

CONTRACT FOR CONSTRUCTION MANAGEMENT AT RISK SERVICES

THE CITY OF DAYTONA BEACH, FLORIDA (the "CITY" or OWNER") and PCEO, Inc., a foreign profit corporation authorized to do business in Florida (the "CM", "CMAR", or "CONTRACTOR"), enter into this Contract for Construction Management at Risk Services (hereinafter, this "Contract" or this "Agreement"), on this _____ day of _____, 2018 (the "Effective Date").

For the mutual covenants, conditions, and considerations set forth herein, the Parties hereto do hereby agree as follows:

ARTICLE 1 - DEFINITIONS

1.1 **Definitions.** Unless specifically provided otherwise, all words and phrases in this Contract in initial caps will have the meanings set out in this Section 1.1; or where not set out in this Section 1.1, in the GTCs or other Contract Documents. In the event of any conflict between the definitions in this Section 1.1 and the definitions contained in any other Contract Documents, the definition in this Section will apply. Other words and phrases used in the Contract Documents and not expressly defined in this Section or in other provisions of the Contract Documents, will have the meanings ordinarily ascribed.

1.1.1 **Approval** or **Approved** means the written approval of OWNER, and, as applicable, the Design Engineer, where expressly required or allowed herein. The act of an Approval will not constitute a waiver of OWNER's rights hereunder or excuse the CM from fulfilling its obligations to perform in accordance with this Contract.

1.1.2 **Building Information Model** or **BIM** means a computable multi-dimensional representation of the physical and functional characteristics of the Project's facilities, to be used as a repository of design and construction information for use by the Project Team during the construction of the Project and for the OWNER's use throughout the life-cycle of the facilities.

1.1.3 **C&A** means the clarifications and assumptions listed in the document included in the GMP Statement, entitled "Scope of Work Clarifications."

1.1.4 **CAD** means AutoCAD DWG format.

1.1.5 **CM Project Manager** means the individual designated by CM, who has been Approved as the contact person with specific authority to properly supervise and direct the duties and responsibilities of CM, on behalf of CM, pursuant to the terms and conditions of this Contract, and who will have decision-making authority to bind CM with respect to the Work rendered in connection with this Contract.

1.1.6 **CM's Response to RFP** means the written proposal submitted by CM, dated August 25, 2017, in response to the RFP, including all additional written documents submitted after the date of initial submission and prior to award of this Contract, addressing CM's approach

to the Project and including background information on CM relied upon by selecting CM for this Contract.

1.1.7 **Code Inspector** means a person employed by or under contract with a Governmental Authority to ensure compliance with Legal Requirements.

1.1.8 **Construction Management Fee** means the amount derived by multiplying the Cost of Work by .06.

1.1.9 **Construction Management Services or Services** means the comprehensive construction and management services to be provided by CM to the OWNER as specified in this Contract. The Services includes performance of the Work in accordance with all of the terms and conditions herein.

1.1.10 **Contract Administrator** has the meaning set forth in the GTCs.

1.1.11 **Contract Documents** means this Contract, and all documents incorporated into this Contract, including the GTCs, Supplemental GTCs (if any), the RFP, the Addenda to the RFP, CM's response to RFP, the Technical Provisions,, the Plans, all Exhibits specifically referenced herein, and all other amendments, all change orders, and any other documents specifically referenced in any of these listed Contract Documents as being a part of this Contract.

1.1.12 **Contract Time** has the set forth in the GTCs; provided, however, that extensions in Contract Time created by Change Order may extend not only the time for achieving Final Completion, but also for Substantial Completion if the Change Order so provides.

1.1.13 **Cost of the Work or Cost of Work** means the direct or indirect field costs to perform the Services, which CM must necessarily incur to properly perform in strict compliance with the Contract Documents. Cost of the Work includes any additional costs due to acceleration of the Work to overcome delays, only to the extent such delays were not caused or contributed to, in whole or in part, by the negligence of CM, or its Subcontractor or other persons over whom CM or any Subcontractor exercises control or is legally responsible. **Cost of the Work** excludes all items of cost covered, Construction Management Fees and all markups on payments to Subcontractors. **Cost of the Work** includes all items within the scope of General Conditions as defined herein, unless such item is expressly excluded from Cost of Work in Section 7.1.6.

1.1.14 **Design Engineer** has the same meaning as set forth for the term "E/A" in the GTCs. The Design Engineer is Carollo Engineers, Inc.

1.1.15 **EPMCS** means electronic Project management control system, which will be a hosted software system acceptable to OWNER, which CM will use in creating Project management controls, including the PMIS and Project Manuals referenced herein. CM will provide OWNER and E/A ready access to the EPMCS and will integrate the EPMCS into other software systems used in the prosecution of the Work as recommended by the CM and Approved by OWNER.

1.1.16 **Effective Date** means the date of this Contract as stated in the first paragraph of this Contract.

1.1.17 **Final Completion** has the same meaning as set forth in the GTCs.

1.1.18 **General Conditions** means those items and related costs that are specified in Section 7.1.7.

1.1.19 **General Terms and Conditions or “GTCs”** means OWNER’s standard construction contract general conditions, labelled as such and incorporated herein by reference in Division 0 of the Contract Documents. The GTCs are separate and apart from “General Conditions” as defined herein. All references within the RFP to “General Conditions,” including within the GTCs themselves and the Technical Provisions, will be deemed to refer to the GTCs, and not the General Conditions as defined herein, unless logic dictates otherwise.

1.1.20 **GMP Statement** means the CM’s written statement, dated June 26, 2018 of the Guaranteed Maximum Price for CM’s performance of the Services referenced herein. The GMP Statement includes the following:

(a) A narrative statement that summarizes all major elements of the Work, including a statement of all major elements of the Work for which CM will self-perform instead of subcontracting.

(b) A list of any changes made to the initial Technical Provisions and Plans attached to the RFP, that were made based on CM’s constructability review referenced in Section 9.1.17(c).

(c) The C&A.

(d) A detailed breakdown of the fees and costs for General Conditions and Other Costs of Work. The breakdown includes reasonably anticipated conditions that may require expenditures from OWNER’s Contingency, as well as projected costs to address these conditions.

(e) A listing of CM’s Key Personnel, including technical qualifications and summary description of their respective roles.

The GMP Statement is attached hereto and incorporated herein as **Exhibit A**.

1.1.21 **Governmental Authority** means any federal, state, or local governmental agency with jurisdiction over the Project, or that otherwise have authority to determine whether an aspect of the Project complies with Legal Requirements such as permits. This term includes the OWNER, when acting as a regulatory authority.

1.1.22 **Guaranteed Maximum Price** (also hereinafter referred to as “GMP”) means the maximum sum that OWNER will be responsible to pay for the completion of the Project or a portion thereof, subject to any change orders, any excess of which will be the obligation solely

of CM.

1.1.23 **Job Site, Project Site, or Site** has the same meaning as the term “Project Site” as used in the GTCs.

1.1.24 **Legal Requirements** has the same as set forth in the GTCs; and includes, with respect to the City of Daytona Beach Utilities Department, the City’s Standard Utility Details.

1.1.25 **OWNER’s Construction Budget** means the sum total of all of the OWNER's funds, budgeted and requested, for construction of the Project.

1.1.26 **OWNER’s Contingency** means the amount of funds, if any, included in the OWNER’s Construction Budget and so designated by the OWNER, which funds are part of the GMP, subject to conditions set forth below, and which constitutes a separate fund available for OWNER’s exclusive use and control for the Project. This Contingency will allow for such items as Permits and testing services. Contingency shall not be unreasonably withheld.

1.1.27 **“Plans”** means the plan documents prepared by the Design Engineer and dated January, 2018, prepared by the Design Engineer, showing the location, character, dimensions, and details of the Work. The defined term may also be referred to within the Contract Documents as “drawings,” “contract drawings,” “contract plans,” or similar terms; but not “shop drawings.” The Plans are not physically attached; however, CM acknowledges receipt thereof.

1.1.28 **Pre-Construction Phase Activities** means certain activities that CM performed prior the execution of this Contract, to help CM perform the Services required herein.

1.1.29 **Project** means the construction of the RAS/WAS Pumping, Bardenpho™ Stage 3 and Stage 5 Aeration and Tertiary and Deep-bed Sand Filters Improvements at the Westside Regional Water Reclamation Facility further described in the RFP, in accordance with the Contract Documents, and including CM’s performance of the Work and all Services referenced herein.

1.1.30 **Project Team** means the OWNER, the CM, and the Design Engineer and any separate contractors, consultants, or other service providers employed by OWNER for the purpose of planning, programming, design, construction, and commissioning of the Project. The Project Team will be designated by OWNER and may be modified from time to time by OWNER.

1.1.31 **Resident Project Representative** means the Design Engineer’s authorized representative of E/A assigned to the Project Site; and in all other instances, the Contract Administrator.

1.1.32 **Request for Proposals or (RFP)** means the solicitation issued by the OWNER dated July 18, 2017 (City RFP No. 0317-2370), including all attachments thereto and all addenda issued by or on behalf of the OWNER prior to opening of the proposals submitted in response to the RFP. The RFP is incorporated into this Contract by reference.

1.1.33 **Supplemental General Terms and Conditions or SGTCs** means the “Florida Department of Environmental Protection--Supplemental Conditions,”labelled as such and included in Division 0 of the Contract Documents which provide specific modifications to the GTCs for purposes of this Contract. The SGTCs are separate and apart from General Conditions as defined below.

1.1.34 **Subcontractor** means a person or organization that has a direct contract with the CM to perform any portion of the Work, including provision of services or deliver of materials or supplies to be incorporated into the Project; and where the context requires, Subcontractors to such persons or organizations. This term is meant to include Subcontractors of all tiers.

1.1.35 **Substantial Completion** has the meaning set forth in the GTCs. Partial use or occupancy will not result in the Project being deemed substantially complete and will not be evidence of Substantial Completion, nor will execution of a certificate of Substantial Completion be deemed to excuse unidentified or uncorrected defects in the Work or Services.

1.1.36 **Technical Provisions** has the meaning set forth in the GTCs; provided that the term also refers to any amendments thereto described in or made necessary by the C&As.

1.1.38 **Work** means the physical construction and the improvements thereby constructed, as required by the Contract Documents, and includes all other labor, materials, and equipment provided or to be provided by the CM, including the work of managing the construction of the Project as described herein, to fulfill the CM’s obligations hereunder. The term includes all work to be performed by subcontractors.

1.1.39 **Work Product** means all work product generated in relation to the Project, including all instruments of service, submittals, drawings, specifications, Project Manuals, CDPs, documents, plans, data compilations or calculations, Building Information Models, studies, reports, or other documents, and all ideas incorporated therein; and all intellectual property rights associated therewith, and any contributions thereto, which are prepared by or on behalf of CM in connection with the Project or in connection with the performance of the Work required hereunder, which Work Product will, except as otherwise set forth in this Contract, be and remain the property of the OWNER, and will only be used by CM in a manner strictly adhering to CM’s limited use and ownership rights as set forth in this Contract.

ARTICLE 2 PROJECT; SCOPE OF SERVICES

2.1 **Description of Project.** CM will perform all services described or referenced herein and complete all work needed for the Project, which will be located at the Westside Regional Water Reclamation Facility, located at 3651 LPGA Boulevard, Daytona Beach, FL 32124.

2.2 **The Contract Documents.** The Contract Documents include this Contract, the GTCs, the SGTCs, the Technical Provisions, Plans, RFP, CM’s Response, all Exhibits attached hereto, all Referenced Standards as described in the GTCs, any change orders or amendments to this

Contract, and any other documents specifically identified by any of the foregoing documents as “Contract Documents”. The Contract Documents also include all information necessary for CM’s proper prosecution and timely completion of the Work, whether or not specifically identified herein.

2.2.1 **Order of Precedence.** GTCs Section 2.1.1 is amended by revising the Order of Precedence in case of conflicts among Contract Documents, to be as follows, ranked from highest to lowest priority.

- (a) Amendments and Change Orders.
- (b) This Construction Contract.
- (c) The SGTCs.
- (d) The C&A.
- (e) Addenda 1 – 6 to the RFP, issued by CITY prior to CM Response to Proposal.
- (f) The Technical Provisions.
- (g) The Plans (figured dimensions will govern over scaled drawings).
- (h) The GTCs.
- (i) All provisions of the RFP other than the SGTCs, Technical Provisions, Plans, and GTCs.
- (j) The GMP Statement, including all attachments thereto other than the C&A.
- (k) All documents submitted, and required to be submitted, as part of CM’s Response to Proposal.
- (l) All other Contract Documents that are neither listed above nor expressly incorporated into one of the foregoing Contract Documents.

2.2.2 **Effect on Other Interpretive Rules.** The listing of priority of Contract Documents in the preceding Section shall not be deemed to alter or waive the contractual interpretive standards contained in GTCs Sections 2.1.2 - 2.1.8; or the contractual interpretive standards referenced in the SGTCs.

2.2.3 **State Revolving Fund-Related Requirements.** The CM understands that the Project will be funded in whole or in part under a State Revolving Fund (“SRF”) loan from the State of Florida Department of Environmental Protection (“FDEP”) to the City. While the SGTCs have been made a part of this Contract in order to provide a mechanism to comply with requirements of the SRF loan, there may be additional technical requirements imposed by FDEP through the SRF loan, as it now exists or is hereafter amended. The Parties agree that if there are any conflicts between these additional technical requirements imposed by FDEP through the SRF loan, and the provisions of the Contract Documents, these additional technical requirements will be complied with.

