be available for public inspection after the opening of Proposals in compliance with Chapter 119 of the Florida Statutes; popularly known as the "Public Record Law." The Proposer shall not submit any information in response to this Solicitation that Proposer considers a trade secret, proprietary, or confidential. The submission of any information to the City in connection with this Solicitation shall be deemed conclusively to be a waiver of any trade secret or other protection that would otherwise be available to the Proposer. In the event that the Proposer submits information to the City in violation of this restriction, either inadvertently or intentionally, and clearly identifies that information in the Proposal as protected or confidential, the City may, in its sole discretion, either (a) communicate with the Proposer in writing in an effort to obtain the Proposer's withdrawal of the confidentiality restriction, or (b) endeavor to redact and return that information to the Proposer as quickly as possible, and if appropriate, evaluate the balance of the Proposal. The redaction or return of information pursuant to this clause may render a Proposal non-responsive.

35. *HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA)*
Any person or entity that performs or assists the City of Delray Beach with a function or activity involving the use or disclosure of "individually identifiable health information (IIHI) and/or Protected Health Information (PHI) shall comply with the Health Insurance Portability and Accountability Act (HIPAA) of 1996. HIPAA mandates for privacy, security, and electronic transfer standards include, but are not limited to:

a. *Use of information only for performing services required by the contract or as required by law;*

b. *Use of appropriate safeguards to prevent non-permitted disclosures;*

c. *Reporting to the City of Delray Beach any non-permitted use or disclosure;*

d. *Assurances that any agents and subcontractors agree to the same restrictions and conditions that apply to the Proposer and reasonable assurances that IIHI/PHI will be held confidential;*

e. *Making Protected Health Information (PHI) available to the customer;*

f. *Making PHI available to the customer for review and amendment, and incorporating any amendments requested by the customer;*

g. *Making PHI available to the City of Delray Beach for an accounting of disclosures; and*

h. *Making internal practices, books, and records related to PHI available to the City of Delray Beach for compliance audits.*

PHI shall maintain its protected status regardless of the form and method of transmission (paper records and/or electronic transfer of data). The selected Proposer must give its customers written notice of its privacy information practices, including specifically, a description of the types of uses and disclosures that would be made with protected health information.

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36. *ADDITIONAL FEES AND SURCHARGES*
Unless provided for in the contract/agreement, the City will not make any additional payments such as fuel surcharges, demurrage fees, or delay-in-delivery charges.

37. *COMPLIANCE WITH FEDERAL STANDARDS*
All items to be purchased under this contract shall be in accordance with all governmental standards, to include, but not be limited to, those issued by the Occupational Safety and Health Administration (OSHA), the National Institute of Occupational Safety Hazards (NIOSH), and the National Fire Protection Association (NFPA).

38. *COMPLIANCE WITH FEDERAL REGULATIONS DUE TO USE OF FEDERAL FUNDING*
If the goods or services to be acquired under this Solicitation are to be purchased, in part or in whole, with Federal funding, it is hereby agreed and understood that Section 60-250.4, Section 60-250.5, and Section 60-741.4 of Title 41 of the United States Code, which addresses Affirmative Action requirements for disabled workers, is incorporated into this Solicitation and resultant contract by reference.

39. *BINDING EFFECT*
All of the terms and provisions of this contract/agreement, whether so expressed or not, shall be binding upon, inure to the benefit of, and be enforceable by the parties and their respective legal representatives, successors, and permitted assigns.

40. *SEVERABILITY*
In the event any term or provision of any contract or agreement entered into pursuant to this Solicitation is found by a court of competent jurisdiction to be invalid, the remaining terms and provisions shall continue to be effective and shall be interpreted and given meaning to the greatest possible extent in the absence of any severed terms or provisions.

41. *GOVERNING LAW AND VENUE*
This contract and all transactions contemplated by this agreement shall be governed by and construed and enforced in accordance with the laws of the State of Florida without regard to any contrary conflicts of law principle. Venue of all proceedings in connection herewith shall lie exclusively in Palm Beach County, Florida, and each party hereby waives whatever its respective rights may have been in the selection of venue.

42. *ATTORNEY'S FEES*
It is hereby understood and agreed that in the event any lawsuit in the judicial system, federal or state, is brought to enforce compliance with this contract or interpret same, or if any administrative proceeding is brought for the same purposes, each party shall pay their own attorney's fees and costs, including appellate fees and costs.

43. *EQUAL OPPORTUNITY AND ANTI-DISCRIMINATION*
The City of Delray Beach complies with all laws prohibiting discrimination on the basis of age, race, gender, religion, creed, political affiliation, sexual orientation, physical or mental disability, color or national origin, and therefore is committed to assuring equal opportunity in the award of contracts and encourages small, local, minority, and female-owned businesses to participate.

During the performance of this contract, the selected Proposer agrees it will not discriminate or permit discrimination in its hiring practices or in its performance of the contract. The selected Proposer shall strictly adhere to the equal employment opportunity requirements and any applicable requirements established by the State of Florida, Palm Beach County, and the federal government.

The selected Proposer further acknowledges and agrees to provide the City with all information and documentation that may be requested by the City from time to time regarding the Solicitation,

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selection, treatment, and payment of subcontractors, suppliers, and Proposers in connection with this contract.

44. *AVAILABILITY OF CONTRACT TO OTHER CITY DEPARTMENTS*
It is agreed and understood that any City department or agency may access this contract and purchase the goods or services successful herein. Each City department will issue a separate purchase order to the selected Proposer for the department's specific purchases.

45. *CRIMINAL HISTORY BACKGROUND CHECKS*
Prior to hiring a contract employee or contracting with a Proposer, the City may conduct a comprehensive criminal background check by accessing any Federal, State, or local law enforcement database available. The contract employee or Proposer will be required to sign an authorization for the City to access criminal background information. The costs for the background checks shall be borne by the City.

46. *LABOR, MATERIALS, AND EQUIPMENT*
Unless specified elsewhere in the Solicitation or resultant contract, all labor, materials, and equipment required for the performance of the requirements of the contract shall be supplied by the selected Proposer.

47. *MINIMUM WAGE REQUIREMENTS*
The selected Proposer shall comply with all minimum wage requirements, such as Living Wage requirements, minimum wages based on Federal Law, minimum wages based on the Davis-Bacon Act, and the provisions of any other employment laws, as may be applicable to this contract.

48. *PACKING SLIP AND DELIVERY TICKET*
A packing slip and/or delivery ticket shall accompany all items delivered to the City. The documents shall include information on the contract number or purchase order, any back-order items, and the number or quantity of items being delivered.

49. *PURCHASE OF OTHER ITEMS*
The City reserves the right to purchase other related goods or services, not listed in the Solicitation, during the contract term. When such requirements are identified, the City may request a price quote from the selected Proposer on the contract. The City, at its sole discretion, will determine if the prices offered are reasonable, and may choose to purchase the goods or services from the selected Proposer, another contract Proposer, or a non-contract Proposer.

50. *PUBLIC RECORDS*
Florida law provides that municipal records shall at all times be available to the public for inspection. Chapter 119, Florida Statutes, the Public Records Law, requires that all material submitted in connection with a Proposal response shall be deemed to be public record subject to public inspection upon award, recommendation for award, or thirty (30) days after Proposal opening, whichever occurs first. Certain exemptions to public disclosure are statutorily provided for in Section 119.07, Florida Statutes. If the Proposer believes any of the information contained in his/her/its Proposal is considered confidential and/or proprietary, inclusive of trade secrets as defined in Section 812.081, Florida Statutes, and is exempt from the Public Records Law, then the Proposer must, in its response, specifically identify the material which is deemed to be exempt and state the legal authority for the exemption. All materials that qualify for exemption from Chapter 119, Florida Statutes or other applicable law must be submitted in a separate envelope, clearly identified as "EXEMPT FROM PUBLIC DISCLOSURE" with the firm's name and the Proposal number clearly marked on the outside. The City will not accept Proposals when the entire Proposal is labeled as exempt from disclosure. The City's determination of whether an exemption applies shall be final, and the Proposer agrees to defend, indemnify, and hold harmless the City and the City's officers, employees, and agents against any loss or damages incurred by any person or entity

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as a result of the City's treatment of records as public records.

The selected Proposer(s) shall keep and maintain public records and fully comply with the requirements set forth at Section 119.0701, Florida Statues, as applicable; failure to do so shall constitute a material breach of any and all agreements awarded pursuant to this Solicitation.

51. *CONFLICTS OF INTEREST*
All Proposers must disclose with their Proposal the name of any officer, director, or agent who is also an employee of the City of Delray Beach. Further, all Proposers must disclose the name of any City employee who has any interest, financial or otherwise, direct or indirect, of five percent (5%) or more in the Proposers' firm or any of its branches. Failure to disclose any such affiliation will result in disqualification of the Proposer from this Solicitation and may be grounds for further disqualification from participating in any future Solicitations with the City.

52. *PUBLIC ENTITY CRIMES*
As provided in Section 287.133(2) (a), Florida Statutes, a person or affiliate who has been placed on the convicted Proposers list following a conviction for a public entity crime may not submit a Proposal on a contract to provide any goods or services to a public entity; may not submit a Proposal on a contract with a public entity for the construction or repair of a public building or public work; may not submit Proposals on leases of real property to a public entity; may not be successful or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity.

53. *OTHER GOVERNMENTAL AGENCIES*
If a Proposer is successfully awarded a contract as a result of this Solicitation, the Proposer shall allow other governmental agencies to access this contract and purchase the goods and services under the terms and conditions at the prices awarded.

54. *COMPLETION OF WORK AND DELIVERY*
All work shall be performed and all deliveries made in accordance with good commercial practice. The work schedule and completion dates shall be adhered to by the selected Proposer, except in such cases where the completion date will be delayed due to acts of nature, force majeure, strikes, or other causes beyond the control of the selected Proposer. In these cases, the selected Proposer shall notify the City of the delays in advance of the original completion so that a revised delivery schedule can be appropriately considered by the City.

55. *FAILURE TO DELIVER OR COMPLETE WORK*
Should the selected Proposer fail to deliver or complete the work within the time stated in the contract, it is hereby agreed and understood that the City reserves the authority to cancel the contract with the selected Proposer and secure the services of another Proposer to purchase the items or complete the work. If the City exercises this authority, the City shall be responsible for reimbursing the selected Proposer for work that was completed and items delivered and accepted by the City in accordance with the contract specifications. The City may, at its option, demand payment from the selected Proposer, through an invoice or credit memo, for any additional costs over and beyond the original contract price that were incurred by the City as a result of having to secure the services of another Proposer.

56. *CORRECTING DEFECTS*
The selected Proposer shall be responsible for promptly correcting any deficiency, at no cost to the City, within three (3) calendar days after the City notifies the selected Proposer of such deficiency in writing. If the selected Proposer fails to correct the defect, the City may (a) place the selected Proposer in default of its contract; and/or (b) procure the products or services from another source and charge the selected Proposer for any additional costs that are incurred by the City for this work or items, either through a credit memorandum or through invoicing.

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57. *ACCIDENT PREVENTION AND BARRICADES*
Precautions shall be exercised at all times for the protection of persons and property. All selected Proposers performing services or delivering goods under this contract shall conform to all relevant OSHA, State, and County regulations during the course of such effort. Any fines levied by the above-mentioned authorities for failure to comply with these requirements shall be borne solely by the selected Proposer. Barricades shall be provided by the selected Proposer when work is performed in areas traversed by persons, or when deemed necessary by the City.

58. *OMISSIONS IN SPECIFICATIONS*
The scope of services or description of items contained within this Solicitation describes the various functions and classes of work required as necessary for the completion of the project. Any omissions of inherent technical functions or classes of work within the specifications and/or statement of work shall not relieve the Proposer from furnishing, installing, or performing such work where required to the satisfactory completion of the project.

59. *MATERIALS SHALL BE NEW AND WARRANTED AGAINST DEFECTS*
The selected Proposer hereby acknowledges and agrees that all materials, except where recycled content is specifically requested, supplied by the selected Proposer in conjunction with this Solicitation and resultant contract shall be new, warranted for their merchantability, and fit for a particular purpose. In the event any of the materials supplied to the City by the selected Proposer are found to be defective or do not conform to specifications, (1) the materials may be returned to the selected Proposer at the Proposer's expense and the contract cancelled; or (2) the City may require the selected Proposer to replace the materials at the selected Proposer's expense.