2.2.4 **Unresolved Conflicts.** If reasonable doubt remains as to the interpretation of provisions of this Contract after applying the order of precedence and the additional contractual interpretive standards referenced above, the most stringent contractual provision will apply.

2.3 **Pre-Construction Phase Activities.** CM affirms that prior to the execution of this Contract, CM performed certain Pre-Construction Phase Activities that are normally compensated by the project owner in construction management at risk contracts, at CM's sole cost and expense; and that any compensation that CM may otherwise claim in consideration for the performance of such activities is included in the Contract Price set forth below. Certain representations regarding these Activities are referenced in Section 9.1, below.

2.4 **Project Management Program.** Prior to commencing Work, the CM will develop and maintain a project management program, acceptable to the OWNER and Design Engineer, to assure the prosecution of the Work in a timely and efficient manner, consistent with all requirements of this Contract. The program will include the elements described below.

2.4.1 **PMIS.**

(a) **In General.**

(1) Prior to OWNER's issuance of a Notice to Proceed ("NTP") CM will implement the PMIS, and will thereafter use the PMIS throughout the life of this Contract. This PMIS will include establishment and use of the EPMCS defined above.

(2) The reports, documents, and data to be provided will through use of the PMIS represent an accurate assessment of the current status of the Project and of the Work remaining to be accomplished and it will provide a sound basis for identifying variances and problems and for making management decisions. It will be prepared and furnished to the OWNER and the Design Engineer monthly and will accompany each pay request.

(3) If requested by the OWNER, the CM will conduct a comprehensive workshop in Daytona Beach, Florida, for participants designated by the OWNER and additional seminars as required to provide instruction. This workshop and the seminars will facilitate each participant's and the OWNER's representatives' use and understanding of PMIS.

(4) The PMIS will be described in terms of the following major subsystems:

- A. Narrative Reporting;
- B. Schedule Control;
- C. Cost Control and Estimating;
- D. Project Accounting;
- E. Accounting and Payment; and
- F. Action Reports.

The above reports will be submitted at least on a monthly basis.

(b) Narrative Reporting Subsystem.

(1) The CM will prepare reports as described hereunder. All reports will be provided in the EPMCS.

(2) The Narrative Reporting Subsystem will include the following reports:

A. A Monthly Executive Summary which provides an overview of current issues and pending decisions, future developments and expected achievements, and any problems or delays, including issues of non-compliance with Legal Requirements found by any Governmental Authority.

B. A Monthly Cost Narrative describing the current construction cost estimate status of the Project.

C. A Monthly Scheduling Narrative summarizing the current status of the overall Project schedule. This report will include an analysis of the various Project schedules, a description of the critical path, and other analyses as necessary to compare planned performance with actual performance.

D. A Monthly Accounting Narrative describing the current cost and payment status of the entire Project. This report will relate current encumbrances and expenditures to the budget allocations.

E. A Monthly Construction Progress Report summarizing the work of the various Subcontractors. This report will include information from the weekly Job Site meetings as applicable such as General Conditions items, long lead supplies, current deliveries, safety and labor relations programs permits, construction problems and recommendations, and plans for the succeeding month.

F. MBE and WBE status report.

G. A Daily Construction Diary describing events and conditions on site.

H. A quarterly report summarizing direct purchases and associated sales tax savings.

(3) The Reports outlined in Paragraphs (2).A. – (2)H. above will be provided and submitted monthly and will be current through the end of the preceding month. Copies will be transmitted to the OWNER and the Design Engineer. A copy of the complete diary will be submitted to the OWNER at the conclusion of the Project.

(c) Scheduled Control Subsystem.

(1) Master Project Schedule. Immediately after the Effective Date, the CM will submit a master Project schedule, including critical path method chart, establishing

significant Project milestones.. The master Project schedule will be produced and updated monthly throughout the Project.

(2) Construction Schedule. Within 30 days after the date of the OWNER's issuance of Notice to Proceed, the CM will prepare and submit to the OWNER a construction schedule graphically depicting the activities contemplated to occur as a necessary incident to performance of the Work required to complete the Project, showing the sequence in which the CM proposes for each activity to occur and duration (dates of commencement and completion, respectively) of each activity.

The form of the construction schedule will be Primavera, and will be acceptable to the OWNER if used by the CM; provided, however, that the OWNER will determine whether the construction schedule developed and submitted by the CM meets the requirements stated above; and such determination will be binding on the CM. Failure of the CM to develop and submit a construction schedule as aforesaid will be sufficient grounds for the OWNER to find the CM in substantial default and that sufficient cause exists to terminate the contract or to withhold any payment.

Following development and submittal of the construction schedule, the CM will, at the end of each calendar month or at such earlier intervals as circumstances may require, update and/or revise the construction schedule which will be submitted to the OWNER in duplicate. Failure of the CM to update, revise, and submit the construction schedule will be sufficient grounds for the OWNER to find the CM in substantial default and that sufficient cause exists to terminate the Contract or to withhold payment to the CM until a schedule or schedule update acceptable to the OWNER is submitted.

(3) Incorporated Schedules. The CM will prepare and incorporate into the schedule database, at the required intervals, the following schedules:

A. *Bid Schedules (Subnetworks)*: The CM will prepare a construction schedule for work encompassed in each bid package. The schedule will be sufficiently detailed as to be suitable for inclusion in the bid package as a framework for contract completion by the successful bidder. It will show the interrelationships between the work of the successful bidder and that of other Subcontractors, and will establish milestones keyed to the overall master schedule.

B. *Subcontractor Construction Schedules (Subnetworks)*: Upon the award of each subcontract, the CM will jointly with the Subcontractor, develop a schedule which is more detailed than the bid schedule included in the bid packages, taking into account the work schedule of the other Subcontractors. The construction schedule will include as many activities as necessary to make the schedule an effective tool for construction planning and for monitoring the performance of the Subcontractor. The construction schedule will also show pertinent activities for material purchase orders, manpower supply, shop drawing schedules and material delivery schedules.

C. *Occupancy Schedule*: The CM will jointly develop with the Design Engineer and OWNER a detailed plan, inclusive of punch lists, final inspections, maintenance training and turn-over procedures, to be used for ensuring accomplishment of a

smooth and phased transition from construction to agency occupancy. The Occupancy Schedule will be produced and updated monthly from its inception through final OWNER occupancy.

(d) **Cost Control Subsystem:** The operation of this subsystem will provide sufficient timely cost data and detail to permit the CM to control and adjust the Project requirements, needs, materials, equipment and systems by building and site elements so that construction will be completed at a cost which, together with all other Project costs, will not exceed the OWNER's Construction Budget.

(e) **Project Accounting Subsystem:** The operation of this subsystem will enable the CM to plan effectively and the OWNER to monitor and control the funds available for the Project, cash flow, costs, change orders, payments, and other major financial factors by comparison of the OWNER's Construction Budget, estimate, total commitment, amounts invoiced, and amounts payable, and also enable the OWNER to stay informed. The CM will retain all Project files in a manner consistent with proper accounting procedures that would be sufficient for an audit by OWNER for a period of 5 years after final completion of the Project, and will make these files available to OWNER or OWNER's agent throughout this period. This subsystem will be produced and updated monthly and includes the following reports:

(1) Costs Status Report representing the budget, estimate, and base commitment (awarded contracts and purchase orders) for any given contract or budget line item. It will show Approved change orders for each contract which when added to the base commitment will become the total commitment. Pending change orders will also be shown to produce the total estimated probable cost to complete the Work.

(2) A Payment Status Report showing the value in place (both current and cumulative), the amount invoiced (both current and cumulative), and the balance remaining. A summary of this report will accompany each pay request.

(3) A Detailed Status Report showing the complete activity history of each item in the Project accounting structure. It will include the budget, estimate, and base commitment figures for each contract. It will give the change order history including change order numbers, description, proposed and Approved dates, and the proposed and Approved dollar amounts. It will also show all pending or rejected change orders.

(4) A Cash Flow Diagram showing the projected accumulation of cash payments against the Project. Cash flow projections will be generated for anticipated monthly payments as well as cumulative payments.

(5) Payments to MBE vendors. The CM will provide and maintain a Detailed Schedule of Values to supplement the operation of the Project accounting subsystem. The schedule will be used to provide construction cost accountability for the Work, on-site reimbursable expenses, and costs requiring accounting needs.

2.4.2 **Policy and Procedure Manual.**

(a) **In General.** Prior to OWNER's issuance of an NTP, the CM will develop a draft of the comprehensive Policy and Procedure Manual describing the services set forth in this Contract. This will provide a plan for the control, direction, coordination, and evaluation of Work

performed throughout the Project; management of Project and Project Site safety; the Project organization including identification of key personnel, responsibilities of the CM, OWNER and Design Engineer; and work flow diagrams.

(b) **Review and Approval.** The OWNER will have the right to review the Policy and Procedure Manual and to approve its content and format. CM will prepare 5 copies of the draft Policy and Procedure Manual for review by the OWNER's designated representatives and the Design Engineer. Upon OWNER's Approval of the Policy and Procedure Manual, CM will provide OWNER 5 copies thereof (these may be the initial drafts if no changes are required thereto).

(c) **Contents of Policy and Procedure Manual.** The Policy and Procedure Manual will describe in detail the procedures for executing the Work and the organizations participating. The Policy and Procedure Manual will include, as a minimum, the following sections:

(1) Project Definition. The known characteristics of the Project or sub-projects will be described in general terms which will provide the participants a basic understanding of the Project or sub-projects.

(2) Project Goals. The schedule, budget, physical, minority participation, technical and other objectives for the Project will be defined.

(3) Project Strategy. A narrative description of the Project delivery methods will be utilized to accomplish the Project goals.

(4) Project Work Plan. A matrix display of the program of work to be performed by the CM, the Design Engineer, and the OWNER.

(5) Project Organization. A summary organization chart showing the interrelationships between the OWNER, the CM and the Design Engineer, and other supporting organizations and permitting review agencies. Detailed charts, one each for the CM and Design Engineer, showing organizational elements participating in the Project will be included.

(6) Responsibility Performance Chart. A detailed matrix showing the specific responsibilities and interrelationships of the OWNER, the Design Engineer, and CM. The Responsibility Performance Chart will indicate major responsibility, and minor responsibility, for each specific task required to deliver the Project. The CM will develop a similar chart for the personnel within CM's own organization who are assigned to the Project, and the Design Engineer from data supplied by such.

(7) Flow Diagrams. These charts will display the flow of information and the decision process for the review and approval of shop drawings and submittals, progress, and change orders and requests for information.

(8) Written Procedures. The CM will provide written procedures for communications and coordination required between Construction Team members throughout the Project. Procedures will cover such items as correspondence, minutes, reports, inspections, team meetings, technical reviews, design reviews, and other necessary communications.

A. Except as otherwise expressly provided in this Contract, communications by the CM to OWNER will be made through the Contract Administrator; and the written procedures will reflect this fact.

(c) **Part of Contract.** The Policy and Procedure Manual is merely an amplification and clarification of this Contract. Any conflicts between the Policy and Procedure Manual and this Contract will be governed by the latter.

(d) **Policy and Procedure Manual Provision-Construction Phase.** The CM will provide the OWNER, its representatives and the Design Engineer with copies of the Policy and Procedure Manual (total number of copies not to exceed 6) expanded for the Construction Phase employing their respective milestones, beginning and finishing dates, their respective responsibilities for performance and the relationships of their work with respect to Subcontractors and suppliers.

(e) **Implementation; Updating.** Once the Policy and Procedure Manual is Approved, CM will strictly comply with it. Notwithstanding the inclusion of scheduling and timelines information in the Manual, the CM will also continue to provide current scheduling information and provide direction and coordination regarding milestones, beginning and finishing dates, responsibilities for performance and the relationships of the CM's work to the work of CM's Subcontractors and suppliers to enable them to perform their respective tasks so that the development of construction progresses in a smooth and efficient manner in conformance with the overall Project schedule. The CM will advise the OWNER, its representatives and the Design Engineer of their required participation in any meeting or inspection giving each at least one week notice unless such notice is made impossible by conditions beyond CM's control. The CM will hold Job Site meetings at least once each month with the Construction Team and at least once each week with the Subcontractors and the Resident Project Representative, or more frequently as required by work progress, to review progress, discuss problems and their solutions and coordinate future work with all Subcontractors. The CM will update the Policy and Project Manual to reflect any changes needed, subject to OWNER's right to review and approve such changes in advance.

2.4.3 **Quality Control.** The CM will develop and maintain a program, acceptable to the OWNER and Design Engineer, to assure quality control of the construction. At a minimum the program will include the quality control plan referenced in Section 01460 of the Technical Provisions. The program will include the production and implementation of quality control reports, and a methodology for incorporation of the program into all subcontracts.

The CM will be solely responsible for implementing effective quality control measures amongst its own employees and all Subcontractors, providing instructions to each when their work does not conform to the requirements of the Contract Documents; and CM will continuously exert CM's influence and control over each Subcontractor to ensure that corrections are made in a timely manner so as to not affect the efficient progress of the Work. Should a disagreement occur between the CM and the Design Engineer over the acceptability of the Work, the OWNER, at its sole discretion, will have the right to determine the acceptability.