60. *TOXIC SUBSTANCES/FEDERAL "RIGHT TO KNOW" REGULATIONS*
The Federal "Right to Know" Regulation implemented by the Occupational Safety and Health Administration (OSHA) requires employers to inform their employees of any toxic substances to which they may be exposed in the workplace, and to provide training in safe handling practices and emergency procedures. It also requires notification to local fire departments of the location and characteristics of all toxic substances regularly present in the workplace.

Accordingly, the selected Proposer performing under this contract is required to provide two (2) complete sets of Material Safety Data Sheets to each City department utilizing any products that are subject to these regulations. This information shall be provided at the time when the initial delivery is made, on a department-by-department basis.

61. *TAXES*
The City of Delray Beach is exempt from Federal and State taxes for tangible personal property.

62. *PROPOSER'S COSTS*
The City shall not be liable for any costs incurred by Proposers in responding to this Request for Qualifications.

63. *SUBSTITUTION OF PERSONNEL*
It is the intention of the City that the selected Proposer's personnel proposed for the contract shall be available for the initial contract term. In the event the selected Proposer wishes to substitute personnel, the selected Proposer shall propose personnel of equal or higher qualifications, and all replacement personnel are subject to the City's approval. In the event the substitute personnel are not satisfactory to the City, and the matter cannot be resolved to the satisfaction of the City, the City reserves the right to cancel the contract for cause.

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64. *FORCE MAJEURE*

The City and the selected Proposer are excused from the performance of their respective obligations under the contract when and to the extent that their performance is delayed or prevented by any circumstances beyond their control, including fire, flood, explosion, strikes or other labor disputes, natural disasters, public emergency, war, riot, civil commotion, malicious damage, act or omission of any governmental authority, delay or failure or shortage of any type of transportation, equipment, or service from a public utility needed for their performance provided that:

a. *The non-performing party gives the other party prompt written notice describing the particulars of the force majeure, including, but not limited to, the nature of the occurrence and its expected duration, and continues to furnish timely reports with respect thereto during the period of the force majeure.*

b. *The excuse of performance is of no greater scope and of no longer duration than is required by the force majeure.*

c. *No obligations of either party that arose before the force majeure causing the excuse of performance are excused as a result of the force majeure.*

d. *The non-performing party uses its best efforts to remedy its inability to perform.*

Notwithstanding the above, performance shall not be excused under this section for a period in excess of two (2) months, provided that in extenuating circumstances, the City may excuse performance for a longer term. Economic hardship of the selected Proposer shall not constitute a force majeure. The term of the contract shall be extended by a period equal to that during which either party's performance is suspended under this section.

65. *NOTICES*

Notices shall be effective when received at the addresses specified in the contract/agreement. Changes in respective addresses to which such notices are to be directed may be made from time to time by either party by written notice to the other party. Facsimile and email transmissions are acceptable notice effective when received; however, facsimile and email transmissions received after 5:00 p.m. or on weekends or holidays will be deemed received on the next business day. The original of the notice must also be mailed to the receiving party.

Nothing contained in this section shall be construed to restrict the transmission of routine communications between representatives of the selected Proposer and the City of Delray Beach.

66. *FISCAL FUNDING OUT*

The City's obligation pursuant to any contract or agreement entered into in accordance with this Solicitation is specifically contingent upon the lawful appropriation of funds. Failure to lawfully appropriate funds for any contract or agreement awarded shall result in automatic termination of the contract or agreement. A non-appropriation event shall not constitute a default or breach of said contract or agreement by the City.

END OF SECTION 9

BE

SECTION 10: SOLICITATION SUMMARY

PURCHASING AND CONTRACT ADMINISTRATION DIVISION
The City of Delray Beach
100 NW 1st Avenue
Delray Beach, FL 33444

SOLICITATION SUMMARY

IMPORTANT NOTICE
The information you provide on this page will be read aloud at the PUBLIC OPENING for this solicitation. It is VERY IMPORTANT that the summary information you provide below is exactly the same information contained in your Proposal. If subsequent to the opening of Proposals, the City determines that the information contained in the electronic version of your Proposal is different from the information on this Solicitation Summary form, the City reserves the right to deem your Proposal NON-RESPONSIVE and remove your Proposal from further evaluation and consideration for contract award.

PROPOSAL INFORMATION

Proposal Number:	RFQ No. 2024-031
Title:	Construction Manager at Risk for Pompey Park Recreation Center
Due Date and Time:	June 19, 2024 **@ 2: 00 P.M., (LOCAL TIME)**
Name of Proposer:	_____
Address:	_____
Contact Person:	_____
Authorized Signature:	_____
Date:	_____

By signing and submitting this Solicitation Summary form, the Proposer affirms that the information provided above is an exact and correct summary of the information contained in the electronic version of the Proposer's Proposal to the City of Delray Beach.

THIS SOLICITATION SUMMARY MUST BE SIGNED AND UPLOADED WITH YOUR SECURE ELECTRONIC PROPOSAL SUBMITTAL THROUGH HTTPS://WWW.PERISCOPEHOLDINGS.COM/S2G

END OF SECTION 10

BE

CONDITIONAL WAIVER AND RELEASE OF LIEN UPON PROGRESS PAYMENT

The undersigned lienor, in consideration of the sum of **$ "Amount"** to be received, but not received, hereby waives and releases its lien and right to claim a lien for labor, services, or materials furnished through **"Through Date"** to **"Owner Name"** on the job of **"Project Name"** at the following property:

Project Address

This waiver and release is conditioned upon payment of the consideration described above by (Insert Owner Name) to (Insert Lienor's Name). It is not effective until said payment is received and said funds have cleared.

This waiver and release does not cover any retention or labor, services or materials furnished after the date specified, nor does the waiver and release cover work performed within the date specified, but not yet approved by way of signed PCO(s), OCO(s), CCD(s) or CO(s) and for which the Owner and Contractor dispute the work performed and/or the amount(s) owed.

Lienor's Name: CORE Construction Services of Florida, LLC

By: _____

Printed Name: _____

Title: _____

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me by means of ____ physical presence or ____ online notarization, this _____ day of_____, 202____, by _____, as _____ (type of authority) for _____.

{Notary Stamp}

_____
Notary, State of _____ at Large

_____ Personally Known or _____Produced Identification
Type of Identification Produced_____

BE

WAIVER AND RELEASE OF LIEN
UPON PROGRESS PAYMENT

The undersigned lienor, in consideration of the sum of **$ "Amount"** hereby waives and releases its lien and right to claim a lien for labor, services, or materials furnished through **"Through Date"** to **"Owner Name"** on the job of **"Project Name"** at the following property:

Project
Address

This waiver and release does not cover any retention or labor, services or materials furnished after the date specified, nor does the waiver and release cover work performed within the date specified, but not yet approved by way of signed PCO(s), OCO(s), CCD(s) or CO(s) and for which the Owner and Contractor dispute the work performed and/or the amount(s) owed.

Lienor's Name: CORE Construction Services of Florida, LLC

By: _____

Printed Name: _____

Title: _____

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me by means of ____ physical presence or ____ online notarization, this _____ day of_____, 20__, by _____, as _____ (type of authority) for _____

(Notary Stamp)

_____
Notary, State of _____ at Large

_____ Personally Known or _____Produced Identification
Type of Identification Produced_____

BE

CONDITIONAL FINAL WAIVER AND RELEASE OF LIEN

The undersigned lienor, in consideration of the final payment in the amount of **$ "Amount" ,** hereby waives and releases its lien and right to claim a lien for labor, services, or materials furnished to **"Owner Name"** on the job of **"Project Name"** at the following property:

Project Address

This waiver and release is conditioned upon payment of the consideration described above by (Insert Owner Name) to (Insert Lienor's Name). It is not effective until said payment is received and said funds have cleared.

Lienor's Name: CORE Construction Services of Florida, LLC

By: _____

Printed Name: _____

Title: _____

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me by means of ____ physical presence or ____ online notarization, this _____ day of_____, 202____, by _____ as _____ (type of authority) for _____.

(Notary Stamp)

_____
Notary, State of _____ at Large

_____ Personally Known or _____Produced Identification
Type of Identification Produced_____

BE

FINAL WAIVER AND RELEASE OF LIEN

The undersigned lienor, in consideration of the final payment in the amount of **$ "Amount" ,** hereby waives and releases its lien and right to claim a lien for labor, services, or materials furnished to **"Owner Name"** on the job of **"Project Name"** at the following property:

Project Address

Lienor's Name: CORE Construction Services of Florida, LLC

By: _____

Printed Name: _____

Title: _____

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me by means of ____ physical presence or ____ online notarization, this _____ day of_____, 202____, by _____ as _____ (type of authority) for _____.

(Notary Stamp)

_____
Notary, State of _____ at Large

_____ Personally Known or _____Produced Identification
Type of Identification Produced_____

BE

State of Florida
County of

WAIVER AND RELEASE OF LIEN UPON PROGRESS PAYMENT

The undersigned lienor, in consideration of the sum of **$"Amount"** (
) hereby waives and releases its lien and right to claim a lien for labor, services or materials furnished through **xx/xx/20xx** to **CORE Construction Services of Florida, LLC** on the job of (List Project Name) to the following property:

Project Name

Project Address

This Waiver and release does not cover any retention or labor, services, or materials furnished after the date specified.

DATED on

Company Name:
Company Address:

Signature:

By:

Title:

Sworn to and subscribed before me this _____.

BEFORE ME, the undersigned authority, personally appeared, _____ to me well known and known to me to be the person described in and who executed the foregoing Waiver and Release of Lien Upon Progress Payment as _____ of _____ and he/she acknowledged to and before me that he/she executed this instrument for the purposes therein expressed.

_____ Personally Known

_____ Identification Shown

_____
Type of Identification

_____
NOTARY PUBLIC

_____
Printed Name of Notary

My Commission Expires:

BE

Docusign Envelope ID: CB8FCBFA-31A7-43FC-AE21-DE9DB44AD501

State of Florida
County of

WAIVER AND RELEASE OF LIEN UPON FINAL PAYMENT

The undersigned lienor, in consideration of the final payment in the amount of **$"Amount"** (
) hereby waives and releases its lien and right to claim a lien for labor, services or materials furnished to **CORE Construction Services of Florida, LLC** on the job of (List Project Name) to the following property:

Project Name

Project Address

DATED on

Company Name:
Company Address:

Signature:

By:

Title:

Sworn to and subscribed before me this _____

BEFORE ME, the undersigned authority, personally appeared, _____ to me well known and known to me to be the person described in and who executed the foregoing Waiver and Release of Lien Upon Final Payment as _____ of _____ and he/she acknowledged to and before me that he/she executed this instrument for the purposes therein expressed.

_____ Personally Known

_____ Identification Shown

_____
Type of Identification

_____
NOTARY PUBLIC

_____
Printed Name of Notary

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CITY ATTORNEY OFFICE - LEGAL REVIEW CHECKLIST

Name of Agreement: A133 and A201 Construction Manager at Risk

Department: Public Works

Contact person: Casetra Thompson

City Manager approval ☐

Reviewed by Purchasing ☐

City Commission approval ☐
Agenda item #:
Agenda meeting date:
Resolution #:

Agreement Action:	New ⊙	Renewal* ○	Amendment* ○	*Renewal: Only change is the agreement term *Amendment: For changes other than/in addition to term

Does the Contractor require the City to sign first?: No

For City Attorney Use only:

Agreement Terms:	**Comments/Specific Provision in Agreement**
Term (Duration of Agreement)	Effective date - end of project: Duration of project to be determined at approval of GMP
Termination Clause	Art. 14 A201 Termination by Contractor. Termination by Owner for Cause and Without Cause w/ 7 days notice
Renewal Clause	N/A
Insurance	Other
Indemnification	Other
Assignment	Art 14.2.1 A133
Fiscal Funding Requirement	pg. 60 of RFQ
FL. Public Records Provision (2016)	Art. 14.4.12 A133
Inspector General Provision	Art. 14.4.13 A133
Governing Law	Florida
Venue	Palm Beach County
Attorney's fees	Art. 14.4.1 A133
E-verify	Art. 14.4.14 A133

Business Principles:	**Comments**
Fees: Total Value	$212,371*
Fees: Per Fiscal Year	

Other Issues:	**Comments**
Non-Negotiable Issues/ Miscellaneous Issues/ Special Considerations	Art. 11 of A201 contains Insurance provisions approved by Risk. Art. 3.18 of A201 contains indemnification provisions Agreement reviewed and approved by outside counsel *Amended project valued to be included in the GMP Amendment.