2.5 Staffing and Personnel.

2.5.1 **CM's Personnel.** CM will maintain sufficient off-site support staff, and sufficient and competent full-time staff at the Project Site, with full authority to act on behalf of the CM, to perform the Services in an efficient manner, including the coordination of the Work with OWNER's ongoing facilities operations at the Project Site and in the vicinity of the Project Site; supervising the activities of all Subcontractors; providing for timely inspections of the Work in progress, including inspections required by Governmental Authorities; and actively coordinating and communicating as necessary with the Design Engineer and the Contract Administrator. All CM personnel assigned to the Project will possess sufficient skills and expertise as required to satisfactorily meet all obligations and requirements of this Contract. OWNER retains the right to reject or require CM to remove CM personnel who OWNER determines in its sole judgment and discretion fail to meet this requirement.

2.5.2 **Lines of Authority.** The CM will establish and maintain lines of authority for its personnel, and will provide this definition to the OWNER and all other affected parties, such as the Code Inspectors of Governmental Authorities, the Subcontractors, and the Design Engineer, to provide general direction of the Work and progress of the various phases and subcontract. The OWNER and Design Engineer may attend meetings between the CM and Subcontractors; however, such attendance is optional and will not diminish either the authority or responsibility of the CM to administer the subcontract(s).

2.5.3 **Key Personnel.** CM will include in its staffing, the Key Personnel listed in the GMP Statement. Neither the listing of such Key Personnel within the GMP Statement, nor any written estimates of the times during which such Key Personnel will perform Services referenced in the GMP Statement or CM's Response to RFP, will in no way serve to limit CM's obligation to provide a workforce sufficient to provide the Services herein. CM will not change any of the Key Personnel identified in the GMP Statement without OWNER's Approval. OWNER will not unreasonably withhold Approval; provided, however, that it will not be unreasonable for OWNER to require that any replacement personnel have at least the same kind of educational and technical background, and same level and quality of experience with projects substantially similar to the Project herein, as the personnel being replaced.

2.5.4 **CM Schedule.** The CM will continue to provide current scheduling information and provide direction and coordination regarding milestones, beginning and finishing dates, responsibilities for performance and the relationships of the CM's work to the work of Subcontractors and suppliers to enable them to perform their respective tasks so that the development of construction progresses in a smooth and efficient manner in conformance with the overall Project schedule. The schedule will include all phases of the Work, material supplies, long lead procurement, approval of shop drawings, change orders in progress, schedules for change orders, and performance testing requirements. The CM will advise the OWNER, its representatives and the Design Engineer of their required participation in any meeting or inspection giving each at least one week notice unless such notice is made impossible by conditions beyond CM's control. The CM will hold Job Site meetings at least once each month with the Construction Team and at least once each week with the Subcontractors and the Resident Project Representative, or more

frequently as required by work progress, to review progress, discuss problems and their solutions and coordinate future work with all Subcontractors.

2.6 Bonds. In accordance with the RFP and the provisions of § 255.05, Florida Statutes, the CM will provide to the OWNER, on forms Approved by the OWNER, a 100% Performance Bond, and a 100% Labor and Material Payment Bond, each in an amount not less than the total Guaranteed Maximum Price. Completed bonds must be originals, not copies, with raised corporate seals included where applicable. The bonds must be accompanied by sufficient evidence of the authority of the issuing agent, including a certified copy of the power of attorney of the person signing the bond on the surety's behalf. The surety company executing the bonds must be must be rated "A-" Class X or better by A.M. Best Key Rating Guide, authorized to do business in the State of Florida, and must be listed by the United States Treasury Department Treasury Fiscal Service, Bureau of Government Financial Operations, Federal Register, Part V, latest revision, entitled: "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies," as being approved for writing bonds for federal Projects on its current list in an amount not less than the required bond amount.

2.7 Coordination of Shop Drawings/Requests for Interpretations. The CM will carefully review and mark as approved all shop drawings and then forward the same to the Design Engineer for review and actions. The Design Engineer will transmit them back to the CM who will then issue the shop drawings to the affected Subcontractor for fabrication and revision. The CM will maintain a suspense control system to promote expeditious handling.

The CM will request the Design Engineer to make interpretations of the drawings or specifications requested of him by the Subcontractors. The CM will tell the Design Engineer which shop drawings or requests for clarification have the greatest urgency and need to be responded to first, the purpose being to enable the Design Engineer to prioritize requests coming from the CM. CM will provide adequate time within their schedule for review of shop drawings and clarification requests but in no case will it be less than 14 calendar days for shop drawings and 7 calendar days for clarification requests. The CM will advise the OWNER and Design Engineer when timely response is not occurring on any of the above.

2.8 Permits and Approvals. The CM will secure all permits and other approvals from Governmental Authorities required by Legal Requirements, the cost of which will be considered an Owners Contingency item. The CM will fully cooperate with the Owner where necessary. CM (and its appropriate personnel) will, as requested by OWNER, attend, and schedule if necessary, all meetings with Governmental Authorities having jurisdiction as necessary to obtain all required permits and Approvals, or other meetings as requested by the OWNER, including where applicable required public meetings and hearings concerning the development and schedule of the Project. The Owner will be responsible for obtaining all permits for the project from the Owner Contingency.

2.9 Job Site Requirements.

(a) The CM will provide for each of the following activities as a part of the Work:

(1) Maintain a log of daily activities, including manpower records, weather, delays, major decisions, etc.

(2) Maintain a roster of companies on the Project with names and telephone numbers of key personnel.

(3) Establish and enforce job rules governing parking, clean-up, use of facilities and worker discipline.

(4) Provide labor relations management for a harmonious, productive Project.

(5) Provide and administer a safety program for the Project to meet OSHA requirements. Monitor for Subcontractor compliance without relieving them of responsibilities to perform work in accordance with the best acceptable practice.

(6) Provide and administer a quality control program as stated under Section 2.4.3.

(7) Provide miscellaneous office supplies that support the construction efforts which are consumed by its own forces.

(8) Provide for travel to and from its home office to the Project site and Daytona Beach as the Project requires.

(b) The CM will provide personnel and equipment or will arrange for separate Subcontractors to provide each of the following as a Cost of the Work item, or in the event the OWNER provides such services, the CM will be responsible for coordinating:

(1) Services of independent testing laboratories, to be paid from OWNER's Contingency as a Cost of Work.

(2) Printing and distribution of all required bidding documents and shop drawings, including the sets required by the Governmental Authority's inspectors.

(3) The OWNER may require that any threshold inspections required by Legal Requirements, be performed by an independent contractor at pertinent stages throughout the construction Project. The Threshold Inspector will advise the CM, the OWNER, and the Design Engineer of the required inspection incidents. The CM will provide the Threshold Inspector with sufficient notice to enable the inspections to take place at the appropriate times.

2.10 Job Site Administration. The CM will provide Job Site administrative functions during construction, to assure proper documentation, including but not limited to the following:

(a) **Job Meetings.** Hold weekly progress and coordination meetings to provide for an easy flowing and timely completed Project. Develop a Substantial Completion punch list of all known items of deficiency from which the OWNER and Design Engineer will either add to or amend during Substantial Completion inspection. Implement procedures and assure timely submittals, expedite processing Approvals and return of shop drawings, samples, etc. Coordinate and expedite critical ordering and delivery of materials, Work sequences, inspection and testing, labor allocation, etc. Review and coordinate each Subcontractor's work. Review and implement revisions to the Schedule. Monitor and promote safety requirements. In addition, a regular monthly Project status meeting will be held between the Design Engineer, OWNER, and CM.

Use the Job Site meetings as a tool for preplanning of Work and enforcing schedules and for establishing procedures, responsibilities, and identification of authority for all to clearly understand. Identify party or parties responsible for follow up on any problems, delay items, or questions, and record course for solution. Revisit each pending item at each subsequent meeting until resolution is achieved. Require all present to make any problems or delaying event known to those present for appropriate attention and resolution.

(b) **Shop Drawing Submittals/Approvals.** Provide staff to check shop drawings and to implement procedures for submittal and transmittal to the Design Engineer of such drawings for action, and closely monitor their submittal and approval process.

(c) **Material and Equipment Tracking.** Provide staff to closely monitor material and equipment deliveries, critically important checking and follow-up procedures on supplier commitments of all Subcontractors and maintain a material and equipment fabrication and delivery log.

(d) **Payments to Subcontractors.** Develop and implement a procedure for review, processing, and payment of applications by Subcontractors for progress and final payments.

(e) **Document Interpretation.** Refer all questions for interpretation of the documents prepared by the Design Engineer to the Design Engineer in written form as a Request for Information (RFI).

(f) **Reports and Project Site Documents.** Record the progress of the Project. Submit written progress reports to the OWNER and the Design Engineer, including information on Subcontractors' work, and the percentage of completion. Keep a daily log available to the OWNER, the Design Engineer, and the Governmental Authority inspectors.

(g) **Subcontractor's Progress.** Prepare periodic punch lists for Subcontractor's work including unsatisfactory or incomplete items and schedules for their completion.

(h) **Substantial Completion.** Ascertain when the Work or designated portions thereof are ready for the Design Engineer's substantial completion inspection. Develop a list of incomplete or unsatisfactory items; prepare a schedule for their completion indicating completion dates for the OWNER's review. If the CM wishes the Design Engineer to conduct a pre-substantial

completion inspection in conjunction with the CM's own forces, the Design Engineer will prepare the pre-substantial punch list from which the CM will develop a completion schedule. The Design Engineer will issue a certificate of substantial completion when Work on the Design Engineer's pre-substantial punch list has been accomplished.

(i) **Final Completion.** Monitor the Subcontractor's performance on the completion of the Project and provide notice to the OWNER and Design Engineer that the Work is ready for final inspection. Secure and transmit to the OWNER, through the Design Engineer, all required guarantees, affidavits, releases, bonds and waivers, manuals, record drawings, and maintenance books including the Final Completion form. Warranties called for by this Contract or by the Drawings and Specifications will commence on the Date of Final Completion of the Project.

(j) **Start-up.** Oversee for compliance with startup manuals and plans the check-out of utilities, operations, systems and equipment for compliance and readiness, and review for compliance in their initial start-up and testing by the Subcontractors with the OWNER's personnel.

(k) **Record Drawings.** The CM will monitor the progress of CM's own personnel and all Subcontractors on marked up field prints which at Project completion will be sent to the Design Engineer and OWNER. Prior to final closeout of the construction Project, the CM will supply to the Design Engineer a set of marked-up record drawings in mylar and electronic format showing all deviations from the Design Engineer's drawings for review and submittal to the OWNER.

2.11 **Administrative Records.** The CM will maintain at the Job Site, originals or copies of, on a current basis, files and records such as, but not limited to the following:

- Contracts or Purchase Orders
- Shop Drawing Submittal/Approval Logs
- Equipment Purchase/Delivery Logs
- Contract Drawings and Specifications with Addenda
- Warranties and Guarantees
- Cost Accounting Records
- Labor Costs
- Material Costs
- Equipment Costs
- Cost Proposal Request
- Payment Request Records
- Meeting Minutes
- Cost-Estimates
- Bulletin Quotations
- Lab Test Reports
- Insurance Certificates and Bonds
- Contract Changes
- Purchase Orders/OWNER Direct Purchases

Material Purchase Delivery Logs
"As-Built" Marked Prints
Operating & Maintenance Instruction
Daily Progress Reports
Monthly Progress Reports
Correspondence Files
Transmittal Records
Inspection Reports
Daily Logs
Bid/Award Information
Bid Analysis and Negotiations
Punch Lists
PMIS Schedule and Updates
Suspense (Tickler) Files of Outstanding Requirements
Policy and Procedure Manual

The Project records will be available at all times to the OWNER and Design Engineer for reference or review.

2.12 **Startup and Operations.**

2.12.1 **Startup.** The CM will provide a smooth, successful, and timely startup and OWNER operation of the completed Work.

2.12.2 **Coordination with Ongoing Plant Operations.** In all phases of the Work, CM will ensure that the schedules and timelines to be submitted and adhered to, account for the need to arrange for the Work in a manner that avoids interference with OWNER's public utility plant operations in an around the Job Site, and to ensure that any discrete components of the Project are brought on line under such conditions as will satisfy OWNER operational requirements.

2.12.3 **Coordination of operations and maintenance requirements; training.** The CM will catalog operational and maintenance requirements of equipment to be operated by maintenance personnel and convey these to the OWNER in such a manner as to promote their usability. The CM will provide operations training in equipment use for facility operators and other plant personnel as reasonably determined by OWNER.

2.12.4 **Warranties.** The CM will secure required guarantees and warranties, assemble and deliver same to the OWNER in a manner that will facilitate their maximum enforcement and assure their meaningful implementation.

2.12.5 **Continuous Review of Drawings and prints.** The CM will continuously review "As-Built" Drawings and mark up progress prints to provide as much accuracy as possible.

2.13 **Title and Risk of Loss of Materials and Equipment.** Except as provided in the OWNER Direct Purchase provisions of the Contract Documents, title to materials and equipment delivered to the Job Site or stored offsite will not be deemed to pass to the OWNER until the OWNER

accepts title by paying for same. The OWNER will be entitled but is not required to request title documentation. Risk of loss will not pass to the OWNER until title passes.

2.14 Additional Requirements.

2.14.1 Communications and Presentations. CM will constantly maintain communications with OWNER, Design Engineer, Subcontractors, and other persons, as needed to maintain efficient services, and to avoid unnecessary costs, conflicts, and errors. CM will participate with the Design Engineer in all explanatory presentations as may be requested by OWNER. CM's personnel, including the CM Project Manager, will meet regularly with the key personnel of OWNER, Design Engineer, and other consultants as directed by OWNER, and will take other reasonable measures to enhance the planning and coordination of the Work. CM will initiate and conduct meetings, and collaboratively contribute to Design Engineer's duties to distribute notices and documents such as agendas, minutes, reports and action papers to inform and guide the OWNER, Design Engineer and others on the Project. CM will actively participate in all meetings and/or teleconferences to bring the full measure of CM's collective experience, expertise and recommendations to the Project as it pertains to the overall Project or to a specific discipline including, but not limited to, matters concerning the proposed site use and improvements, selection of materials, and building systems and equipment.

2.14.2 Project Safety. CM will prepare a worksite safety plan and related procedures for managing safety on the Job Site in accordance with the Project Manuals, including drug testing, and criminal background testing for all of CM's personnel and all Subcontractor personnel who are working at the Job Site; and the incorporation of OWNER's site-specific safety requirements from the Project Manuals.

2.14.3 Signage. CM will not erect any sign on or relating to the Job Site, or permit others to do so, without prior Approval.

2.14.4 Long Lead Procurements. CM will plan for acquisition of long-lead items.

2.14.5 Warranty Claims Procedures. CM will develop and implement warranty claim procedures for the prompt repair or replacement of defects in the Work.

2.14.6 Maintenance of Work Progress. CM will maintain work progress and products consistent with the schedules. CM will monitor the Work of the CM personnel and Subcontractors as required and coordinate such Work with the activities and responsibilities of the Project Team with a goal to attain completion of the Project at a cost not to exceed the Guaranteed Maximum Price and the Owner's Construction Budget, and to complete the Project within the Contract Time.

2.15 OWNER Approvals. Any provisions in this Contract to the contrary notwithstanding, all consents and/or Approvals by OWNER will be in its sole and absolute discretion, and must be in writing.

2.15.1 No changes to the scope of the Work or Services or the Compensation to be received by CM, will be valid or enforceable unless evidenced by a fully executed written

amendment to this Contract or expressly Approved via Change Order.

2.15.2 To the extent that OWNER Approval is required to authorize incurring any costs, such Approval must be acquired prior to incurring any such costs.

2.15.3 OWNER reserves the right, if deemed appropriate by OWNER in its sole discretion, to extend any of the deadlines set out in this Contract.

2.15.4 OWNER hereby reserves the right, if deemed appropriate by OWNER in its sole discretion, to conduct reviews of inspections during the course of design and construction of the Project. However, CM will not be relieved of any of its obligations arising pursuant to this Contract.

2.15.5 No inspections of the Project conducted by OWNER or Design Engineer during the course of construction, either singularly or in the aggregate, will reduce the level or extent of CM's responsibilities arising pursuant to this Contract. Neither the Approval and/or final acceptance of the Project or any Deliverables, the payment of any pay application, or the issuance of any Certificates of Final or Substantial Completion by OWNER will constitute, nor be deemed, a release of CM's obligation to perform the Work and deliver the Services in a manner consistent with: (i) that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances; and (ii) as required by the Contract Documents.

ARTICLE 3 - OWNER'S RESPONSIBILITIES

3.1 **OWNER's Information.** Upon request, the OWNER will provide information regarding OWNER's requirements for the Project to the CM.

3.2 Contract Administration.

3.2.1 **Contract Administrator.** The OWNER will designate a Contract Administrator who will be fully acquainted with the Project and will define the lines of OWNER authority to approve Project Construction Budgets, and changes in Project. The Contract Administrator will render decisions promptly and furnish information expeditiously. The OWNER will inform the CM if a change is made in the Contract Administrator. CM acknowledges that the GTCs contains additional references to the Contract Administrator's authority and limitations on authority

3.2.2 **Design Engineer.** The Design Engineer's services, duties and responsibilities are described in a written agreement between the OWNER and the Design Engineer, a copy of which will be furnished to the CM. The CM will be notified of any written modification affecting the responsibilities of the Design Engineer on the job. The Contract Documents set forth of the Design Engineer's scope of services and the limitations on the Design Engineer's scope of authority under this Contract—the CM's attention is directed to the provisions of the GTCs (and SGTCs, if applicable) referencing the "E/A" and "Resident Project Representative". In addition to these limitations, the Design Engineer's authority is limited as follows:

(a) The Design Engineer will have no authority to supervise, direct, control, or have authority over, or be responsible for CM's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto. The Design Engineer, as a representative of the OWNER, will visit the Job Site at intervals appropriate to the stage of the CM's operations: (i) to become generally familiar with and to keep the OWNER informed about the progress and quality of the portion of the Work completed; (ii) to endeavor to guard the OWNER against defects and deficiencies in the Work; and (iii) to determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Design Engineer will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Design Engineer will neither have control over or charge of, nor be responsible for, the CM's construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the CM's rights and responsibilities under the Contract Documents.

3.2.3 Limitations on Contract Administration. Neither (i) Design Engineer's authority or responsibility under the Design Engineer's agreement with OWNER, or under any provision of the Contract Documents, nor (ii) any decision made by the Design Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by the Design Engineer, will create, impose, or give rise to any duty in contract, tort, or otherwise owed by the Design Engineer to CM, any Subcontractor, to any surety for or employee or agent of any of them. In no event will OWNER or the Design Engineer or their consultants or any other party engaged by or on behalf of OWNER, have control over, be in charge of, or be responsible for the CM's construction means, methods, techniques, sequences, procedures, or for safety precautions and programs in connection with the Work, since these are solely CM's responsibility. OWNER will not be responsible for the CM's failure to carry out the Work in accordance with the Contract Documents. OWNER will not have control over, be in charge of, and will not be responsible for the acts or omissions of CM, its personnel, Subcontractors, or their agents or employees, or of any other persons performing portions of the Work.

3.3 Site Survey and Reports. The OWNER will provide to the CM and/or the Design Engineer all surveys in OWNER's possession describing the physical characteristics, soil reports, and subsurface investigations.

CM ACKNOWLEDGES THAT ANY AND ALL SURVEYS, REPORTS, AND INVESTIGATIONS, IN THE POSSESSION OF OWNER AND PROVIDED TO CM THAT REFLECT OR DEPICT SITE BOUNDARIES, RECORDED EASEMENTS, TOPOGRAPHY, UTILITY LOCATIONS, AND OTHER SITE CONDITIONS AND/OR RESTRICTIONS WHICH MAY IMPACT THE DESIGN AND/OR CONSTRUCTION OF THE PROJECT WERE PREPARED SOLELY FOR OWNER'S BENEFIT AND FOR INFORMATION ONLY PURPOSES, AND THAT CM SHALL HAVE NO RIGHT TO RELY UPON SUCH AND THAT ANY RELIANCE THEREON SHALL BE AT CM'S OWN RISK.

3.4 **Approvals and Easements.** The OWNER agrees to remedy any disputes relating to the ownership and OWNER's use of the property where the Job Site is located, which might arise during the course of construction.

3.5 **Cost of Surveys & Reports.** The services, information, surveys and reports required by Section 3.3 will be furnished with reasonable promptness in accordance with the established schedule at the OWNER's expense.

3.6 **Project Fault Defects.** If the OWNER becomes aware of any fault or defect in the Project or non-conformance with the drawings and specifications, he will give prompt written notice thereof to the CM and Design Engineer.

3.7 **Funding.** The OWNER will furnish in accordance with the established schedule, reasonable evidence satisfactory to the CM that sufficient funds will be available and committed for the cost of each part of the Project. The CM will not commence any work, unless authorized in writing by the OWNER

3.8 **Lines of Communication.** The OWNER and Design Engineer will communicate with the Subcontractors only through the CM. The OWNER and Design Engineer will not attempt to direct the work of any Subcontractor or interfere with work of the CM or any Subcontractor.

3.9 **Lines of Authority.** The OWNER will establish and maintain lines of authority for OWNER's personnel and will provide this definition to the CM and all other affected parties.

3.10 **Permitting and Code Inspections.** The CM recognizes and agrees to coordinate with the Governmental Authorities and the OWNER will assist in such coordination to the extent practicable.

ARTICLE 4 - SUBCONTRACTORS

4.1 **No Privity Created.** Nothing contained in this Contract or in any Contract Document creates any contractual relation between the OWNER or Design Engineer and any Subcontractor.

4.2 **Required Subcontractors' Qualifications and Subcontract Conditions.**

4.2.1 **Subcontractual Relations.** By an appropriate written agreement, the CM will require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the CM by the terms of the Contract Documents, and to assume toward the CM all the obligations and responsibilities which the CM assumes toward the OWNER and the Design Engineer with respect to the Work to be performed by the Subcontractor so that the subcontracting thereof will not prejudice such rights. The CM will require each Subcontractor to enter into similar agreements with lower tier Subcontractors.

CM will make available to each proposed Subcontractor, prior to the execution of the subcontract, copies of the Contract Documents, to which the Subcontractor will be bound. The CM will also identify to the Subcontractor any terms and conditions of the proposed subcontract

which may be at variance with the Contract Documents. Each Subcontractor will similarly make copies of such Documents available to lower tier Subcontractors.

4.2.2 **Subcontractual Requirements.**

(a) **Supervision** - The Subcontractor must agree to provide one or more field (on-site) supervisors to provide on-site supervision. In addition, if requested by the Contract Administrator, the Subcontractor will assign and name a qualified employee for scheduling direction for its work.

(b) **Required Subcontract Provisions** - All subcontracts will provide:

(1) Limitation of Remedy. Unless otherwise Approved, in the event of a change in the Work, the Subcontractor's claim for adjustments in the Subcontractor's fee are limited exclusively to its actual costs for such changes plus overhead, profit, bond, and liability insurance costs in a manner in substantial conformity with the requirements of GTCs Section 13.3.

The subcontract will require that the Subcontractor expressly agrees that the foregoing constitute its sole and exclusive remedies for delays and changes in the Work and thus eliminate any other remedies for claim for increase in the contract price, damages, losses, or additional compensation.

(2) Filing Delay Claims. Each subcontract will require that any claims by Subcontractor for delay or additional cost must be submitted to the CM within the same time and in the same manner in which the CM must submit such claims to the OWNER under this Contract; and that failure to comply with the conditions for giving notice and submitting claims will result in the waiver of such claims.

(3) Privity and Control. The subcontract will be exclusively with the CM and will contain the necessary provision to allow the CM to control the performance of the Work.

4.3 **Responsibilities for Acts and Omissions.** The CM will be responsible to the OWNER for the acts and omissions of CM's employees and agents, including Subcontractors and Subcontractor's employees and agents, and all other persons performing any of the Work.

4.4 **Subcontracts to be Provided.** The CM will include a copy of the subcontract, including the general supplementary conditions, in the Policy and Procedure Manual.

4.5 **Negotiation of Claims.** CM will be solely responsible for negotiating with Subcontractors for their claims for additional time/cost/work. CM will review the costs associated with these claims and advise the OWNER and Design Engineer of their validity and reasonableness, acting in the OWNER's best interest, prior to approving any change order from the OWNER. Before any work is begun on any Subcontractor change order, a written authorization from the OWNER must be issued. However, when there is an eminent threat to health and safety, and OWNER's concurrence is impractical, the CM will act immediately to remove the threats to health and safety

and will subsequently fully inform OWNER of all such action taken. CM's authority to negotiate Subcontractor claims as referenced herein, and OWNER's right to be approve such changes as referenced herein, will in no way be deemed to waive or limit the provisions of this Contract, including the GCs, establishing procedures and standards for claims for additional Contract Time or changes in the price to be paid to CM herein.

ARTICLE 5 COMMENCEMENT AND COMPLETION

5.1 Time is of the Essence; Contract Time. The CITY and CM mutually agree that time is of the essence with respect to the dates and times set forth in the Contract Documents. To that end CM will commence the Work not later than the Commencement Date set forth in the General Conditions, achieve Substantial Completion within 720 days after the Commencement Date and Final Completion within 60 days after Substantial Completion, subject only to any adjustments in the Contract Time that may be authorized by Change Orders properly issued in accordance with the Contract Documents. CONTRACTOR affirms that the deadlines imposed for Substantial and Final Completion, and the establishment of a Contract Time of 780 days (consisting of 720 days for Substantial Completion and 60 additional days for Final Completion), are reasonable.

5.2 Liquidated Damages. The CITY will suffer financial loss if the Work is not achieved within the Contract Time. Accordingly, and in lieu of actual damages or proof thereof, if CM fails to meet the deadlines established above, CM will be liable to the CITY for liquidated damages as follows, subject to the upset limit on liquidated damages referenced below:

In the amount of \$1,200.00 for each and every day of unexcused delay in achieving Substantial Completion; and

In the amount of \$600.00 for each and every day of unexcused delay from the date that Substantial Completion is achieved until Final Completion is achieved.