Consistent with applicable policies including, but not limited to, Procurement policies. Yes ☑

Attorney: Daniela Vega, Esq.
Reviewed and approved as to form and legal sufficiency only

Form version 5, March, 2018

RESOLUTION NO. 46-25

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, APPROVING AN AGREEMENT WITH CORE CONSTRUCTION SERVICES OF FLORIDA, LLC, FOR CONSTRUCTION MANAGEMENT SERVICES OF THE POMPEY PARK RECREATION CENTER RENOVATION PURSUANT TO REQUEST FOR QULAIFICATION 2024-031; AUTHORIZING THE CITY MANAGER TO EXECUTE ANY AMENDMENTS AND/OR RENEWALS THERETO AND TAKE ANY AND ALL ACTIONS NECESSARY TO EFFECTUATE THE INTENT OF THIS RESOLUTION; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

WHEREAS, the City of Delray Beach ("City") is authorized to enter into agreements to provide services, programming and products in accordance with its Charter; and

WHEREAS, the City requires construction management services for the Pompey Park Recreation Center renovation; and

WHEREAS, the City desires to enter into a Construction Manager at Risk Agreement with Core Construction Services of Florida, LLC ("Contractor") for construction management services pursuant to Request for Qualifications No. 2024-031 (the "Agreement"); and

WHEREAS, the City Commission deems approval of this Resolution to be in the best interest of the health, safety, and welfare of the residents and citizens of the City of Delray Beach and the public at large.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AS FOLLOWS:

Section 1. The foregoing recitals are hereby affirmed and ratified.

Section 2. The City Commission of the City of Delray Beach has reviewed and hereby approves this Agreement between the City and Contractor, attached to this Resolution as Exhibit "A".

Section 3. The City Commission authorizes the City Manager to take any action necessary to effectuate the intent of this Resolution.

Section 4. This Resolution shall become effective immediately upon adoption.

PASSED AND ADOPTED in regular session on the 20 day of MAY, 2025.

ATTEST:

Alexis Givings, City Clerk

Thomas F. Carney, Jr., Mayor

Approved as to form and legal sufficiency:

Lynn Gelin, City Attorney

CITY OF DELRAY BEACH
SEAL
FLORIDA

PERFORMANCE BOND

TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA
Hartford, Connecticut 06183

Bond No.:

CONTRACTOR:
(Name, legal status and address)

SURETY:
(Name, legal status and principal place of business)

OWNER:
(Name, legal status and address)

CONSTRUCTION CONTRACT
Date:
Amount: $
Description:
(Name and location)

BOND
Date:
(Not earlier than Construction Contract Date)

Amount: $
Modifications to this Bond: ☐ None ☐ See Section 16

CONTRACTOR AS PRINCIPAL		**SURETY**	
Company:	*(Corporate Seal)*	Company:	*(Corporate Seal)*
Signature:		Signature:	
Name and Title:		Name and Title:	

(Any additional signatures appear on the last page of this Performance Bond.)

(FOR INFORMATION ONLY — Name, address and telephone)
AGENT or BROKER:

OWNER'S REPRESENTATIVE:
(Architect, Engineer or other party:)

§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

§ 2 If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Section 3.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond shall arise after

.1 the Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Section 3.1 shall be held within ten (10) business days of the Surety's receipt of the Owner's

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notice. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default;

.2 the Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and

.3 the Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.

§ 4 Failure on the part of the Owner to comply with the notice requirement in Section 3.1 shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.

§ 5 When the Owner has satisfied the conditions of Section 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

§ 5.1 Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;

§ 5.2 Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;

§ 5.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Section 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or

§ 5.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:

.1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or

.2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.

§ 6 If the Surety does not proceed as provided in Section 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Section 5.4, and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

§ 7 If the Surety elects to act under Section 5.1, 5.2 or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication, for

.1 the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;

.2 additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Section 5; and

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

§ 8 If the Surety elects to act under Section 5.1, 5.3 or 5.4, the Surety's liability is limited to the amount of this Bond.

§ 9 The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors and assigns.

§ 10 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 11 Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after a declaration of Contractor Default

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or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 12 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears.

§ 13 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

§ 14 Definitions

§ 14.1 Balance of the Contract Price. The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

§ 14.2 Construction Contract. The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.

§ 14.3 Contractor Default. Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.

§ 14.4 Owner Default. Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 14.5 Contract Documents. All the documents that comprise the agreement between the Owner and Contractor.

§ 15 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 16 Modifications to this bond are as follows:

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL		**SURETY**	
Company:	*(Corporate Seal)*	Company:	*(Corporate Seal)*
Signature:	_____	Signature:	_____
Name and Title:		Name and Title:	
Address:		Address:	

BE

PAYMENT BOND

TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA
Hartford, Connecticut 06183

Bond No.:

CONTRACTOR:
(Name, legal status and address)

SURETY:
(Name, legal status and principal place of business)

OWNER:
(Name, legal status and address)

CONSTRUCTION CONTRACT
Date:
Amount: $
Description:
(Name and location)

BOND
Date:
(Not earlier than Construction Contract Date)

Amount: $
Modifications to this Bond: [ ] None [X] See Section 18

CONTRACTOR AS PRINCIPAL
Company: *(Corporate Seal)*

Signature: _____

Name and
Title

SURETY
Company: *(Corporate Seal)*

Signature: _____

Name and
Title

(Any additional signatures appear on the last page of this Payment Bond.)

(FOR INFORMATION ONLY — Name, address and telephone)
AGENT or **BROKER:**

OWNER'S REPRESENTATIVE:
(Architect, Engineer or other party:)

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The Company executing this bond vouches that this document conforms to American Institute of Architects Document A312, 2010 edition, except to the extent a new paragraph has been added in the Modifications section on the fourth page of this bond.

§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.

§ 2 If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Section 13) of claims, demands, liens or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety.

§ 4 When the Owner has satisfied the conditions in Section 3, the Surety shall promptly and at the Surety's expense defend, indemnify and hold harmless the Owner against a duly tendered claim, demand, lien or suit.

§ 5 The Surety's obligations to a Claimant under this Bond shall arise after the following:

§ 5.1 Claimants, who do not have a direct contract with the Contractor,

.1 have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and

.2 have sent a Claim to the Surety (at the address described in Section 13).

§ 5.2 Claimants, who are employed by or have a direct contract with the Contractor, have sent a Claim to the Surety (at the address described in Section 13).

§ 6 If a notice of non-payment required by Section 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Section 5.1.1.

§ 7 When a Claimant has satisfied the conditions of Sections 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:

§ 7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and

§ 7.2 Pay or arrange for payment of any undisputed amounts.

§ 7.3 The Surety's failure to discharge its obligations under Section 7.1 or Section 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Section 7.1 or Section 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.

§ 8 The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Section 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

§ 9 Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction

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Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

§ 10 The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to, or give notice on behalf of, Claimants or otherwise have any obligations to Claimants under this Bond.

§ 11 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 12 No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Section 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 13 Notice and Claims to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.

§ 14 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

§ 15 Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.

§ 16 Definitions

§ 16.1 Claim. A written statement by the Claimant including at a minimum:

- **.1** the name of the Claimant;
- **.2** the name of the person for whom the labor was done, or materials or equipment furnished;
- **.3** a copy of the agreement or purchase order pursuant to which labor, materials or equipment was furnished for use in the performance of the Construction Contract;
- **.4** a brief description of the labor, materials or equipment furnished;
- **.5** the date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
- **.6** the total amount earned by the Claimant for labor, materials or equipment furnished as of the date of the Claim;
- **.7** the total amount of previous payments received by the Claimant; and
- **.8** the total amount due and unpaid to the Claimant for labor, materials or equipment furnished as of the date of the Claim.

§ 16.2 Claimant. An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

§ 16.3 Construction Contract. The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.

§ 16.4 Owner Default. Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

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§ 16.5 Contract Documents. All the documents that comprise the agreement between the Owner and Contractor.

§ 17 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 18 Modifications to this bond are as follows:

Notwithstanding anything in the Payment Bond or the Construction Contract to the contrary, this payment bond is furnished to comply with the requirements of Chapter 713, Florida Statutes and (without limitation) the provisions and limitations of Section 713.02(6) and 713.23, Florida Statutes. The payment bond is hereby amended to incorporate all provisions and limitations, including conditions, notice and time limitations of the applicable statute, which are incorporated herein by reference. Any provision of the payment bond which conflicts with or purports to grant broader or more expanded coverage in excess of the minimum requirements of the applicable statute shall be deemed deleted from the payment bond. The payment bond is a statutory bond, not a common law bond.

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL		**SURETY**	
Company:	*(Corporate Seal)*	Company:	*(Corporate Seal)*
Signature:	_____	Signature:	_____
Name and Title:		Name and Title:	
Address:		Address:	

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The Company executing this bond vouches that this document conforms to American Institute of Architects Document A312, 2010 edition, except to the extent a new paragraph has been added in the Modifications section on the fourth page of this bond.

Exhibit B.1

CONSTRUCTION MANAGER PROVIDED INSURANCE

Construction Manager shall purchase insurance, as indicated below, with carriers licensed to do business in the state in which the Project is located and rated by AM Best with at least an A- rating and a minimum Financial Size Category of VIII. The insurance coverage shall be maintained during the construction phase period and for a minimum of two years following completion of construction. Claims-made coverage, other than for Professional Liability (E & O), will not be acceptable.

Coverage for General Liability (GL) must include Additional Insured coverage in favor of the Owner for both ongoing and completed operations utilizing the combination of forms CG 20 10 04 13 and CG 20 37 04 13 or their equivalents. GL coverage must be on a primary/non-contributory basis and have a per project aggregate endorsement.

Limits must meet the minimums set forth below, or the policy limit, whichever is greater:

Worker's Compensation	Statutory in the state in which the project is located
Employer's Liability	$1,000,000 Ea. Accident, $1,000,000 Disease $1,000,000 Policy limit
General Liability	$1,000,000 per occurrence $2,000,000 general aggregate $2,000,000 products/completed operations aggregate
Excess Liability	$2,000,000 per occurrence and general aggregate
Automobile Liability	$1,000,000 Combined Single Limit
Professional Liability (E&O Coverage)	$1,000,000 per claim and in the aggregate

Such insurance shall be evidenced by certificate on an Acord-25 form. Construction Manager shall provide evidence of coverage prior to the start of construction.

Construction Phase Property Insurance:

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 builders' risk "all-risk" or equivalent policy form in the amount of the initial contract sum, plus value of subsequent contract 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. This insurance shall include interests of the Owner, the Construction Manager, Subcontractor and its subcontractors in the Project, and shall include insurance against the perils of fire and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal, including demolition occasioned by enforcement of any applicable legal requirements. Such property insurance shall be maintained until a written notice of Substantial Completion, at which time Owner shall install permanent insurance on the property.

Owner and Construction Manager waive all rights against each other and against all Subcontractors, Sub-subcontractors, Material Suppliers, and the Architect/Engineer, for damages caused by fire or other perils covered by Builder's Risk or any other property insurance, except such rights as they may have to the proceeds of such insurance. Such insurance may be subject to an amount deductible from the sums otherwise payable thereunder and the burden of such deduction shall be borne by the Owner. The Owner or Construction Manager, as appropriate, shall require of the Architect, Architect's consultants, separate contractors, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein.

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EXHIBIT C - WARRANTY OF WORK FORM

WARRANTY OF WORK

Project Name: Name of Project
CORE Project No: XX-XX-XXX

Subcontractor:
Company Name
Address
City, ST, Zip
Phone: 000-000-0000

SCOPE OF WORK:

Subcontractor hereby warranties and guarantees all Work performed, generally described as the Scope of Work above, against all faults and defects resulting from the use of defective materials, equipment or workmanship or a failure to conform to the Contract Documents, including but not limited to the plans, specifications and building code requirements for a period of One (1) Year from the Date of Final Completion and Acceptance by the Owner as defined in the applicable Prime Contract ("Warranty Period"). If any part of the Project is warrantied and guaranteed for a longer period, per the Contract Documents, such longer period shall apply.

If, within the Warranty Period, repairs or changes are required in connection with warrantied and guaranteed Work, which, in the opinion of the Owner, the Owner's agent or CORE Construction Services of Florida, LLC, is rendered necessary as a result of the use of materials, equipment or workmanship which are defective or not in accordance with the Contract Documents, Subcontractor shall upon written notice, within a time period determined by CORE Construction Services of Florida, LLC, and without expense to Owner or CORE Construction Services of Florida, LLC, place in satisfactory condition in every particular all such warrantied and guaranteed Work, correct all defects therein and make good all damages to the structure, site, equipment or contents thereof. In the event of Subcontractor's failure to perform such remedial work within the stated time period, Contractor may perform said work and Subcontractor shall reimburse Contractor for all costs incurred. Subcontractor shall further reimburse Contractor for reasonable attorney's fees and costs, including at all trial and appellate levels, incurred by reason of Subcontractor's failure to perform under the terms of this Warranty. Subcontractor shall be required to comply with CORE's procedures for responding to warranty requests as set forth in the Contract Documents.

By: _____
(Authorized Agent)

Printed Name: _____

Date_____

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Exhibit F

Phase 1 Scope of Services (Preconstruction)

1641 Worthington Rd., #405
West Palm Beach, FL 33409

T 754.600.4723

January 15, 2025

Eugene Bitteker
Chief Procurement Officer
City of Delray Beach
Email: BittekerE@mydelraybeach.com

Re: Preconstruction Phase Services Proposal
031-Pompey Park Recreation Center

Dear Eugene,

As requested, please accept this preconstruction phase services proposal for the 031-Pompey Park Recreation Center project. Our services are broken down as follows:

PHASE / DELIVERABLE	TOTAL
GMP Estimate	212,371
GRAND TOTAL	**212,371**

The scope of preconstruction phase services generally includes:

- GMP Pricing
- Site Investigation & Coordination
- Schedule Development
- Coordination Meetings with Pompey Park Leadership
- Two Local Outreach Events
- Social Media & Project Website

The schedule for the preconstruction phase is assumed to be 3 months from approved purchase order and Notice to Proceed issued by the City for preconstruction services to submitted GMP. It is anticipated that board approval will take 6 weeks. Preconstruction services are a lump sum and will be billed at the time of GMP submission.

If the preconstruction services phase exceeds 5 months, compensation for additional services may be requested by the contractor.

This proposal includes an allowance of $25,000 for GPR investigation and potholing services to locate subsurface utilities.

The following supporting documents are attached:

1. List of Deliverables
2. Vendor Fee Matrix
3. Rate Sheet
4. Milestone Schedule

Please feel free to contact us with any questions or comments. Thank you again for the opportunity to serve City of Delray Beach on this project.

Sincerely,

CORE

Ted Cava
Vice President

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CORE

031-Pompey Park Recreation Center

List of Deliverables

The following deliverables are to be provided at the completion of the preconstruction services phase:

1. Site Investigation Report

Report outlining the existing conditions at the subject site

2. Constructability Analysis Report

Report summarizing the CM's review of the construction documents

3. GMP Estimate Deliverable

3A. GMP Proposal

Cost proposal for the construction of the project

3B. Construction Schedule

Schedule showing proposed construction timeline and key milestones

3C. Site Logistics / Phasing Plan

Report outlining the proposed project phasing plan and site logistics strategy for each phase

3D. Procurement Schedule (Long Lead Items)

Schedule outlining procurement plan for long lead-time materials

3E. Potential Cost Savings List

List of potential value engineering alternates

3F. List of Proposed Subcontractors

List outlining the trade partners proposed to be used for the construction of the project

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VENDOR FEE MATRIX

CORE

031-Pompey Park Recreation Center

Task No.	Task Name	Director of Preconstruction	Preconstruction Manager - Hatcher	Preconstruction Manager - Randolph	Preconstruction Manager 2 [Site & Structure	Preconstruction Manager 3 [Envelope & MEP	Principal in Charge	Project Director	Senior Project Manager	Senior Superintendent	Virtual Construction Director	Total Hours	Total Prime Consultant Estimated Cost	Subconsultants: GPR Consultant Estimated Fee	Subconsultants: Community Engagement / Liason Consultant Estimated Fee	Subconsultants: Scheduling Consultant Estimated Fee	Total Estimated Cost
	Hourly Billing Rate	$188.00	$114.00	$114.00	$110.00	$114.00	$231.00	$188.00	$120.00	$130.00	$85.00						
		Estimated Hours	Estimated Hours	Estimated Hours	Estimated Hours	Estimated Hours	Estimated Hours	Estimated Hours	Estimated Hours	Estimated Hours	Estimated Hours						
1.0	**Design Review / Coordination**																
1.1	Design Document Review/Coordination		30	30		30			100		100	290	$ 30,760.00				$ 30,760.00
2.0	**GMP Development**																
2.1	Cost Estimating	40	60	60	60	60						280	$ 34,640.00				$ 34,640.00
2.2	Develop Bid Packages	12	34	34	20	34				20		154	$ 18,684.00				$ 18,684.00
2.3	Negotiate and Finalize GMP	30					15	15				60	$ 11,925.00				$ 11,925.00
2.4	Post Bid Interviews with Subcontractors				30			15	120	60		225	$ 28,320.00				$ 28,320.00
2.5	Tabulate bids					12						12	$ 1,368.00				$ 1,368.00
3.0	**Outreach**																
3.1	Advertise & Hold PreBid Conference		6	6		6		4	20			42	$ 5,204.00				$ 5,204.00
3.2	Trade Partner Outreach											0	$ -		$ 13,725.00		$ 13,725.00
3.3	Website / Social Media											0	$ -		$ 2,625.00		$ 2,625.00

VENDOR FEE MATRIX

CORE

031-Pompey Park Recreation Center

Task No.	Task Name	Director of Preconstruction	Preconstruction Manager - Hatcher	Preconstruction Manager - Randolph	Preconstruction Manager 2 [Site & Structure	Preconstruction Manager 3 [Envelope & MEP	Principal in Charge	Project Director	Senior Project Manager	Senior Superintendent	Virtual Construction Director	Total Hours	Total Prime Consultant Estimated Cost	Subconsultants: GPR Consultant Estimated Fee	Subconsultants: Community Engagement / Liason Consultant Estimated Fee	Subconsultants: Scheduling Consultant Estimated Fee	Total Estimated Cost
	Hourly Billing Rate	$188.00	$114.00	$114.00	$110.00	$114.00	$231.00	$188.00	$120.00	$130.00	$85.00						
		Estimated Hours	Estimated Hours	Estimated Hours	Estimated Hours	Estimated Hours	Estimated Hours	Estimated Hours	Estimated Hours	Estimated Hours	Estimated Hours						
4.0	**Permit / Utility Coordination**																
4.1	Coordinate with Utility Providers									10		10	$ 1,300.00				$ 1,300.00
5.0	**Schedule /Phasing / Constructability**																
5.1	Construction Schedule Development								60	60		120	$ 15,000.00			$ 3,680.00	$ 18,680.00
6.0	**Team Coordination Meetings**																
6.1	Team Coordination Meetings	5	10	10		10	20	20	40	20		135	$ 20,140.00				$ 20,140.00
7.0	**Site Investigaton**																
7.1	GPR Services											0	$ -	$ 25,000.00			$ 25,000.00
	Total Hours	87	140	140	110	152	35	54	340	170	100	1,328					
	Subtotal Estimated Cost	$16,356.00	$15,960.00	$15,960.00	$12,100.00	$17,328.00	$8,085.00	$10,152.00	$40,800.00	$22,100.00	$8,500.00		$167,341.00	$ 25,000.00	$ 16,350.00	$ 3,680.00	**$ 212,371.00**

CORE

031-Pompey Park Recreation Center

Preconstruction Services Scope Summary - Rate Sheet

	Total Hourly Rate*
Director of Preconstruction	188.00
Preconstruction Manager - Hatcher [Finishes / Specialties Estimating]	114.00
Preconstruction Manager - Randolph [Finishes / Specialties Estimating]	114.00
Preconstruction Manager 2 [Site & Structure Estimating]	110.00
Preconstruction Manager 3 [Envelope & MEP Estimating]	114.00
Principal in Charge	231.00
Project Director	188.00
Senior Project Manager	120.00
Senior Superintendent	130.00
Virtual Construction Director	85.00

*Rates listed are valid for fiscal year 2025

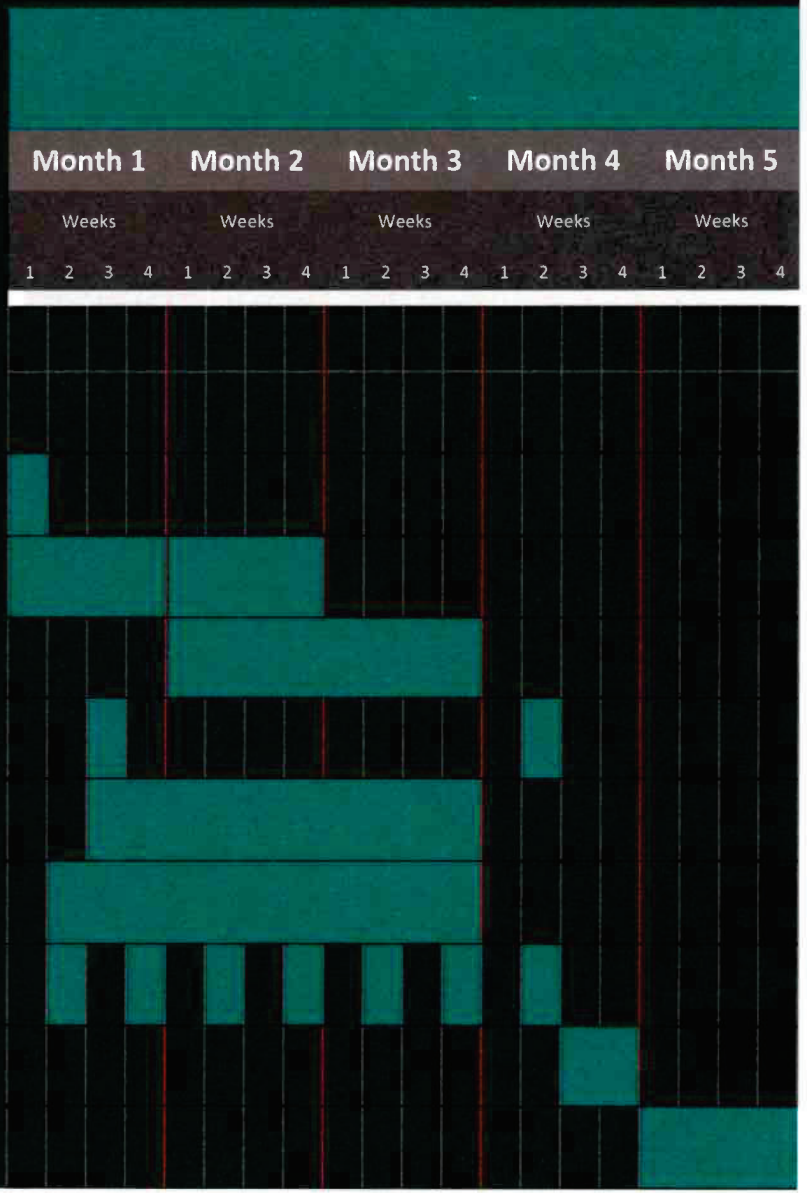
CORE's labor burden is 56.8%
Randolph & Hatcher labor burden is 42.0%

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PROJECT: Pompey Park

CORE CONSTRUCTION SERVICES OF FLORIDA, LLC

Milestone description	Category	Assigned to	Progress
Activities			
Project Kick Off Meeting	Milestone	Core	0%
Design Coordination	Goal	Core	0%
GMP Develop	Goal	Core	0%
Outreach Events	Goal	Core	0%
Permit / Utility Coordination	Goal	Core	0%
Schedule / Phasing Development	Goal	Core	0%
Team Coordination Meetings	Goal	Core	0%
GMP Submission	Goal	Core	0%
GMP Approval	Milestone	Delray Beach City Commision	0%



The City of Delray Beach
100 NW 1st Avenue
Delray Beach, FL 33444

PURCHASING AND CONTRACT ADMINISTRATION DIVISION

REQUEST FOR QUALIFICATIONS

RFQ NO.: 2024-031
Project No. 16-102 / Pompey Park Recreation Center
CONSTRUCTION MANAGER AT RISK

DUE DATE AND TIME: June 19, 2024 @ 2:00 P.M., (LOCAL TIME)

INSTRUCTIONS

Sealed Proposals **must** be received on or before the due date and time (local time). All Proposals will be publicly opened at City Hall, unless otherwise specified.