The CITY will have the right to offset such liquidated damages against any remaining portion of the Contract Price due CM, but will not be limited to the offset if it is insufficient. If the unpaid balance of the Contract Price is less than the amount of the Liquidated Damages, the CM or its Surety must pay the deficiency to the CITY upon demand.

5.3 Upset Limit on Liquidated Damages. The total Liquidated Damages assessed against CM will not exceed an upset limit of \$144,000.

5.4 Delays in Work. Nothing herein will be deemed to prohibit CM from receiving OWNER's Approval for extending the deadlines above for Substantial or Final Completion for excusable or compensable delays as described in Article 11 of the GTCs; provided however, that where applicable such requests must strictly comply with the deadlines for notice referenced in Section 17.10.1, in addition to the requirements of GTCs Article 11.

ARTICLE 6 – CM’S COMPENSATION

6.1 Pre-Construction Phase Activities Performed Without Fee; Consideration. In consideration of OWNER’S willingness to enter into this Contract and provide CM the compensation set forth below, CM shall perform the work required in this Contract as well as work performed prior to the execution of this Contract CM performed all Pre-construction Phase Activities referenced herein (including those identified in the RFP, CM’s proposal, or elsewhere in the Contract Documents).

6.2 Contract Price. The OWNER will pay CM a Contract Price equal to the lesser of the following: (i) the sum of the Construction Phase Services Fees and Costs set forth in Section 6.2.1, or (ii) the GMP as referenced in Section 6.3. The Contract Price (as may be adjusted as set forth herein) represents CM’s sole compensation from the OWNER for prosecution of the Work, including the performance of all Services referenced herein. The Contract Price will be paid in a series of Progress Payments and a Final Payment, and is subject to retainage, as further described in the Contract Documents.

6.2.1 Construction Phase Services Fees and Costs consist of the Construction Management Fee and the Cost of Work, as defined above. CM agrees that the total compensation for Cost of Work will not exceed \$35,772,337.00, unless an amendment to this Contract is executed, or Change Order Approved, authorizing such increase.

6.2.2 OWNER’S Contingency. Owner has sole control over Owner’s Contingency, subject to any express requirements of this Contract, and shall approve the use of such Contingency in good faith as intended for the benefit of the Project.

6.3 GMP. The GMP is **\$39,918,677.00**, inclusive of the OWNER’S Contingency. Unless the GMP is increased by an amendment to this Contract or by a Change Order, the total compensation paid by OWNER to CM in connection with the Project of the performance of the Services herein referenced herein, will not exceed the GMP amount stated in this Section 6.3.

6.3.1 CM to Bear Costs in Excess of GMP. To the extent the Cost of Work exceeds the GMP, CM will bear all such costs in excess of the GMP without reimbursement or additional compensation from OWNER. CM assumes the risk of, and will be responsible for, all costs that overrun the GMP from any cause whatsoever, including costs due to otherwise excusable circumstances for which an adjustment to the GMP would have been permitted, unless CM has obtained, in advance of incurring such overrun costs, an amendment or change order to this Contract specifically increasing the GMP for such costs. For clarity, cost overruns in one or more line items of cost will be subject to this provision only if such cost overruns contribute to cost overruns that, in the aggregate, are expected to overrun the GMP; provided, however, CM will promptly inform OWNER and obtain Approval before continuing to incur any cost overrun for a line item or group of line items if CM believes or reasonably should anticipate that CM will be unable to deliver the Project within the GMP by incurring such cost overrun. Nothing in this Section 6.3.1 will be deemed to require the Owner to use the OWNER’S Contingency.

6.3.2 **OWNER Entitled to Savings in Cost of Work.** If there are any savings realized in actual expenditures for the Cost of Work, those savings will be returned to OWNER through a credit Change Order at the conclusion of the Project. Returned costs will include the portion of Construction Management Fee proportioned to the reduced Cost of Work.

6.3.3 **Retention of OWNER's Contingency.** While the OWNER's Contingency is included in the GMP, the OWNER retains the right to determine whether and when to use the OWNER's Contingency toward Project-related cost increases as referenced elsewhere in this Contract; and, if there are unused portions of the OWNER's Contingency at the expiration or termination of this Contract, OWNER will be entitled to retain them and the GMP will be reduced accordingly.

6.4 **Progress Payments.** The administration of all progress payments will be governed by the following provisions.

6.4.1 **Initial Pay Application.** The submission of the initial pay application must be preceded by the submission and Approval of the Schedule of Values as required by the GTCs.

6.4.2 **Additional Pay Application Requirements.** In addition to the specific requirements for pay applications found in the GTCs, each pay application must also include the following additional documentation.

(a) An updated Work Progress Schedule and all other submittals required by the Contract Documents.

(b) All test results and reports from all Subcontractors and/or otherwise under CM's possession or subject to CM's control.

(c) Proof of satisfaction of CM's obligation to timely upload the CM's Daily Log to the EPMCS.

(d) Any additional information or documentation required to be provided by the PMIS or Policy and Procedure Manual.

(e) Any additional information or documentation as may be requested by the OWNER.

6.4.3. **Payment by OWNER.** Payments on progress payments, and retainage on such progress payments, will be in accordance with the GTCs; provided, that no progress payments will be made that will cause CM's total compensation, inclusive of retainage held by OWNER, to exceed the GMP.

6.4.4. **Credit on Cost Plus Subcontracts.** If a subcontract is awarded on a cost plus a fee basis, CM will return to OWNER any cost savings arising out of a final subcontract cost that is less than the budgeted or expected cost for performing the subcontract, or funds that were planned to be expended, but not expended, in completing the performance of the subcontract.

6.5. Changes in the Work. Changes to the scope of Work, and Adjustments to the Contract Price or to Contract Time, will be Approved only as provided in the Contract Documents. OWNER will be entitled to a reduction in the GMP if OWNER issues a Change Order that decreases the scope of the Work, resulting in a net decrease in the estimated Cost of Work, if any. Such reduction in the GMP will be calculated in direct proportion to and based upon the net decrease in the estimated Cost of Work for such scope decrease.

6.5.1. Enforceability of Changes. In order to be valid and enforceable, changes to the scope and/or Cost of Work must be requested and Approved in strict accordance with the Contract Documents.

6.5.2. No Course of Conduct. No course of conduct or dealings between the parties, nor express or implied acceptance of alterations, or additions to the Work, and no claim that OWNER has been unjustly enriched by any alteration or addition to the Work, whether or not there is, in fact, any unjust enrichment to the Work, will be the basis of any claim to any increase in any amounts due under the Contract Documents or a change in any period provided for in the Contract Documents.

6.6. Adjustments to Cost of Work. When the CM claims that adjustment to Cost of Work are necessary, OWNER may, at its sole discretion, fund the Work from OWNER'S Contingency or OWNER may reject the claim. In no event, however, and any provisions the GTCs, SGTCs, or other Contract Document to the contrary notwithstanding, will CM be authorized to add, charge, or collect any mark-up for overhead and profit for any subcontracted Work. No adjustments will be made to Cost of Work in association with delay claims, unless such delays are compensable delays as provided in GTCs Article 11 or as provided in Section 6.7, below.

6.7 Increases in Cost of Work/GMP Based on Delay. If a change order is issued approving an extension of Contract Time based on an excusable or compensable delay as described in GTCs Article 11, CM will also be entitled to an increase in the Cost of the Work in an amount equal to increases in General Conditions costs reasonably incurred by CM due to the delay. CM must include in the notice of delay required under GTCs Article 11, a detailed description (and where applicable, third party invoices or quotations) of the increases in General Conditions associated with the delay. The change order will specify the amount of the increase Approved by the OWNER. This Section will control in the event of conflict with GTCs Article 11; however, nothing in this Section will be deemed to allow for increases in Cost of Work or to the GMP for unexcused delays.

6.8. Items Excluded from Cost of the Work. Amounts that accrue to OWNER in accordance with the foregoing provisions will be credited to OWNER as a deduction from the Cost of Work, or refunded to OWNER as appropriate.

6.8.1. Mark-ups on Subcontracts Prohibited. Notwithstanding any provisions in the GTCs or other Contract Documents relating to mark-ups for subcontracted Work, CM will not obtain, receive or accept any remuneration for, and will not be entitled to include in the Cost of Work any mark-up on the value of, any Work performed by Subcontractors.

6.9. Certification as to Cost of Work and General Conditions Fee as It Relates to Insurance. No portion of the Cost of Work, or the OWNER's Contingency will include any sums for deductibles or self-insured retentions that CM may be obligated to pay in the event of any property or casualty loss.

6.10 Change Orders– Final Settlement. Unless otherwise provided in the Change Order, execution of a Change Order will constitute a final settlement of all matters relating to and all claims the CM may have, directly or indirectly, arising out of or relating to the change in the Work which is the subject of the Change Order. By accepting a Change Order, CM agrees that any adjustment to the Guaranteed Maximum Price, the Construction Management Fee and/or the construction schedule effectuated by such Change Order is sufficient to cover all direct and indirect costs, impact costs and time extensions associated with such change

ARTICLE 7 - COMPONENTS OF COST OF WORK

7.1 Cost of Work. The "Cost of the Work" or "Cost of Work" refers only to the direct or indirect field costs the CM reasonably and necessarily incurs to properly perform the Work in strict compliance with the Contract Documents, and excludes any item of cost required to be covered by the Pre-Construction Services Fee or the Construction Management Fee. The Cost of the Work includes only the cost items expressly set forth below.

7.1.1 Direct Costs. Direct costs, which include the following:

(a) Wages of construction workers directly employed by CM to self- perform at the Job Site which will be paid in compliance with the requirements of this Contract. Such wages do not include CM's wages of CM's indirect management personnel assigned to coordinate and manage the Subcontractors' performance of the Work on the Project, whose services are to be compensated as a Cost of Work.

(b) With regard to those workers directly employed by CM to self-perform at the Job Site, costs incurred and paid by CM for taxes, contributions, assessments, and benefits required by law or collective bargaining agreements and, for such personnel who are not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions.

7.1.2 Subcontract Costs. Costs that CM incurs and pays according to the terms of Approved Subcontracts competitively awarded for the performance of all major elements of the Work on the Project. Such costs may include the labor costs for construction workers directly employed by a Subcontractor under an Approved Subcontract to perform such portions of the Work, including Approved labor burden rates for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on the wages for such construction workers and comply with the prevailing wage rate requirements of this Contract.

7.1.3 Costs of Materials, Consumable Supplies and Equipment Incorporated into the Completed Construction. Reasonable and necessary costs of procuring materials, consumable supplies, and equipment required by the Contract Documents to be used or incorporated into the completed Project, including and subject to the following.

- (a) Reasonable and necessary costs of transportation and storage for such items.
- (b) Costs of materials in excess of those actually installed or incorporated that CM demonstrates to have been reasonably unavoidable due to normal and customary waste and spoilage and that cannot be recovered by return or alternative uses for other purposes resulting in a credit to OWNER for the cost thereof.
- (c) At OWNER's option, any unused excess materials will become OWNER's property at the completion of the Work or removed from the Site and sold by CM in a commercially reasonable manner as soon as it is reasonable to determine that they are unnecessary for the Project. Any amounts realized from such sales will be credited to OWNER to reduce the Cost of Work.
- (d) Costs for any previously used items to be installed in the Project must be Approved in advance and based on fair market value.

7.1.4 Other Costs of Construction. Other reasonable and necessary costs of construction, as follows.

(a) Reasonable and necessary costs of renting motorized or engine powered or other specialized items of construction equipment or temporary facilities that are necessary to perform the Work at the Site. If such items are rented from the CM's own inventory, the amount or rate of such rentals, including the freight and delivery cost thereon and all operating expenses except labor, will be determined to be the lesser of (i) those established by the "Contractor's Equipment Cost Guide," latest edition published by the Associated General Contractors of America, or (ii) the lowest of three (3) competitive bids obtained from equipment leasing companies that have been Approved before any commitments are made. Such rental costs will in no event be charged at higher than competitive rental rates prevailing in the Deltona-Daytona Beach-Ormond Beach, FL Metropolitan Statistical Area for similar equipment. In no event will the aggregate rental cost to OWNER exceed the purchase price and maintenance cost of the item. In the event the item can be purchased for an amount comparable to the aggregate rental cost thereof, CM will at OWNER's option, either (i) purchase such item, transfer ship of it to OWNER upon Final Completion, or (iii) credit OWNER with the amount of the fair market resale value thereof.

(b) Reasonable and necessary costs of furnishing hand tools, instruments and other devices (except for those customarily owned by construction workers) that are necessary to use at the Site to perform the Work; provided, however, any rates to rent any such items must be Approved in advance and all other such costs must be based on fair market value less any fair market salvage value or credit for the sale or return thereof.

(c) Worksite debris removal and disposal costs in accordance with this Contract and Applicable Laws.

(d) Sales, use or similar taxes imposed by a Governmental Authority that are related to the Work and for which CM is liable and for which CM is unable to will avail itself of an exemption based upon OWNER's tax-exempt status.

(e) Permits, licenses, and inspections and related fees and assessments, for which CM is required to be paid by the Contract Documents.

(f) Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work.