The City will only accept electronic submittals for this Request for Qualifications (RFQ). RFQ's will be accepted through a secure mailbox at Periscope Supplier-to-Government (S2G) (formerly known as BidSync) (www.periscopeholdings.com/S2G or www.bidsync.com) until the Due Date and Time indicated in this RFQ. Periscope S2G does not accept electronic Proposals after the Due Date and Time. It is the sole responsibility of the Proposer to ensure its electronic RFQ submission is complete prior to the solicitation Due Date and Time. Electronic submission of Proposals will require the uploading of forms and/or attachments as designated in this RFQ. Electronic submission **must** include a signed original of the Solicitation Summary form. The submission of forms and attachments containing embedded documents or proprietary file extensions is prohibited.

If the Solicitation Summary form is not included, the City may deem the Proposal non-responsive. Proposals **must** contain all information required to be included in the submittal, as described in this Solicitation.

BROADCAST

The City of Delray Beach utilizes electronic online services for notification and distribution of its solicitation documents. The City's solicitation information can be obtained from: (a) Periscope S2G; (b) Purchasing webpage on the City of Delray Beach website; and (c) Request via email; etiennee@mydelraybeach.com.

Proposers who obtain solicitations from sources other than those named above are cautioned that the Request for Qualifications package may be incomplete. The City will not evaluate incomplete Proposal packages. Periscope S2G is an independent entity and is not an agent or representative of the City. The City

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is not responsible for errors and omissions occurring in the transmission or downloading of any documents, addenda, plans, or specifications from these websites.

CONTACT

Any questions regarding the specifications and solicitation process **must** be submitted in writing through the "Question" feature on www.periscopeholdings.com/S2G. Requests for clarification and additional information **must** be received prior to the deadline for Submission of Questions on **May 24, 2024 @ 5:00 P.M. (Eastern Time).**

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The City of Delray Beach
100 NW 1st Avenue
Delray Beach, FL 33444

LEGAL ADVERTISEMENT

RFQ NO.: 2024-001
Project No. 16-102 / Pompey Park Recreation Center
CONSTRUCTION MANAGER AT RISK

The City of Delray Beach, Florida ("City") is seeking Proposals from qualified firms for professional services and construction services related to Pompey Park Recreation Center, in accordance with the terms, conditions, and specifications contained in this Request for Qualifications.

Request for Qualifications documents are available beginning April 25, 2024, on the Purchasing and Contract Administration Division's webpage of the City of Delray Beach website at:

https://www.delraybeachfl.gov/government/city-departments/purchasing/current-bids-solicitations

Documents may also be obtained via Periscope S2G at www.periscopeholdings.com/s2g (formally known as BidSync), by contacting the City Purchasing and Contract Administration Division at cadeauxp@mydelraybeach.com or by phone at (561) 243-7351.

Proposals will be accepted through a secure mailbox at Periscope S2G (www.periscopeholdings.com/S2G) until the Deadline for Submission as indicated in this RFQ. **The Due Date and Time for submission of submittals is June 19, 2024 @ 2:00 P.M. (Eastern Time).** Late Proposals will not be accepted. The City will only accept electronic Proposals for this RFQ.

The City will hold a virtual Pre-Proposal Conference. Attendance is not mandatory, although highly recommended, for those firms intending to submit a proposal. The virtual Pre-Proposal Conference will be held on **May 14, 2024 @ 10:00 A.M., (LOCAL TIME)** online via Microsoft Team meeting via the link provided below:

Microsoft Teams Meeting

Join the meeting now
Meeting ID: 281 819 258 099
Passcode: FS7YxL
Phone Conference Dial-In Number: 1 352-448-9762
Phone Conference ID: 828 921 693#

The City will not conduct a site visit for this solicitation. It is the responsibility of the Proposer to ensure all pages are included in the submission. All Proposers are advised to closely examine the solicitation package. BE

The City of Delray Beach is exempt from Federal and State Taxes for tangible personal property tax.

The City of Delray Beach reserves the right to accept or reject any or all Proposals, in whole or in part, with or without cause, to waive any irregularities and/or technicalities, and to award the contract on such coverage and terms it deems will best serve the interests of the City.

CITY OF DELRAY BEACH

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SECTION 1: PROJECT OVERVIEW

1.1. INTRODUCTION

The City of Delray Beach (City) is seeking a Construction Management at Risk (CMAR) firm for the construction of Pompey Park Recreation Center project. The project is generally described as construction of a new two-story 54,191 square foot recreational center, including gymnasium and running track, meeting, fitness and dance/aerobic rooms, multipurpose room, and kitchen area. The project also includes a family pool and a competition pool with bleachers, baseball fields, basketball courts, playgrounds, and surface parking. The project limits include the property located at 1101 NW 2nd Street, Delray Beach, Florida 33444 (inclusive of three (3) parcels with Property Control Numbers 12434617000003130, 12434617000003140 and 12434617000003160). The City of Delray Beach partnered with Justin Architects, P.A. (formerly Cartaya and Associates, Architects PA) for design services and KEITH and Associates, Inc. for owner's representative services.

This project is fully funded by the City's Community Redevelopment Agency (CRA).

1.2. SCOPE OF SERVICES

The purpose of this Request for Qualifications is to obtain a CMAR for a Guaranteed Maximum Price (GMP), in accordance with Chapter 255.103 of the Florida Statutes. A governmental entity may select a construction management entity, pursuant to the process provided by S.287.055 (CCNA), which is to be responsible for construction project scheduling and coordination in both pre-construction and construction phases and generally responsible for the successful, timely, and economical completion of the construction project.

The intent of this solicitation is for the City to select a firm capable of providing CMAR services as required for the Pompey Park Recreation Center project. The project has an estimated construction budget of approximately $45,000,000. The project currently consists of construction of a new two-story 54,191 square foot recreational center, including gymnasium and running track, meeting, fitness and dance/aerobic rooms, multipurpose room, and kitchen area. The project also includes a family pool and a competition pool with bleachers, baseball fields, basketball courts, playgrounds, and surface parking.

The selected firm awarded the contract will coordinate and collaborate with the City, the Architect/Engineer of Record, Justin Architects, P.A. (formerly Cartaya and Associates, Architects PA), Owner's Representative, KEITH and Associates, Inc., and all applicable permitting and governmental agencies.

Agreements are subject to annual appropriation and the availability of funds.

The City intends to award two (2) separate phases for the CMAR services for the project. The first phase would be for Pre-Construction Services and is identified as Phase I. The second phase would be for Construction Services and is identified as Phase II.

At or before the completion of Phase I and following completion of cost estimating, value engineering and other services, the CMAR firm will tender to the City a written GMP for final completion of the project, based upon bid documents and specifications. The City, at its sole discretion, may decline to accept the CMAR GMP for any Construction Services and thereupon without penalty; the Contract **shall** terminate according to its terms at the end of the Pre-

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Construction Services phase of the work under contract. The CMAR firm **shall** have no recourse from this termination, and the City **shall** retain ownership of such documents without paying further remuneration. Conditions precedent to a contract amendment for Phase II for any project is the satisfactory final completion of Phase I and an agreed upon GMP. If a GMP is agreed to with the CMAR firm, a contract amendment for Phase II will be entered into between the parties.

1.3. The Method of Award for this solicitation will be to the Proposer with the highest ranking or scores with whom the City is able to negotiate an acceptable Agreement. The City will enter negotiations with the firm receiving the highest-ranking proposal score. Should negotiations fail then the City will enter negotiations with the next highest-ranking firm.

1.4. The City intends to contract with a single firm for the project listed in this procurement. The Proposer will provide the following services: (1) Phase I: Pre-Construction Services; and (2) Phase II: Construction Services as outlined in Section 3 of this solicitation.

1.5. The schedule is as follows:

ITEM	EVENT	DATE/TIME
a.	Issue RFQ	April 25, 2024
b.	Institute Cone of Silence	April 25, 2024
c.	Pre-Bid Conference Meeting	May 14, 2024 @ 10:00 A.M.
d.	Deadline for Delivery of Questions	May 24, 2024 @ 5:00 P.M.
e.	Due Date and Time (for delivery of Proposals)	June 19, 2024 @ 2:00 P.M.
f.	Technical Evaluations Location: TBD	TBD @ TBD
g.	Interviews Location: TBD	TBD @ TBD
h.	Final Evaluations Location: TBD	TBD @ TBD

1.6. Meetings will be held in the City Hall Conference Room, located at 100 NW 1st Avenue, First Floor, Delray Beach, FL 33444 or the Swinton Operations Center (SOC) – Conference and Training Room located at 434 South Swinton Avenue, Delray Beach, FL 33444

END OF SECTION 1

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SECTION 2: SPECIAL TERMS AND CONDITIONS

2.1. PURPOSE

The purpose of this Request for Qualifications (RFQ) is to solicit Proposals from qualified firms who can provide Construction Manager at Risk (CMAR) services for the Pompey Park Recreation Center project.

The City expects each Proposer to clearly outline its best and most comprehensive resources in its response, because all services and responsibilities identified in this solicitation may be awarded to the selected Proposer.

2.2. ELIGIBILITY

To be eligible to respond to this RFQ and be considered for award, the Proposer **must** demonstrate to the satisfaction of the City that it or the principals assigned to the project has successfully provided services, similar in scope and complexity, to a municipality, quasi-governmental organization, or a private organization.

2.3. SEPARATION OF SERVICES

The entity(ies) performing design or owner's representative and CMAR services may not be the same entity for this Project. Vendors solely providing geotechnical and/or surveying services for the design are exempt from this provision.

2.4. RECORDS, ACCOUNTS, AND STATEMENTS

The successful Proposer **shall** keep on its premises, or such other place approved by the City, current true, accurate, and complete records and accounts of all services provided to the City and **shall** give the City or City's representative access during reasonable business hours and upon three (3) business days' notice to examine and audit such records and accounts. Such records **shall** be maintained at such standard to allow a certified auditor the ability to properly examine the records in order to certify a statement of the successful Proposer's business with the City.

2.5. GENERAL STANDARDS

The successful Proposer **shall** at all times comply with all rules, regulations, and other governmental agencies having jurisdiction. The successful proposal **shall** further take all precautions and extreme care to conduct its activities in a safe, professional, and prudent manner with respect to its agents, employees, members, visitors, and participants.

2.5.1. Its most recent certified business financial statements as of a date not earlier than the end of the Proposer's preceding official tax accounting period, together with a statement in writing, signed by a duly authorized representative, stating that the present financial condition is materially the same as that shown on the balance sheet and income statement submitted, or with an explanation for any material change in the financial condition. A copy of the most recent business income tax return will be accepted if the certificate financial statements are unavailable.

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2.5.2. Information concerning any prior or pending litigation, either civil or criminal, involving a governmental agency or which may affect the performance of the services to be rendered herein, in which the Proposer, any of its employees or subcontractors, is or has been involved in within the last three (3) years.

2.6. DEFAULT

In the event the successful Proposer defaults in the performance of the contract, the city **shall** have the following options:

2.6.1. The City Manager will give the successful Proposer thirty (30) days' written notice of default. If the problem is not resolved within the thirty (30) days, the City may immediately terminate the contract upon providing written notice of the Proposer's failure to timely cure the default and obtain the services elsewhere.

2.6.2. The City may recover at law any all claims that may be due to the City from the successful Proposer.

2.6.3. The City may perform such work as it deems necessary to cure the default or subsequent default and charge the successful Proposer for the full cost of labor and materials expended, plus thirty percent (30%) of the cost for administrative overhead.

The acceptance of all or part of monies due for any period after a default **shall** not deemed as a waiver of any of these options, or a waiver of the default or subsequent default of the same or any other term, covenant, and condition.

The successful Proposer agrees that the City **shall** not be responsible or have any liability whatsoever for any alleged damages, claim of lost profits, or otherwise in the event the City declares the successful Proposer in default hereunder.

2.7. INSURANCE

The selected Proposer **shall** not commence any performance pursuant to the terms of this RFQ until certification or proof of insurance has been received and approved by the City's Risk Coordinator or designee.

The required insurance coverage is to be issued by an insurance company authorized, licensed, and registered to do business in the State of Florida, with the minimum rating of A- VII or better, in accordance with the latest edition of A.M. Best's Insurance Guide. This insurance **shall** be documented in certificates of insurance which provides that the City of Delray Beach **shall** be notified at least thirty (30) days in advance of cancellation, non-renewal, or adverse change. The receipt of certificates or other documentation of insurance or policies or copies of policies by the City or by any of its representatives, which indicate less coverage than is required, does not constitute a waiver of the selected Proposer's obligation to fulfill the insurance requirements herein. Deductibles **must** be acceptable to the City of Delray Beach.

The selected Proposer **must** submit a current Certificate of Insurance prior to commencement of the Work. The City, and any other entities that may be required, **shall** be listed as an Additional Insured on both the comprehensive General Liability and the Automobile Liability Policies. New certificates of insurance are to be provided to the City upon expiration. All renewal or replacement certificates

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of insurance **shall** be forwarded to the City Purchasing and Contract Administration Division located at 100 NW 1st Ave., Delray Beach, FL 33444.

The selected Proposer **shall** provide insurance coverage as follows:

2.7.1. WORKERS COMPENSATION – With statutory limits, the City reserves the right not to accept exemptions to the Workers Compensation requirements of this solicitation.

2.7.2. EMPLOYER'S LIABILITY – With a limit of not less than One Hundred Thousand Dollars ($100,000) for each accident, One Hundred Thousand Dollars ($100,000) for each occurrence, and Five Hundred Thousand Dollars ($500,000) in the aggregate.

2.7.3. COMPREHENSIVE GENERAL LIABILITY – With limits of not less than One Million Dollars ($1,000,000) per occurrence and Two Million Dollars ($2,000,000) in the aggregate for Bodily Injury and Property Damage.

NOTE – If Comprehensive General Liability limits are less than One Million Dollars ($1,000,000), the sum of Comprehensive General Liability limits and Excess Liability limits **must** equal no less than One Million Dollars ($1,000,000).

The Comprehensive General Liability insurance policy **must** include coverage that is not more restrictive than the latest edition of the Comprehensive General Liability Policy, without restrictive endorsements, as filed by the Insurance Services Offices, and the policy **must** include coverage's for premises and/or operations, independent contractors, products and/or completed operations for contracts, contractual liability, broad form contractual coverage, broad form property damage, products, completed operations, and personal injury. Personal injury coverage **shall** include coverage that has the Employee and Contractual Exclusions removed.

2.7.4. AUTOMOBILE LIABILITY – Covering all vehicles associated with Proposer's operations to include all owned, non-owned and hired vehicles. The coverage will be written on an occurrence basis with limits of liability not less than One Million Dollars ($1,000,000) combined single limit per each occurrence.

2.7.5. PROFESSIONAL LIABILITY – With limits of not less than One Million Dollars ($1,000,000) per occurrence.

2.7.6. UMBRELLA LIABILITY – With limits of not less than five Million Dollars ($5,000,000) per occurrence and in the aggregate. This policy **shall** be issued on a follow-form basis, including General Liability, Automobile Liability and Employers Liability in its schedule of underlying coverage.

The selected Proposer **must** submit no later than ten (10) days after award and prior to commencement of any work, a Certificate of Insurance naming the City of Delray Beach as an additional insured.

2.8. PAYMENT AND PERFORMANCE BOND/LETTER OF CREDIT

Required bonds/ letter of credit to be requested from the selected Proposer, applicable to Phase 2 services. Bonds will be determined upon receipt of the GMP and will be included in the amendment for the Construction Phase. The CMAR firm **shall**, following receipt of the Notice to Proceed with

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Construction but prior to commencing any work, furnish the City with a Performance Bond and Payment Bond in a form reasonably acceptable to the City, each equal to the amount of the construction cost as defined in the contract.

2.9. LICENSES AND CERTIFICATIONS

Any Proposer which submits an offer in response to this solicitation **shall**, at the time of such offer, hold all the required licenses, permits, and certifications issued by the State or County Examining Board qualifying the Proposer to perform the services described in this solicitation.

The City may at its option, and in its best interest, allow the Proposer to supply any missing information on certification and licensing during the Proposal Evaluation period.

Proposer **must** have staff licensed by the Florida Department of Business & Professions Regulation. Provide a screenshot or copy of Proposer's license from the Florida Department of Business & Professions Regulation that confirms Proposer has current licenses to perform the services described in this solicitation.

2.10. METHOD OF PAYMENT – MONTHLY INVOICES

The selected Proposer **shall** submit an invoice to the City, each month, after the services have been performed and have been received and accepted by the City. The amount charged **shall** not be in excess of the rates and fees agreed to in the Agreement.

The date of the invoices **shall** not exceed thirty (30) calendar days from the performance of the work. Under no circumstances **shall** the invoice be submitted to the City in advance of the performance of the work. The invoice **shall** contain the following basic information: the selected Proposer's name and address, invoice number, date of invoice, description of the service performed, the contract number, purchase order number, and any discounts.

The City prides itself on paying its vendors promptly and efficiently, and as such requires that vendors accept payment via wire transfer, ACH (direct deposit), or an appropriate electronic payment method. The City is averse to issuing paper checks and seeks to discontinue this practice. All payments **shall** be made in accordance with the Florida Prompt Payment Act, Section 218.74, Florida Statutes, upon presentation of a proper invoice by the awarded Proposer.

2.11. SUBCONTRACTING

As part of its Proposal, the Proposer **must** identify any and all subcontractors that will be used in the performance of the proposed work, their capabilities and experience, and the portion of the work to be done by the subcontractor. The competency of the subcontractor(s) with respect to experience, skill, responsibility, and business standing **shall** be considered by the City when making the award in the best interest of the City. If the Proposer fails to identify any and all sub-contractors in the Proposal, the Proposer may be allowed to submit this documentation if such action is in the best interest of the City.

2.12. OTHER FORMS OR DOCUMENTS

If the City is required by the selected Proposer to complete and execute any other forms or documents in relation to this solicitation, the terms, conditions, and requirements in this solicitation BE

shall take precedence to any and all conflicting or modifying terms, conditions or requirements of the selected Proposer's forms or documents.

2.13. MODIFICATION OF SERVICES

The City reserves the right to delete or modify any portion of the contracted services at any time without cause, and if such right is exercised by the City, the rates and fees **shall** be reduced at the same ratio as the estimated costs of the services deleted relates to the estimated costs of the service originally contracted. If service has already been provided on the portion of the work to be deleted, the selected Proposer will be paid for the deleted portion based on the estimated percentage of the completion of such portion.

If the selected Proposer and the City agree on modifications or revisions to the service elements, after the City has approved performance of a particular task or project, and a budget has been established for that task or project, the selected Proposer **shall** submit a revised budget to the City for approval prior to proceeding with the task or project.

END OF SECTION 2

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SECTION 3: SCOPE OF SERVICES

3.1 PROJECT HISTORY AND BACKGROUND

Pompey Park Recreation Center is located at 1101 NW 2nd St., Delray Beach, FL 33444. The park is an approximately 14-acre site bounded by NW 13th Avenue on the west, NW 2nd Street on the south, NW 10th Avenue on the east, and NW 3rd Street on the north. The park has provided recreational resources, senior programs, after-school programs, summer camp, holiday camp, and other school-age programming for the surrounding neighborhood since its construction in the 1950s. An estimated 150,000 people utilize the building each year, while more than 40 organizations and civic groups utilize it monthly.

The current facility consists of an existing one story 22,823 square foot community center building, located near the southeast corner of the site along with associated parking. The proposed improvement will include a new category 5 (hurricane) rated recreation building. The new facility will also serve as a hurricane shelter and staging location for hurricane events, for City staff and other official personnel. The project will also include some sustainability concepts and efforts (FGBC - Silver).

3.2 SUMMARY OF WORK

The selected Proposer **shall** provide pre-construction and construction services to construct Pompey Park Recreation Center. The Proposer will provide Construction Manager at Risk (CMAR) services in accordance with City policies, procedures, standards, and requirements for construction of a two-story 54,191 square foot recreation center building, family pool, competition pool and bleachers, pool cabanas, three (3) baseball fields (one new, two updated) and associated dugouts, batting cages and warm up areas, a civic lawn, shelters and restrooms, two (2) full-court and one (1) half-court basketball courts, shade structures, fitness and playground areas, hardscape, landscape surrounding all facilities, and surface parking surrounding the site. An existing two-story concession building, centrally located in the site, is to remain and receive new exterior finish (repair and waterproof existing stucco) and paint.

The City may designate a person, such as City's Project Manager or Owner's Representative, who will be the CMAR coordinating contact point during both the Pre-Construction and Construction Phases. This person or contact will provide day-to-day representation for the City and will be the primary channel of communication to the City and will act as the City's liaison with the CMAR firm. The City may designate multiple representatives responsible for defined aspects of the Project and may replace or re-designate any or all representatives at the City's sole discretion.

3.2.1 Project Phasing Plan

3.2.1.1 General

Phasing Plan is for bid and reference only. The General Contractor is responsible for verifying all existing conditions, coordinating with City and providing a Construction Phasing Plan meeting all permitting requirements prior to commencement of work. The existing Park Facilities will remain operational and open to the Public during construction. The General Contractor **shall** phase and coordinate all construction activities to facilitate the Park operations with minimal interruptions.

Two (2) Notices to Proceed (NTP) will be issued to the General Contractor. The first NTP will be issued for Phases 1A and 1B only. The NTP for Phase 2 will only be issued upon completion of Phases 1A and 1B, receipt of a Certificate of Occupancy for the new facility and relocation of City staff and equipment to the new building.

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The anticipated construction duration for Phase 1A and 1B is eighteen (18) months with two (2) additional months (twenty (20) months total) to facilitate the City's effective occupancy of the new Recreation Building. The anticipated duration of construction for Phase 2 is nine (9) months.

3.2.1.2 Road Improvements by Others

Refer to Sheet PH101 for limits of road improvements work along perimeter roads (NW 10th Ave., NW 13th Ave. and NW 3rd St.). The scope of work for the Road Improvements by Others includes parking spaces and sidewalks. Landscaping and Irrigation is not part of the Road Improvements by Others and is included in this project.

3.2.1.3 Phase 1A

3.2.1.3.1 General Contractor (GC) to secure all permitting prior to initiating demolition. At the time of Demolition Permit Application, GC is to provide the Maintenance of Traffic (MOT) Plan for City and Architect of Record (AOR) review and approval. GC to provide Site Staging Plan to include the following items at a minimum: construction trailer location, equipment storage, designated temporary parking area, fenced off area of demolition, and construction site perimeter.

3.2.1.3.2 Refer to "Temporary Parking Area During Phase 1" assigned on the East side of the site (refer to Sheet PH100).

3.2.1.3.3 Install all applicable temporary construction fencing signs.

3.2.1.3.4 Refer to Civil and Landscaping plans for tree protection, temporary irrigation, and temporary utility.

3.2.1.3.5 Refer to Technical Specification Division 1 for all General Requirements.

3.2.1.3.6 Demolition of existing surface parking area and associated utilities to accommodate new Recreation Building.

3.2.1.3.7 Build new Administration Facility, parking and surroundings. Coordinate with the City's Building Department and City to complete all close-out requirements to obtain Certificate of Occupancy.

3.2.1.3.8 Coordinate with City all FFE for new facility, GC to proceed with all installation of new equipment, furniture as required to relocate from existing facility to new building.

3.2.1.4 PHASE 1B

3.2.1.4.1 Proceed with demolition of existing Recreational Building after full relocation of the old building into the new building. Relocation **must** be coordinated with City.

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3.2.1.5 PHASE 2

Notice to Proceed for Phase 2 will not be issued until a certificate of occupancy is obtained for new facility and the new building is occupied.

3.2.1.5.1 Install all perimeter fencing and signs around construction areas for Odom's Field.

3.2.1.5.2 Proceed with demolition and site preparation for the construction of Odom's Field.

3.2.1.5.3 Proceed with the construction of Odom's Field, including fields, fencing, dugout, warmup area, bleachers pavilions, pergola, trash enclosure and parking areas.

3.2.1.5.4 Construction of monument signs, parking, adjacent surrounding of new facility and pool.

3.2.1.5.5 Install all perimeter fencing and signs around construction areas for Little League Field.

3.2.1.5.6 Proceed with demolition and site preparation for the construction of the Little League Field.

3.2.1.5.7 Proceed with the construction of the Little League Field, including fields, fencing, dugout, warmup area, bleachers pavilions, pergola trash enclosure and parking areas.

3.2.1.5.8 Install all perimeter fencing and signs around construction areas for Teddy's Field.

3.2.1.5.9 Proceed with demolition and site preparation for the construction of Teddy's Field.

3.2.1.5.10 Proceed with the construction of Teddy's Field, including fields, fencing, dugout, warmup area, bleachers pavilions, pergola trash enclosure and parking areas.

3.2.1.5.11 Proceed with the demolition of existing pools, pump building, basketball courts and all utilities within the upper North-East corner of the site.

3.2.1.5.12 Proceed with the construction of general areas, family pool and competition pool, shelter and restrooms, internal walkways, picnic pavilions, playground and green space civic lawn area.