(g) Third-party intellectual property royalties and license fees paid for the use of a particular design, process, or product when specifically required by the Contract Documents and identified in the GMP Amendment establishing the Guaranteed Maximum Price for such Work; Duties with respect to Royalties and Licenses to Use Intellectual Property. CM will pay all royalties and license fees due in connection with the Services and the Work. CM warrants that the Services, the Work and the use of CM's Work Product will not infringe any patent or other proprietary right; provided, however, CM will only be liable to OWNER for infringement of a patent or other proprietary right if it arises out of designs, processes or products in the Work that the CM has recommended or caused to be used for or on the Project or that arise out of the use of the CM's Work Product. Should OWNER, in consultation with CM, determine that CM's proprietary information, data or systems will be used on the Project, CM agrees that OWNER will be entitled to a royalty-free license to enable OWNER to use CM's proprietary information, data or system, in connection with the ongoing use and maintenance of the Project, which license agreement will be non-exclusive, perpetual, and not require further expenditure by OWNER.

(h) Net Premiums (less return premiums, rebates and bond dividends) for insurance and bonds to the extent directly attributable to this Contract and incurred in accordance with the requirements of this Contract. Return premiums, rebates and bond dividends will be paid to OWNER when received by CM.

(i) Other costs Approved in advance by OWNER at OWNER's sole discretion.

7.1.5 Emergency Costs. Emergency costs, which will include the following.

(a) Costs incurred in taking action to prevent or mitigate damage, injury or loss in case of an emergency affecting the safety of persons and property as provided in the GTCs.

(b) Costs of repairing damaged Work performed by CM or Subcontractors.

(c) Notwithstanding the foregoing provisions of this Section 7.1.5, such costs may be included in the Cost of the Work only to the extent such costs (i) were not caused or

contributed to by the CM's or the Subcontractors' negligence, or failure to fulfill a specific responsibility, and (ii) are not covered by insurance of the CM, sureties, Subcontractors, or others.

7.1.6 Cost Items Excluded from the Cost of Work. Any provisions in this Contract to the contrary notwithstanding, Cost of Work will not include the following cost items.

(a) Costs of salaries or other compensation of CM's personnel not stationed at the Site and stationed at the CM's principal office or offices, except as may be specifically provided in Section 7.1.1.

(b) Expenses of the CM's home office or other principal or satellite offices.

(c) Overhead and general expenses, including legal costs to review and negotiate the Contract Documents, except as may be expressly included in Sections 7.1.1 to 7.1.5.

(d) CM's capital expenses, including interest, on the CM's capital employed for the Work.

(e) Except as provided in Section 7.1.5(c), costs due to the negligence or failure of CM, Subcontractors, or anyone directly or indirectly employed or engaged by any of them, or for whose acts any of them may be liable to fulfill a specific responsibility under the Contract.

(f) Travel and subsistence expense of CM, its officers or employees incurred while traveling between the Project and CM's principal or branch offices, and travel in the metropolitan area of the Project that exceed the amount set forth in the GMP Statement for travel and subsistence expenses, unless Approved in advance in writing via a change order or amendment to this Contract. Any such travel and subsistence expenses Approved will be limited to reasonable and necessary expenses.

(g) Fines, penalties, sanctions or impositions assessed or imposed by any governmental body, instrumentality or tribunal arising from the fault of CM.

(h) Costs resulting from the failure of CM or any CM's personnel to procure and maintain insurance as and to the extent required by the Contract Documents.

(i) Any and all personnel costs, including, without limitation, wages, salaries, and benefits, except for personnel based at the field office at the Worksite and only as specifically permitted under this Contract.

(j) Any and all overhead expense or office expense except as specifically permitted under this Contract.

(k) Costs related to CM's indemnification obligations.

(l) Costs arising out of the CM's failure to adhere to the standard of care, including, without limitation, costs related to defective, rejected, or nonconforming Work,

materials or equipment, and damage to persons or property, including warranty Work, or other costs which should have been mitigated and avoided by CM in the exercise of the standard of care.

(m) Liquidated or actual damages imposed by OWNER for failure of CM to complete the Work by the Scheduled Date of Substantial Completion.

(n) Rental costs of machinery and equipment, except to extent expressly permitted under this Contract.

(o) Fees of testing laboratories for tests required by the Contract Documents inasmuch as those are paid by OWNER directly under separate contract.

(p) Costs due to CM's failure to apply in a timely manner for permits for which CM is responsible under this Contract.

(q) Costs of acceleration of the Work arising as a result of delay in the Work caused by the negligence of CM, or its Subcontractor or other persons over whom CM or any Subcontractor exercises control or is legally responsible, including any and all overtime wages, unabsorbed home office overhead, exemplary damage, or other consequential damage incurred by CM.

(r) Any and all costs not otherwise expressly authorized to be charged as a Cost of the Work herein, including, without limitation, any cost which would exceed a Guaranteed Maximum Price established by Contract Amendment.

(s) Testing fees that must be incurred by CM pursuant to the terms and conditions of this Contract.

(t) Any costs not specifically and expressly identified in Sections 7.1.1 through 7.1.5.

(u) Costs exceeding the GMP as amended for any Change Orders that are Approved in advance.

(v) Costs incurred in CM's performance of Pre-Construction Activities. *See Section 6.1.*

(v) Costs incurred by OWNER in making Owner Direct Purchases as provided in Section 8.1.

7.1.7 General Conditions. For purposes of this Contract, "General Conditions" means the following items and related costs which are included in the Cost of Work.

(a) Bonds and insurance.

(b) Both office and field project management, supervisory, support, and administrative personnel.

(c) Temporary field offices, facilities and storage including equipment, materials, and temporary utilities.

(d) Background checks and employee identification materials.

(e) Safety program.

(f) Construction documentation.

(g) Transportation.

(h) Parking.

(i) Temporary barriers, signage, and controls.

(j) Cleaning and waste disposal.

7.2 Discounts, Rebates, and Refunds. All cash discounts obtained or otherwise realized on payments made by CM will accrue to OWNER if, before making the payment, CM included them in a pay application and received payment from OWNER; otherwise, all cash discounts will accrue to CM. In no instance may CM retain as profit or gain, a discount, rebate or refund received as a result of a purchase or Work performed as part of the Project.

7.2.1 The OWNER will be entitled to deduct amounts for the following items, from any Application for Payment or from the request for Final Payment submitted by the CM:

(a) The fair market value of all tools, surplus materials, construction equipment, and temporary structures that were charged to the Work (other than rental items) but were not consumed during construction or retained by the OWNER. Upon completion of the Work or when no longer required, CM will either credit the OWNER for the fair market value (as Approved) for all surplus tools, construction equipment and materials retained by the CM or, at OWNER's option, use commercially reasonable efforts to sell the surplus tools, construction equipment and materials for the highest available price and credit the proceeds to the OWNER's account. Only materials and equipment which are to be used directly in the Work will be brought to and stored on the Worksite by the CM. Any materials and equipment no longer required for the Work, will be promptly removed from the Worksite.

(b) Discounts earned by the CM through advance or prompt payments funded by the OWNER. The CM will obtain all possible trade and time discounts on bills for material furnished, and will pay bills within the highest discount periods. The CM will purchase materials for the Project in quantities that provide the most advantageous prices to the OWNER.

(c) Rebates, discounts, or commissions obtained by the CM from material suppliers or Subcontractors, together with all other refunds, returns, or credits received for materials, bond premiums, insurance and sales taxes.

(d) Deposits made by OWNER and forfeited due to the fault of the CM.

(e) Any other identified contract savings.

7.2.2 OWNER will be entitled to recover any savings realized between the Guaranteed Maximum Price and the buyout price for subcontracting Work, provided however, that CM may use such savings to offset other buyout packages that exceed the amounts identified in the initial Guaranteed Maximum Price, so long as the total Cost of Work proposed in the Guaranteed Maximum Price does not increase. OWNER will, within 30 days after execution of all Subcontracts and all other agreements related to any particular design package, be entitled to deductive Change Order reducing any Guaranteed Maximum Price, and if appropriate, a modification to CM's Contingency therein, to an amount based on the actual Cost of the Work as established by Subcontracts in such form as, and based upon Subcontractor bids that have been Approved, if such Subcontracts result in a lower Cost of the Work. CM will submit to OWNER a deductive Change Order for the total reduction in the Cost of the Work evidenced by all such executed Subcontracts and agreements.

7.2.3 OWNER will be entitled to recognize and recover 100% of any savings identified by cost review or audit at any time, before or after Final Payment.”

7.3 **Accrual to OWNER.** Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment will accrue to OWNER, and CM will make provisions and take such actions so that they can be obtained.

ARTICLE 8 – OWNER'S DIRECT PURCHASE OPTION

8.1 **OWNER's Direct Purchase Option:** The CM agrees to arrange for purchase of materials and other items subject to the State sales tax through issuance of OWNER purchase orders directly to the supplier, to save, where practicable, the payment of sales taxes.

8.2.1 **CM to Provide OWNER Sufficient Information:** To enable the OWNER to realize savings of Sales Tax on selected tangible personal property needed for this Project, the Design Engineer or alternately, the CM will provide to the OWNER a list of all tangible personal property to be used in the Work, for selection as Direct Purchases. The CM will evaluate the list to recommend which items the OWNER should directly purchase. The OWNER will either accept or reject the CM's recommendations and purchases orders will be issued accordingly. If the OWNER accepts the CM's recommendation to directly purchase specific tangible personal property, the OWNER will issue Purchase Order(s) directly to the supplier of the item or items to be purchased as described below, accompanied by the OWNER's Certificate of Exemption from payment of sales tax. If the OWNER rejects the recommendation to directly purchase specific tangible personal property, the CM will proceed accordingly.

8.2.2 OWNER DIRECT PURCHASE POLICY. The OWNER reserves the right to issue OWNER Purchase Orders directly to suppliers of materials to be incorporated into the Work of Project as described in the Contract, in order to obtain the exemption from sales taxes available under Florida Statutes § 212.08(6), in accordance with the procedures listed below. For purposes of this Policy, the term, “materials,” means all items of tangible personal property which OWNER may be eligible to directly purchase tax free in accordance with Florida Statutes § 212.08(6), and implementing administrative regulations; and all other terms will have the meaning provided or suggested in the Contract, where applicable.

(1) The CM will provide to the OWNER a list of all materials to be used in the Work, including those items of material required to be used by the Design Engineer, and will denote on that list any items that the CM deems suitable for OWNER to purchase directly. CM will also denote those items that are to CM’s knowledge likely to have long lead times or that are available from only one or a severely limited number of suppliers.

(2) The OWNER may accept or reject the CM’s recommendations and will at OWNER’s discretion directly purchase those items that OWNER deems suitable for direct purchase. The OWNER’s election to make direct purchases under this Policy will not eliminate or affect the CM’s responsibilities under the Contract except as specifically noted herein. Among other things, CM will remain responsible for controlling the means and methods by which the Work is to proceed; working diligently to complete the Work in accordance with applicable deadlines; and for tracking ordering and delivery of materials so as to maintain the critical path. Neither the procedures herein, nor the OWNER’s election to directly purchase certain materials, will alter or the applicability of the procedures and standards to be used under the Contract for claims for delay or change orders.

(3) The CM will require that all quotes for materials received by CM for tangible personal property to be incorporated into the Project: (i) itemize sales tax as a separate item; (ii) include language that the quotations are assignable to the OWNER; and (iii) include language stating that if assigned to OWNER, no sales tax will be charged upon provision of OWNER’s sales tax exemption certificate. Nothing herein will prohibit the OWNER from requiring the supplier of materials to be directly purchased by OWNER, from requiring the supplier to issue a written quotation directly to OWNER, even where CM has provided OWNER with an assignable quotation as provided herein.

(4) OWNER will provide CM a list of items of tangible personal property to be purchased directly by OWNER. CM will remain responsible for directly purchasing all items of such property that OWNER does not elect to purchase directly.

(5) For those items of tangible personal property that OWNER elects to directly purchase, CM will prepare City form Purchase Order Requisitions, consistent with the quotes provided by the suppliers and this Policy.

(6) CM will forward the completed Purchase Order Requisition to the OWNER’s Account Clerk, and provide a copy to the Contract Administrator.

(7) The Purchasing Agent will issue a purchase order to the supplier based on the information provided by the CM and the supplier's written quotation. The Purchasing Agent will provide a copy of the purchase order to the CM.

(8) Upon receipt of the OWNER's purchase order, CM will issue a deductive contract adjustment to the supplier that will account for the value of the material and the sales tax as it pertains to that supplier's contract with the sub-contractor. All sales tax savings will be credited to the OWNER through a deductive change order under the OWNER's contract with CM. The deductive change for Owner Direct Purchase will not reduce the Construction Management Fee.

(9) OWNER will acquire title to and assume responsibility for materials directly purchased by OWNER under this Policy, upon delivery to the Job Site.

(10) Suppliers will directly invoice the OWNER. Invoices will be forwarded to the CM for verification. Immediately as materials directly purchased by OWNER are delivered to the Job Site, the CM will review the condition of the materials delivered for conformity with contract specifications and the supplier's invoice for conformity with this Policy, including confirmation that the invoice references OWNER's purchase order and is billed to OWNER, not CM. CM will promptly advise the OWNER of any deficiencies in the materials or invoice. The intent of this requirement is to require CM to act diligently to allow OWNER to meet its obligations to the supplier under Florida's Prompt Payment Act, Florida Statutes § 218.70 *et seq.* Nothing herein will prohibit the CM from requiring a Subcontractor of CM's conduct a similar review for CM's benefit; however, CM will remain responsible to OWNER for promptly reviewing the materials and invoice in accordance with this Section.