3.2.1.5.13 Remove the existing tennis courts' surface. Tennis courts are to remain (upper North-East corner of the site). Existing tennis court to be resurfaced.

3.2.1.5.14 Resurface and upgrade tennis courts.

3.2.1.5.15 Existing two-story concession building to receive new exterior finish. Patch

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and repair all stucco finish to receive new paint. All exterior doors, door frames, and window frames to receive new paint. All exterior light fixtures to be replaced with new.

3.2.1.5.16 Proceed with demolition of existing playground, old temporary parking designated areas and staging areas for construction.

3.2.1.5.17 Proceed with new construction of parking area, basketball courts, basketball pavilions, parking, and shelter and restrooms.

The City reserves the right to not issue NTP for Phase 2. In such event, the CITY will not be responsible to reimburse the CMAR for any continuing contractual commitments to subcontractors or material men or for penalties or damages for canceling such contractual commitments.

3.3 SCOPE OF SERVICES

CMAR scope of services **shall** have the following sections, at a minimum, performed in two (2) phases:

3.3.1 Phase I: Pre-Construction Services

3.3.1.1 Review and coordinate the proposed work with the Architect/Engineer of Record and the City.

3.3.1.2 Perform and submit a cost and savings program (Value Engineering) to the Architect/Engineer of Record and the City for consideration.

3.3.1.3 Develop a provisional construction Critical Path Methods (CPM) schedule indicating methods and sequencing of construction.

3.3.1.4 Perform a constructability review of the Construction Documents.

3.3.1.5 Provide analysis of different construction methods in each major trade group for quality control, cost and schedule enhancements and the ability to utilize concurrent activities to expedite time of delivery.

3.3.1.6 Develop a project construction budget/cost model (independent from any similar cost estimates provided by the City) to be maintained throughout design phases and construction.

3.3.1.7 Coordinate competitive bidding and contracting for trade subcontractors.

3.3.1.8 Coordinate with homeowners and governmental agencies having jurisdiction on this project, and all utility companies servicing this area.

3.3.1.9 Calculate and provide a Guaranteed Maximum Price (GMP) for the project at completion of Pre-Construction Services for the City's consideration, review and acceptance.

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3.3.2 Phase II: Construction Services

3.3.2.1 Provide Performance and Payment Bonds for the full value of the Guaranteed Maximum Price (GMP) for the project, in addition to ensuring compliance with all insurance requirements.

3.3.2.2 Apply for, obtain, coordinate, and pay for all permits, construction inspections, and testing.

3.3.2.3 Be responsible for the successful, timely, and economical completion of the projects. Create, maintain, and present an overall construction schedule of activities showing CPM.

3.3.2.4 Coordinate with the City of Delray Beach Department of Public Works, the Architect/Engineer or Record, Justin Architects, P.A. (formerly Cartaya and Associates, Architects PA) and Owner's Representative, KEITH and Associates, Inc., for the entire duration of the project.

3.3.2.5 Coordinate with homeowners and governmental agencies having jurisdiction on this project, and all utility companies servicing this area.

3.3.2.6 Maintain a safe and reliable MOT plan, considering corridor activities for weekend and Holidays. No more than one lane of traffic **shall** be closed at any given time, without prior approval from the City.

3.3.2.7 Maintain quality control and ensure conformity with the Contract Documents. Provide certified (signed and sealed) as-builts drawings (CAD & GIS) at the completion of the project.

3.3.2.8 Coordinate post-completion activities, including the assembly of guarantees, manuals, closeout documents, training, and Final acceptance, delivery and training of O&M Manuals.

3.3.2.9 Warranty Phase - Coordinate and monitor the resolution of Punch List items and warranty complaints to the satisfaction of the Owner during the warranty period.

3.3.2.10 Coordinate Construction Management Services, including but not limited to regular job site meetings, maintaining and updating schedules, overseeing quality assurances, maintaining and providing copies of all contract documents, and ensuring compliance with all safety programs.

3.3.2.11 The CMAR firm manages the construction project for the City, as an open book project. Buyout savings through the subcontractor buyout process will be split by the City and CMAR Firm with City receiving 70% and CMAR Firm receiving 30% by way of Change Order adjusting the GMP.

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3.4 ITEMS TO BE FURNISHED BY THE CITY TO THE CMAR FIRM

The City, on an as needed basis, will furnish the following Contract documents for the project:

- Executed Construction Contract
- Construction Plans (developed by Architect/Engineer)
- Technical Specifications (developed by Architect/Engineer)
- Permits
- Environments Reports
- Geotechnical Reports
- City's Approved Material List (if applicable)

These documents may be provided in either paper or electronic format. The City will not provide connection to their Network. The CMAR Firm will furnish and support any needed software to perform their work.

3.5 PUBLIC OUTREACH

The CMAR firm **shall** provide a public engagement plan and program. CMAR firm **shall** engage in extensive public outreach during the duration of the Project, to maintain that residents and business owners informed of major activities on the site. The CMAR firm may provide public outreach services to include, but not be limited to:

- Involvement with residents daily to keep the residents well-informed regarding what the CMAR firm is going to do each week.

- Preparation and dissemination of information to the public, elected officials, and the media; with approval from the City's designee; regarding any upcoming events, which will affect traffic flow.

- Production and distribution of publications (letters, door hangers, mail notifications to homeowners (including postage), flyers, brochures, and news releases to the public) necessary for this construction contract. Prior to release, the City's designee will approve all responses, letters, provide drone photography, news releases, and the like.

- Coordination of public information meetings, open houses, and community meetings as directed by the City's representatives. This may also include development of a webpage, website, and/or mechanisms to quickly respond to the public.

END OF SECTION 3

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SECTION 4: RESPONSE REQUIREMENTS

4.1. SUBMITTAL REQUIREMENTS

Proposers should carefully follow the format and instructions outlined herein. All documents and information **must** be fully completed and signed as required. Do not password-protect electronic documents.

The Proposal **shall** be written in sufficient detail to permit the City to conduct a meaningful evaluation of the proposed services. However, overly elaborate responses are not requested or desired.

4.2. REQUIRED INFORMATION AND SUBMITTAL FORMAT

In addition to the information required in Section 3, Scope of Services, Proposers **must** submit the following information with their Proposal Submittals:

SUBMITTAL FORMAT
To facilitate and expedite review, the City asks that all Proposers follow the response format outlined below. Failure to submit your response in the format requested may result in a delay evaluating your Proposal. To assist you in preparing your response, the City's selection procedures are also described herein. Please abide by all requirements set forth to avoid any risk of disqualification.

The overall package should be no longer than 80 pages total (40 double-sided or 80 single-sided, excluding Standard Form 330, Section E / resumes). Pages must be numbered to verify quantity. Tab dividers are excluded from the page count.

PROPOSALS SHOULD FOLLOW THE FORMAT BELOW:

4.2.1. TAB 1 – INTRODUCTION

Provide a cover letter no longer than two (2) pages in length. Provide a positive commitment to provide the required services. The table of contents should follow the cover letter.

4.2.2. TAB 2 – TABLE OF CONTENTS

Include a clear identification of the material included in the Proposal by page number.

4.2.3. TAB 3 – MINIMUM QUALIFICATIONS

Proposers **must** meet the following minimum qualifications; failure to meet the minimum qualifications may result in the Proposer being deemed non-responsible.

A. Proposer **must** provide an affirmative statement and submission of evidence **must** be included with the firm's response indicating that firm and all assigned key professional staff possess all licenses and certifications required to undertake and complete the project.

B. Proposer **must** have a Florida State General Contractor's license **Provide proof, in the form of a copy of license(s), that the Bidder meets this qualification.**

C. Proposer **must** have been in business, under the current vendor name, for a minimum of five (5) years prior to the Due Date and Time. **Provide supporting documentation (e.g. state,**

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county, city business license; occupational license) that confirms Proposer has been in business for a minimum of five (5) years prior to the Due Date and Time.

D. Proposer **must** have adequate bonding capacity for a single-project, with each payment and performance bonding capability of at least $45,000,000 with a surety company having a current financial rating (A.M. Best) of A- VII or better. **Provide documentation of your firm's total and single-project bonding capacity and the name and current A.M. Best rating of the surety company utilized by your firm.**

E. Proposer has no reported conflict of interests in relation to this RFQ.

Disclose the name of any officer, director or agent who is also an employee of the City. Disclose the name of any City employee who owns, directly or indirectly, any interest in the Proposer's firm or any of its branches. If no conflicts of interests are present, Proposer must submit a statement to that affect.

F. Proposer **must** submit Standard Form 330.

Complete and submit Standard Form 330. Proposers may use the electronic form.

G. Proposer **must** be registered with the State of Florida Division of Corporations to do business in Florida.

No documentation is required. The City will verify registration.

H. Proposer is NOT listed on the Florida State Board of Administration, Scrutinized List of Prohibited Companies found at:

https://www.dms.myflorida.com/business_operations/state_purchasing/state_agencyresources/vendor_registration_and_vendor_lists/scrutinized_list_of_prohibited_companies

4.2.4. TAB 4 – PROPOSER'S INFORMATION

A. Legal contracting name including any dba and state of organization or incorporation.

B. Ownership structure of Proposer's company
(e.g., Sole Proprietorship, Partnership, Limited Liability Corporation, Corporation)

C. Provide, in this section, a completed and executed copy of Proposer's W-9 that includes the company federal identification number.

D. Contact information for Proposer's Corporate headquarters and any other office locations include the following:
   i. Address
   ii. City, State, Zip
   iii. Phone

E. Contact information for Proposer's primary and secondary representative during this solicitation process including the following:
   i. Name

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ii. Phone
iii. Email
iv. Mailing Address
v. City, State, Zip

F. Provide details of any ownership changes to Proposer's organization in the past three years or Changes anticipated within six months of the Due Date and Time (e.g., mergers, acquisitions, changes in executive leadership).

G. Provide the names of the persons who are officers or principals of the company.

H. Any additional organizational information that Proposer wishes to supply to augment its Proposal.

I. Provide a letter on your firm's letterhead indicating if your firm has paid liquidated damages and/or if your firm has been terminated for default or is pending legal action. Provide details of these occurrences and the associated projects. If your firm has not paid liquidated damages or been terminated for default include this in a letter on your firm's letterhead.

J. Provide prior or pending litigation, either civil or criminal, involving a governmental agency or which may affect the performance of the services to be rendered herein, in which the Proposer, and of its employees or subcontractors, is or has been involved within the last three (3) years.

K. Its most recent certified business financial statements as of a date not earlier than the end of the Proposer's preceding official tax accounting period, together with a statement in writing, signed by a duly authorized representative, stating that the present financial condition is materially the same as that shown on the balance sheet and income statement submitted, or with an explanation for any material change in the financial condition. A copy of the most recent business income tax return will be accepted if certified financial statements are unavailable.

4.2.5. TAB 5 – EXPERIENCE, ABILITY AND REFERENCES

A. Provide details of Proposer's years of experience in the field construction and acting as a CMAR firm. Include number of projects, construction dollar value, and years of relevant experience.
B. Provide a detailed narrative documenting the Proposer's specific experience including, but not limited to the following:

i. At least three (3) projects of similar scope, budget, size, and complexity. Preferably, these projects will have been completed in the last five (5) years.

Provide the following information for the five (5) qualifying projects:

A. Name of Project Owner
B. Contact Name
C. Contact Email
D. Location / Address of Project
E. Dates of Project (start/end)

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F. Brief Description of Project
G. Project's GMP and final construction cost. Attach an explanation for each project where total project cost exceeded GMP OR estimated project cost by greater than 10 percent (10%).
H. List of the components of the project as stated above

ii. Experience with CMAR projects that include construction of a recreational center, including gymnasium and running track, meeting, fitness and dance/aerobic rooms, multipurpose room, and kitchen area. The project also includes a family pool and a competition pool with bleachers, baseball fields, basketball courts, playgrounds, and surface parking.

NOTE: The City recognizes that it is unlikely that candidates for this solicitation will have all of the similar experience requested in a single project. Experience in each of the different elements is desired, however, it is not required that all types of similar project experience is included in the same project.

iii. Experience with municipal or government agency construction projects.

iv. Experience with projects in Florida, particularly in South Florida and in Palm Beach County.

v. Other types of related experience or information.

C. Submit three (3) client references for whom Proposer has provided CMAR services (similar to those specified in this RFQ) in the past five (5) years and who are agreeable to respond to a request from the City regarding proposer's experience.

Each client reference should include the following:
i. Organization name
ii. Contact name(s)
iii. Contact email address
iv. Address
v. Telephone and fax numbers
vi. Dates of service (start/end)
vii. Scope of work (brief description)

D. Identify the primary contact person, supervisory personnel, and other key personnel (including subconsultants) who are designated to work on the City's project. Provide a **Standard Form (SF) 330, Section E** for each individual. Include copies of relevant licenses and certifications relevant to the project.

E. Explain Proposer's ability and commitment to maintain accessibility and availability for meetings, communications, and supervision.

F. Describe any significant or unique awards received or accomplishments in previous, similar projects received by the prime consultant and/or any subcontractors (Team), or by individuals within the Team.

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4.2.6. TAB 6 – ORGANIZATIONAL STRUCTURE AND CAPACITY

A. Submit SF 330, Section C for the Team proposed to work on this City project.

B. Submit SF 330, Section D detailing an organizational chart of the proposed Team.

C. Submit SF 330, Part II detailing Team's staffing resources and the location(s) at which services will be provided.

D. Provide a narrative detailing the Team's recent, current, and projected workloads at the time of submission and provide a statement of the Team's commitment of personnel and other resources for the City project.

4.2.7. TAB 7 – METHODOLOGY AND WORK PLAN

A. Provide a detailed narrative description of the proposed approach and methodology for engaging with City representatives while performing the CMAR duties in accordance with the Agreements.

B. Describe in detail Proposer's approach to the CMAR for recreational center, pool, baseball fields, basketball courts, playgrounds, and surface parking projects.

C. Narrative that demonstrates working knowledge and understanding of the CMAR requirements in the Scope of Services.

D. Provide details of how Proposer intends to meet the detailed time schedule.

E. Specify the location(s), including the complete physical address, where the work for this project will be performed, including work performed by sub-Consultants, if applicable.

F. Proposer **shall** thoroughly explain:
   i. Its accessibility in the areas of availability for meetings, general communications, coordination, and supervision.
   ii. How the Proposer physically plans on attending pre-scheduled meetings.
   iii. How the Proposer plans on ensuring accessibility and availability during the term of the Agreement.

4.2.8. TAB 8 – ATTACHMENTS

All Attachment/Forms and Affidavits required by this solicitation **shall** be fully executed by the Proposer and submitted as shown in Section 8 of this solicitation.

END OF SECTION 4

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SECTION 5: THE EVALUATION PROCESS

5.1 REVIEW OF PROPOSALS FOR RESPONSIVENESS

Each Proposal will be reviewed to determine if the Proposal is responsive to the submission requirements outlined in this solicitation. A responsive Proposal is one that follows the requirements of this solicitation, includes all documentation, is submitted in the format outlined in this solicitation, is of timely submission, and has the appropriate signatures as required on each document. Failure to comply with these requirements may result in the Proposal being deemed non-responsive.

5.2 REVIEW OF PROPOSALS FOR RESPONSIBILITY

Each Proposer will be reviewed to determine if the Proposer is a responsible Proposer. A responsible Proposer is a Proposer which the City affirmatively determines (prior to the award of a contract) has the ability, capability, and skill to perform under the terms of the contract; can provide the materials or service promptly within the time specified, without delay or interference; has a satisfactory record of integrity and business ethics; and meet the Minimum Qualification requirements in this RFQ.

5.3 EVALUATION CRITERIA

Proposals will be evaluated by a committee who will score and rank Proposals on the criteria listed below. The Evaluation Committee will be comprised of appropriate City personnel and/or members of the community, as deemed necessary, with the appropriate experience and/or knowledge. **The criteria are itemized below with their maximum scores for a maximum total of One-Hundred (100) points per proposal, per Committee member.**

CRITERIA	MAX. POINTS
Experience	**25**
➢ Example Projects and Reference Feedback	
Methodology & Work Plan	**50**
➢ Technical Approach & Methodology	
➢ Work Plan & Schedule	
Organizational Structure and Capacity	**25**
➢ Firm Qualifications	
➢ Qualifications of Key Staff	
➢ Adequacy of Staffing/Organization to Accomplish Project scope	
➢ Availability of staff	

5.4 ORAL PRESENTATIONS/INTERVIEWS

Upon initial completion of the criteria evaluation indicated above, rating and ranking, the Evaluation Committee may choose to conduct an oral presentation with the Proposers which the Evaluation Committee deems to warrant further consideration based on, among other considerations, scores in clusters and/or maintaining competition. Upon completion of the oral presentation(s), the Evaluation/

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Selection Committee will perform a final evaluation, rating, and ranking of the Proposals. In such circumstances, the initial ranking of the Proposers **shall** be considered a preliminary ranking only.

5.5 NEGOTIATIONS

If the City and the Proposer(s) cannot reach an agreement on a contract, the City reserves the right to terminate negotiations and may, at the City Manager's or designee's discretion, begin negotiations with the next highest-ranked Proposer(s). This process may continue until a contract acceptable to the City has been executed or all Proposals are rejected. No Proposer **shall** have any rights against the City arising from such negotiations or termination thereof.

5.6 CONTRACT AWARD

Any contract resulting from this solicitation will be submitted to the City Manager or designee, and the City Commission for approval, as appropriate. Notice will be provided once the City makes an award recommendation. The contract award, if any, **shall** be made to the Proposer whose Proposal **shall** be deemed by the City to be in the best interest of the City. Notwithstanding the rights of protest listed herein, the City's decision of whether to make the award and to which Proposer **shall** be final.

END OF SECTION 5

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SECTION 6: PROPOSAL SUBMITTALS

6.1 FORMS

The forms listed below **shall** be completed by an official having legal authorization to contractually bind the company or firm. Each signature represents a binding commitment upon the Proposer to provide the goods and/or services offered to the City if the Proposer is determined to be the most responsive and responsible Proposer. Solicitation forms should be uploaded to: www.periscopeholdings.com/S2G

A. Acknowledgment of Addenda

B. Proposal Submittal Signature Page

C. Conflict of Interest Disclosure Form

D. Notification of Public Entity Crimes Law

E. Notification of Public Records Law

F. Drug-Free Workplace

G. Non-Collusion Affidavit

H. Truth-In-Negotiation Certificate

I. Scrutinized Company

J. Condition of Purchase

K. Sample Performance Bond Format

L. Sample Payment Bond Format

M. Sample Letter of Credit Format

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City of Delray Beach
RFQ No. 2024-031
Project No. 16-102 / Pompey Park Recreation Center
CONSTRUCTION MANAGER AT RISK

ACKNOWLEDGEMENT OF ADDENDA

Please complete Part I or Part II, as applicable

PART I:
List below the dates of issue for each addendum received in connection with this solicitation:

Addendum #1, Dated _____

Addendum #2, Dated _____

Addendum #3, Dated _____

Addendum #4, Dated _____

Addendum #5, Dated _____

Addendum #6, Dated _____

Addendum #7, Dated _____

Addendum #8, Dated _____

Addendum #9, Dated _____

Addendum #10, Dated _____

PART II:

☐ NO ADDENDUM WAS RECEIVED IN CONNECTION WITH THIS SOLICITATION

_____
Firm Name

_____
Signature

_____
Name and Title (Print or Type)

_____
Date

BE

PROPOSAL SUBMITTAL SIGNATURE PAGE

By signing this Proposal, the Proposer certifies that it satisfies all legal requirements as an entity to do business with the City, including all Conflict of Interest and Code of Ethics provisions.

Firm Name:

Street Address:

Mailing Address (if different from Street Address):

Telephone Number(s): _____

Fax Number(s): _____

Email Address: _____

Federal Employer Identification Number: _____

Prompt Payment Terms: _____% _____ days' net _____days

Signature: _____
(Signature of authorized agent)

Print Name: _____

Title: _____

Date: _____

By signing this document, the Proposer agrees to all terms and conditions of this solicitation and the resulting contract/agreement.

THE EXECUTION OF THIS FORM CONSTITUTES THE UNEQUIVOCAL OFFER OF PROPOSER TO BE BOUND BY THE TERMS OF ITS PROPOSAL, FOR NOT LESS THAN ONE HUNDRED AND TWENTY (120) DAYS, AND THE PROPOSER'S UNEQUIVOCAL OFFER TO BE BOUND BY THE TERMS AND CONDITIONS SET FORTH IN THIS SOLICITATION. FAILURE TO SIGN THIS SOLICITATION WHERE INDICATED ABOVE, BY AN AUTHORIZED REPRESENTATIVE, SHALL RENDER THE PROPOSAL NON-RESPONSIVE. THE CITY MAY, HOWEVER, IN ITS SOLE DISCRETION, ACCEPT ANY PROPOSALTHAT INCLUDES AN EXECUTED DOCUMENT WHICH UNEQUIVOCALLY BINDS THE PROPOSER TO THE TERMS OF ITS PROPOSAL.

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CONFLICT OF INTEREST DISCLOSURE FORM

The award of this contract is subject to the provisions of Chapter 112, *Florida Statutes*. All Proposers **must** disclose within their Proposal: the name of any officer, director, or agent who is also an employee of the City of Delray Beach.

Furthermore, all Proposers **must** disclose the name of any City employee who owns, directly or indirectly, an interest of more than five percent (5%) in the Proposer's firm or any of its branches.

The purpose of this disclosure form is to give the City the information needed to identify potential conflicts of interest for evaluation team members and other key personnel involved in the award of this contract.

The term "conflict of interest" refers to situations in which financial or other personal considerations may adversely affect, or have the appearance of adversely affecting, an employee's professional judgment in exercising any City duty or responsibility in administration, management, instruction, research, or other professional activities.

Please check one of the following statements and attach additional documentation if necessary:

_____ To the best of our knowledge, the undersigned firm has no potential conflict of interest due to any other Cities, Counties, contracts, or property interest for this Proposal.

_____ The undersigned firm, by attachment to this form, submits information which may be a potential conflict of interest due to other Cities, Counties, contracts, or property interest for this Proposal.

Acknowledged by:

_____
Firm Name

_____
Signature

_____
Name and Title (Print or Type)

_____
Date

BE

NOTIFICATION OF PUBLIC ENTITY CRIMES LAW

Pursuant to Section 287.133, *Florida Statutes*, you are hereby notified that a person or affiliate who has been placed on the convicted contractors list following a conviction for a public entity crime may not submit a Proposal on a contract to provide any goods or services to a public entity; may not submit a Proposal on a contract with a public entity for the construction or repair of a public building or public work; may not submit Proposals on leases or real property to a public entity; may not be awarded or perform work as a contractor, supplier, sub-Proposer, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017 [F.S.] for Category Two [$35,000.00] for a period of thirty-six (36) months from the date of being placed on the convicted contractors list.

Acknowledged by:

_____
Firm Name

_____
Signature

_____
Name and Title (Print or Type)

_____
Date

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NOTIFICATION OF PUBLIC RECORDS LAW PERTAINING TO PUBLIC CONTRACTS AND REQUESTS FOR CONTRACTOR RECORDS PURSUANT TO CHAPTER 119, *FLORIDA STATUTES*

Pursuant to Chapter 119, *Florida Statutes*, Contractor shall comply with the public records law by keeping and maintaining public records required by the City of Delray Beach in order to perform the service. Upon request from the City of Delray Beach' custodian of public records, contract shall provide the City of Delray Beach with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, *Florida Statutes* or as otherwise provided by law. Contractor shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract. If the Contractor does not transfer the records to the City of Delray Beach. Contractor upon completion of the contract, shall transfer, at no cost, to the City of Delray Beach all public records in possession of the Contractor or keep and maintain public records required by the City of Delray Beach in order to perform the service. If the Contractor transfers all public records to the City of Delray Beach upon completion of the contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City of Delray Beach, upon request from the City of Delray Beach' custodian of public records, in a format that is compatible with the information technology systems of the City of Delray Beach.

IF CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, *FLORIDA STATUTES*, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT OFFICE OF THE CITY CLERK LOCATED AT 100 NW 1ST AVENUE, DELRAY BEACH, FLORIDA 33444, PHONE NUMBER (561) 243-7000, EMAIL ADDRESS: JOHNSONK@MYDELRAYBEACH.COM.

Acknowledged:

Firm Name

Signature

Name and Title (Print or Type)

Date

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DRUG-FREE WORKPLACE

_____ is a drug-free workplace and has
(Company Name)
a substance abuse policy in accordance with and pursuant to Section 440.102, *Florida Statutes*.

Acknowledged by:

_____
Firm Name

_____
Signature

_____
Name and Title (Print or Type)

_____
Date

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