(11) Upon being satisfied that directly purchased materials and the accompanying invoice from the supplier are satisfactory, OWNER will pay the supplier for the items purchased. Under no circumstances will CM be responsible for paying the supplier. The OWNER will issue a check for the Approved invoice amount and mail this check directly to the supplier, accompanied by the Certificate of Entitlement. A copy of the check will be forwarded to the CM so that CM can accurately track and summarize all OWNER Direct Purchase payments.

In the event the OWNER does not timely execute the appropriate documents submitted by the CM for direct purchase, the CM may, upon timely notice to the OWNER, order such materials irrespective of loss of sales tax savings. It is the intent of these provisions to implement the cost savings afforded by the sales tax exemption without delay of the Work and that the CM retain complete control of the Project Schedule. While the OWNER'S direct purchase of materials or supplies will not relieve the CM of responsibility to maintain and safeguard such materials and supplies until they are incorporated into the Work and accepted by the OWNER, the OWNER will assume liability for the materials at the time they are delivered to the jobsite. The CM will not be entitled to a time extension in the event that delay is occasioned by the OWNER'S direct purchase of materials.

(12) The OWNER will bear the economic burden of obtaining insurance covering damage or loss or will directly enjoy the economic benefit of the proceeds of any such

insurance. Nothing herein will prohibit the OWNER from requiring CM to supply additional coverage, such as through a builder's risk policy or installation floater, to insure materials directly purchased by OWNER from damage and risk of loss.

(13) The OWNER does hereby defend, hold harmless, and indemnify the CM from any and all liability for unpaid sales taxes which the CM may suffer as a result of claims, demands, costs, interest, penalties or judgments against the CM made by or in favor of the State of Florida on account of failure to pay Florida State Sales Taxes on materials purchased by the OWNER under this Policy. The OWNER agrees to defend against any such claims or actions brought against the CM whether rightfully or wrongfully brought or filed. The CM agrees that it will promptly notify the OWNER of any such claim, demand, or action. Furthermore, the CM expressly agrees that, if and when requested by the OWNER, it will enter into such amendments to this Contract as the OWNER, upon consultation with its legal counsel, may deem necessary or useful to preserve or ensure its right under Florida law to the sales tax exemption contemplated by this subsection. OWNER's obligation to indemnify and hold harmless CM as provided herein is subject to limitations, including monetary limitations, contained in Florida Statutes § 768.28.

ARTICLE 9 - WARRANTIES AND REPRESENTATIONS BY CM

9.1 Warranties and Representations by CM. CM hereby makes the following warranties, representations, and certifications, all of which are true, accurate, and complete at the time of the Effective Date and throughout the term of this Contract, and which will be true, accurate, and complete with respect to each Deliverable. All representations, warranties and certifications discussed below will survive the expiration or termination of this Contract.

9.1.1 CM's Standard of Care. CM will, in the performance of the Services and Work, comply with the standard of care described herein. Notwithstanding anything to the contrary contained in this Contract, OWNER and CM agree and acknowledge that OWNER has entered into this Contract in reliance on CM's special and unique construction management abilities to perform its obligations hereunder. CM accepts that, by this Contract, a relationship of trust and confidence is hereby established between it and OWNER. CM understands the complexity involved in this type of construction and the necessity of coordination of the performance of its Services with the Project Team. In addition to the foregoing, and in addition to the rights and remedies otherwise existing under this Contract, at law or in equity, CM will perform, or cause to be performed, all Services and Work expeditiously, and in no event later than is required to conform, as applicable, to the construction schedule, and will do so with that degree of professional skill and care practiced by firms similar to it, using similar collaborative Project planning and management methods, and having industry leading knowledge and skill for the planning and management of construction Projects of comparable complexity and value, and engaged in the providing of similar services for major environmental construction Projects of comparable value in the United States under the same or similar circumstances as described in the RFP. CM will furnish efficient business administration and superintendence and perform the Services in such manner as to provide OWNER the best value. CM will employ and exercise the professional judgment of its experienced and qualified construction professionals to provide OWNER confidence that the Project will be completed in conformity with the design concepts and construction requirements established by OWNER, and it is the intention of the parties that CM

will, at all times, act in OWNER's best interests with respect to the performance of the Services and the management of all aspects of the Projects. CM will, at all times, exercise exclusive direction and control, and will be responsible for proper supervision of all its CM Personnel, Subcontractors, and subconsultants while present on the Worksites and otherwise. The standard of care required hereunder will not, however, be deemed to alter or expand CM's common-law duty to OWNER with respect to liability for, or the duty to indemnify, defend or hold OWNER harmless under Section 10.1 with respect to claims or liability for bodily injury or property damage covered by that indemnity, for which the standard of care hereunder will be deemed and construed to be no greater than that imposed upon CM by common law.

9.1.2 Financial Ability, Insurance and Bonds. CM is financially solvent and possesses or is able to engage sufficient working capital to complete the Services and the Work as required by this Contract. CM's insurance policies and bonds are and will be maintained in the form required under OWNER's Insurance Requirements and CM's Bond Forms.

9.1.3 Compliance with All Legal Requirements. CM will procure and maintain for the duration of this Contract any state, county, city, or federal license, authorization, insurance, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by CM to provide the goods or services required by this Contract. CM will be responsible to pay all taxes, assessments, fees, premiums, permits, and licenses required by law. CM agrees to be responsible for payment of any such government obligations not paid by its Subcontractors during performance of this Contract. As part of the performance of the Work and delivery of the Services, CM will make itself familiar with and at all times give all notices required by, and will observe and comply with, all Legal Requirements of all Governmental Authorities that in any manner affect performance under this Contract.

OWNER reserves the right, in its sole discretion, to unilaterally amend this Contract throughout its term to incorporate any modifications necessary to address OWNER's or CM's required compliance with all Laws and Regulations.

9.1.4 Power to Contract. The CM, and all CM's personnel, Subcontractors, Sub-Subcontractors, and Suppliers, with respect to their portions of the Work, are fully authorized to assume their contractual obligations to perform the same, and that each of them, with respect to its portion of the Work, is fully licensed, certified and authorized to perform the Work contemplated by the Contract Documents and any other Work performed on the Project, and will provide evidence of the same to OWNER upon request. CM and each of CM's personnel, officers, and agents, including Subcontractors (i) if a corporation or limited liability company, is duly organized, validly existing and in good standing under the laws of the State of Florida, or a foreign corporation or limited liability company duly authorized and in good standing to conduct business in the State of Florida, having all necessary corporate power and having received all necessary corporate approvals required to execute and deliver their respective contracts (including this Contract), and each of the individual signing such contracts (including this Contract) has been duly authorized to act for and bind the entity for whom such signature is made;; and (ii) the individual executing this Contract on behalf of CM, and the individual executing any Subcontract to assume any obligation under this Contract, has been duly authorized to act for and bind CM or Subcontractor, as applicable.

9.1.5 **Licenses, Patents, and Permits.** CM has determined what licenses, patents and permits are required under the Contract and will have acquired all such licenses, patents and permits prior to commencement of construction.

9.1.6 **Responses to RFP; Duty to Disclose.** All statements, representations and certifications contained in, or otherwise set out in, CM's response(s) to the RFP for this Project were true and correct when made, and will remain true and correct throughout the term of this Contract. All information contained in CM's responses, including CM's statements and representations as to its history, experience, capabilities, litigation disclosure, financial information, and other qualifications are accurate and complete, and no material change in circumstances has occurred as of the Effective Date that would cause CM's responses to be untrue or materially different than what was originally stated. CM will have a continuing duty to disclose any material change in circumstances that could adversely affect CM's ability to continue to perform the Services and the Work in accordance with its obligations hereunder, including materials changes in the information provided in CM's Response to RFP, that occur while this Contract is in effect.

9.1.7 **CM Safety.** CM and all CM Personnel performing work or providing Services will abide by all OSHA rules and regulations provided by the Department of Labor, OSHA, Code of Federal Regulations, Chapter 29. Employees of CM and Subcontractors will be trained in accordance with Chapter 29, Occupational Safety and Health Regulations. CM and Subcontractors will inform the Contract Administrator of their Hazardous Electrical Energy Control, Lockout/Tag-out Procedure. CM's procedure must meet or exceed OWNER's procedure as determined by the Contract Administrator. Work or services will not be done on energized electrical circuits, components or equipment. When de-energizing is impractical due to possible harm to personnel, equipment or facility damage, negative onsite or offsite environmental impact, or business interruption, CM must follow OSHA requirements as detailed in OSHA Regulations 1910.331 – 1910.399.

9.1.8 **Proficiency in Systems.** CM is, or will be, proficient in the use of CAD and BIM systems and the hosting and operation of the EPMCS Approved for the Project.

9.1.9 **Warranty of Deliverables.** All Deliverables will be: (i) completed and delivered in a timely manner and in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances; conform to or exceed the specifications set forth in the Contract Documents; and (ii) be fit for ordinary use, of good quality, and with no material defects.

Any provisions in the GTCs or other Contract Documents to the contrary notwithstanding, including, the creation of CM's 1-year warranty will not be construed to constitute a waiver of CM's obligation to correct, or otherwise be responsible for, any latent defects beyond the above-mentioned 1-year corrective period.

Any provision in the GTCs or SGTCs to the contrary notwithstanding, no warranty periods will commence unless and until a Certificate of Substantial Completion has been issued for the corresponding Work or portion thereof.

9.1.10 Warranty of Improvements. Any provisions herein to the contrary notwithstanding, CM expressly warrants that all improvements, including workmanship and materials incorporated into the Project, will be free from defects. CM will, at the OWNER's reasonable election, either repair or replace any defects in any of the CM's Work, Services or related deliverables as soon as the CM becomes aware of such defects or is notified of such defects. Should the CM refuse or neglect to make good such defects within a reasonable time after receiving notice requesting such remedial Work, then the OWNER will be entitled to make good such defective Work, Services or related deliverables at the CM's expense. CM's obligation hereunder is in addition to, and not in substitution of, any other remedy the OWNER may have hereunder, or at law or in equity. Any warranty repair or replacement will comply with the requirements of this Contract and will be verified by the CM's performance of testing as OWNER may require. All costs incidental to such repair, replacement, and testing, including the removal, replacement and reinstallation of equipment and materials necessary to gain access to concealed areas, will be borne by the CM. CM will be liable for the satisfaction and full performance of the warranties as set forth herein.

9.1.11 CM's Ancillary Warranty Obligations. All warranties include all labor, and all equipment and materials installed, and will be signed by and delivered to the CM and countersigned by the Subcontractor performing the same and/or the manufacturer thereof, as the case may be. As of the time of Final Completion of the Work, the CM agrees to assign to OWNER any and all CM's Subcontractors' and manufacturers' warranties relating to labor, equipment and materials installed in the Work. CM further agrees to perform the Work in such manner so as to preserve any and all such manufacturers' warranties. In addition to the foregoing, the CM will comply with all other warranties referred to in any other provision of the Contract Documents. Where more than one warranty obligation applies hereunder, the more stringent warranty obligation will govern.

9.1.12 Duty to Protect the Work. CM will be responsible for the protection and security of the Work and the Project until OWNER has assumed control of and accepted beneficial occupancy thereof or a portion thereof for its intended use, or Substantial Completion of the Work or any portion of the Work has occurred. OWNER may, but is not obligated to, accept CM's tender of any portion of the Project for beneficial occupancy and use prior to Substantial Completion of the entire Project. CM will give OWNER full opportunity to inspect the Work at all stages. Where any utility installations will be affected by Work to be carried on by CM, CM must provide ample advance notice to OWNER, to enable OWNER to obtain the prior consent of, the owners, operators or persons in charge of such utilities, so that the performance of Work is not delayed.

9.1.13 Affirmation as to Submittals. Upon submittal to OWNER of any documentation or data that was created or modified by CM, including but not limited to Drawings, Specifications, and the Budget, all representations contained therein will be true and accurate as to each such creation or modification.

9.1.14 **Site Investigation.** Prior to execution of this Contract, CM has had ample opportunity to examine all of the Contract Documents, Drawings and Specifications, and all OWNER Deliverables pertaining to the Work and the site of the Work and its surroundings. Prior to the submission of a GMP Proposal, CM will have again carefully examined all such information, and will have also investigated the site of the Work to the degree that CM deems necessary and appropriate to fully acquaint CM with the scope of Work, the completeness of the design, the availability of materials, the presence of existing facilities (including underground utilities), general topography, soil structure, subsurface or substructure conditions or obstructions, adjoining property constraints, and all other conditions related to the Work, the site of the Work and its surroundings. **NOTWITHSTANDING ANYTHING TO THE CONTRARY IN ANY OTHER PROVISION OF THE CONTRACT DOCUMENTS, THE OWNER DELIVERABLES, OR ANY REPRESENTATION, STATEMENT OR OTHER INFORMATION MADE OR FURNISHED BY OWNER OR ITS REPRESENTATIVES, CM AGREES CM'S SUBMISSION OF ITS GMP PROPOSAL TO ESTABLISH A GMP FOR THE WORK SHALL CONSTITUTE CM'S REPRESENTATION TO OWNER THAT (i) CM HAS COMPLETED A REASONABLE REVIEW OF ALL AS-BUILT AND GEOTECHNICAL REPORTS PROVIDED BY OWNER, AND OBSERVED THE SITE AND FACILITIES LOCATED THEREON NECESSARY OR APPROPRIATE TO FULLY EVALUATE REASONABLY FORESEEABLE RISK, (ii) CM AGREES TO ASSUME SUCH RISK, (iii) CM SHALL COMPLETE THE WORK FOR THE CONTRACT PRICE, AND SHALL BEAR RISKS OF COST OVERRUNS BEYOND THE GMP AS REFERENCED IN THIS CONTRACT, NOTWITHSTANDING SUCH DIFFICULTIES OR CONDITIONS, AND (iv) CM SHALL NOT BE ENTITLED TO REQUEST EITHER THE USE OF FUNDS FROM THE OWNER'S CONTINGENCY OR AN INCREASE IN THE GMP TO PAY FOR REASONABLY FORESEEABLE YET UNANTICIPATED COSTS TO OVERCOME ANY SUCH DIFFICULTIES OR CONDITIONS. CM ASSUMES FULL AND COMPLETE RESPONSIBILITY FOR AND SHALL NOT BE ENTITLED TO A CHANGE ORDER FOR ANY SUCH COSTS TO OVERCOME SUCH DIFFICULTIES OR CONDITIONS, REGARDLESS OF THE EXTENT TO WHICH THEY MAY CAUSE THE TOTAL COST OF THE WORK TO EXCEED THE ESTIMATES ON WHICH CM BASED ITS PROPOSED GMP (TO WIT, THE GMP SPECIFIED HEREIN).**

As part of its examination of the Site conditions, CM has made and/or will make, reasonable and appropriate efforts to discover the presence of any subsurface or otherwise concealed Hazardous Materials. The results thereof will be delivered to OWNER in writing at or prior to the delivery of the GMP Proposal.

In the event CM discovers the presence of other Hazardous Materials during the Construction Phase of the Project, CM will promptly, but in no event later than twenty-four hours after each such discovery, provide written notice thereof to OWNER and Design Engineer. CM will not disturb said conditions.

Any remediation of such Hazardous Materials will be considered outside the scope of Work.

In any emergency affecting the safety of persons or property, the CM will act at CM's discretion, to prevent threatened damage, injury or loss. Any increase in the Guarantee Maximum Price or extension of time claimed by the CM on account of emergency work will be determined as provided in Article 7.

9.1.15 **CM Personnel Background.** CM represents and warrants that CM and CM's employees have not been convicted of a felony criminal offense, or of a crime involving moral turpitude, or that, if such a conviction has occurred, CM has fully advised OWNER as to the facts and circumstances surrounding the conviction. All of CM's employees and Subcontractors that will perform any work on-site at a City-owned property will be subject to a criminal background check. Any expense associated with such criminal background check will be borne by CM.

9.1.16 **Equal Opportunity.** CM represents and warrants that CM will not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, or national origin. CM will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, sex, religion, age, or national origin. Such action will include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. CM will post in conspicuous places, available to employees or applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination subsection. CM will include the above provisions in all Subcontracts pertaining to the Work.

9.1.17 **Project Assessment.** Prior to entering into this Contract, CM performed a "Project Assessment" including the following tasks:

(a) **Consultation and Job Site Visits.** CM consulted with OWNER's staff and the Design Engineer in order to become thoroughly familiar with: (i) the Job Site; and (ii) any and all relevant and existing facilities.

(b) **Identification of CM's Key Personnel.** The CM identified key personnel, including the Project Manager. These Key Personnel are identified in the GMP Statement, **Exhibit A** to this Contract. CM represents that the Key Personnel are sufficiently experienced and competent to perform their respective responsibilities; that CM will not remove or replace these Key Personnel except with OWNER's prior written Approval; that during the prosecution of the Work CM will replace any such Key Personnel with other personnel of appropriate experience and qualifications if OWNER has reasonable objections to such Personnel; and that, regardless of CM's selection of such Key Personnel, or the manner in which CM currently plans on deploying such Key Personnel to help complete the Project, CM will devote sufficient personnel and labor resources to perform the Project as required herein.

(c) **Constructability Review.** Without assuming any design responsibilities of the Design Engineer, CM has performed a "constructability review" in accordance with industry standards apply to identify any omissions, conflicts, lack of correlation or clarity, use of illegally restrictive covenants, or other deficiencies in the plans and specifications and other draft contract documents provided with the RFP; and that CM has provided OWNER and Design Engineer notice

of such deficiencies. Without assuming any design or engineering responsibility, CM warrants and represents that the Technical Provisions and Plans are consistent, the Project as described in said Technical Provisions and Plans is practical, feasible, and constructable within the Contract Time.

(d) **Budget Review.** CM has performed a review of the OWNER Construction Budget.

(e) **Long Lead Procurement.** CM has reviewed the plans and specifications prepared by Design Engineer and included in the RFP, for the purpose of identifying long lead procurement items (such as machinery, equipment, materials, and supplies). CM has accounted for such long lead procurement items in entering into this Contract and agreeing to the Contract price and Contract Time described herein. CM will continue to diligently monitor such items in performing the Work. CM promptly notify items and advise OWNER and Design Engineer of any potential problems in these previously identified items or other long lead procurements that may become apparent due to causes beyond CM's control, and their potential impact on delaying Project completion.

(f) **Separate Contracts Planning.** Based in part upon CM's review of the Technical Provisions and Plans, the location of the Project and a review of OWNER's ongoing water and sewer facility operations at the location, and other relevant factors, CM has determined a logical and efficient sequence of construction activities, and a logical and efficient method for determining the subcontracted portions of the Work. CM let bids for subcontracts on the basis of such factors as natural and practical lines of severability, sequencing effectiveness, access and availability constraints, required Contract Time, construction market conditions, availability of labor and materials, community relations, and any other factors pertinent to saving time and cost and maintaining quality of Service. CM will supply the OWNER a copy of the schedule for the OWNER's review.

ARTICLE 10 -INSURANCE, INDEMNITY, WAIVER OF SUBROGATION, AND LIMITATIONS ON DAMAGES

10.1 **Indemnity.** The CM will indemnify and hold harmless the OWNER, the Design Engineer, and the OWNER's and Design Engineer's respective officers and employees, from all liabilities, damages, losses, and costs, and claims of any kind, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the CM, including CM's officers, employees, Subcontractors, and other agents, employed or utilized by the CM in the performance of the Services and Work. This indemnification agreement is separate and apart from, and in no way limited by, any insurance provided pursuant to this Contract or otherwise.

For purposes of this Section 10.1, all references to "OWNER" and "Project Engineer" include their respective officers, employees, and agents.

10.2 CM's Insurance.

10.2.1 **Coverages Required.** Prior to commencing construction, the CM will purchase, and maintain at all times while this Contract is in effect, the following types and amounts of insurance, in form and companies satisfactory to the OWNER:

(a) **Workers' Compensation Insurance.** As required by Florida Statutes, Chapter 440, Workers' Compensation Insurance, for all employees of the CM, employed at the Job Site or in any way connected with the Work, which is the subject of this service. The insurance required by this provision will comply fully with the Florida Workers' Compensation Law and include Employers' Liability Insurance with limits of not less than \$500,000 per occurrence. Any associated or subsidiary company involved in the service must be named in the Workers' Compensation coverage.

(b) **Liability Insurance.** Commercial General Liability Insurance, including coverage for operations, independent contractors, products-completed operations, broad form property damage, and personal injury on an "occurrence" basis insuring the CM and any other interests, including but not limited to any associated or subsidiary companies involved in the Work; and Automobile Liability Insurance, which will insure claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle used by the CM at the site of the Project or in any way connected with the Work.

The limit of liability will be a combined single limit for bodily injury and property damage of no less than \$1,000,000 per occurrence. If insurance is provided with a general aggregate, then the aggregate will be in an amount of no less than \$2,000,000.

THE LIABILITY INSURANCE WILL NAME THE OWNER AS AN ADDITIONAL INSURED. CM's Commercial General Liability insurance policy will provide coverage to CM, and City when required to be named as an additional insured either by endorsement or pursuant to a blanket additional insured endorsement, for those sources of liability which would be covered by the latest edition of the standard Commercial General Liability Coverage Form (ISO Form CG 00 01) without the attachment of any endorsements excluding or limiting coverage for Products/Completed Operations, Independent Contractors, Property of City in CM's Care, Custody or Control or Property of City on which contracted operations are being performed, Explosion, Collapse or Underground hazards (XCU Coverage, Contractual Liability or Separation of Insureds). When City is added as additional insured by endorsement, ISO Endorsements CG 20 10 and CG 20 37 or their equivalent will be used to provide such Additional Insured status.

(c) **Umbrella Liability Insurance** in the amount of \$5,000,000 per occurrence/aggregate that is no more restrictive in coverage than all underlying coverages described above.

(d) **Professional Liability Insurance**, insuring CM and other interests, including, but not limited to, any associated or subsidiary companies involved in the work, for

errors or omissions in the performance of professional services to be rendered pursuant to this Contract. The limit of liability will be no less than \$1,000,000.

(Professional Liability coverage will be provided on an Occurrence Form or a Claims Made Form with a retroactive date equal to at least the first date of this agreement and with a two year reporting tail beyond the annual expiration date of the policy).

(e) **Builders' Risk.** On an "all risk" basis, including but limited to the completed value basis on the insurable portion of the Work for the benefit of the OWNER, the CM and Subcontractors as their interests may appear. The OWNER shall be listed as loss payee for its insurable interests. The OWNER, the CM and any Subcontractor insured therein waive all rights against each other for damages caused by fire and other perils to the extent covered by the insurance obtained pursuant to this Section 10.2.1(e).

Unless specifically waived hereafter in writing by the Risk Manager, CM agrees that the insurer shall waive its rights of subrogation, if any, against the OWNER on each of the foregoing types of required insurance coverage.

10.2.2 Subcontractors' Insurance. Each Subcontractor will be required to provide insurance in substantially similar form to the insurance required of CM above based on the services they will provide to the Project.

10.2.3 Loss Deductible Clause. The OWNER will be exempt from, and in no way liable for, any sums of money that may represent a deductible in any insurance policy. The payment of such deductible will be the sole responsibility of the CM or sub-contractor providing such insurance.

10.2.4 Proof of Insurance. The CM will furnish proof of insurance acceptable to the OWNER prior to or at the time of execution of the agreement and the CM will not commence Work until CM has obtained all the insurance required under this agreement and such insurance has been filed with and Approved by the OWNER, nor will the CM allow any Subcontractor to commence Work on its subcontract until similar insurance required of the Subcontractor has been so obtained and Approved. The CM will furnish evidence of all required insurance in the form of certificates of insurance which will clearly outline all hazards covered as itemized above, the amounts of insurance applicable to each hazard and the expiration dates

If requested by the OWNER, the CM will furnish copies of the insurance contracts to support the certificates of insurance and the copies of said insurance must be acceptable to the OWNER.

10.2.5 Cancellation and Replacement. CM will file replacement certificates 30 days prior to expiration or termination of any required insurance occurring prior to expiration or termination of this Contract. If such insurance terminates without CM's prior knowledge, immediately upon becoming aware of such termination CM will provide notice to the CITY's Risk Manager at P.O. Box 2451, Daytona Beach, Florida 32115-2451.

The CITY reserves the right to suspend any or all of the Work until such insurance has been replaced, or to obtain replacement insurance at CM's sole cost.

10.2.6 Maintenance of Insurance: The CM will file replacement certificates 30 days prior to expiration of termination of the required insurance occurring prior to the acceptance of the Work by the OWNER. In the event such insurance will lapse, the OWNER expressly reserves the right to renew the insurance at the CM's expense. The CM may not cancel the insurance required by this Contract until the Work is completed, accepted by the OWNER and the CM has received written notification from the Risk Management Division of the City of Daytona Beach that the CM may cancel the insurance required by this agreement and the date upon which the insurance may be cancelled. The Risk Management Division will provide such written notification at the request of the CM if the request is made no earlier than two weeks before the Work is to be completed.

10.2.7 Liabilities of CM Not Limited by Insurance. Anything to the contrary notwithstanding, the liabilities of the CM under this Contract will survive and not be terminated, reduced or otherwise limited by any expiration, limitation, exclusion or termination of insurance coverage. Neither approval nor failure to disapprove insurance furnished by CM will relieve the CM or its sub-contractors from responsibility to provide insurance as required by this Contract.

10.3 Limitation on CM's Liability. CM's total liability to OWNER for damages resulting from breach or any other cause shall not exceed 15% of the total Contract Price. This limitation excludes:

(a) Liability for failing to complete the work within the Contract Time, including the Substantial and Final Completion deadlines; provided that any liquidated damages legally assessed by OWNER will not exceed the upset limits set forth in Section 5.3.

(b) Any liability arising due to the willful or negligent actions or omissions of CM, or CM's officers, employees, Subcontractors, or agents.

(c) Any liability regarding patent or other proprietary rights as referenced in Section 7.1.4.

(d) Any liability, pursuant to Section 16.3.1 of the GTCs, to pay for the excess costs of completing the Work as described in that provision.

(e) Any liability arising from the failure of CM or any of the Subcontractors to meet the manufacturer's warranty conditions, in the care and maintenance of any equipment or facilities to be installed as part of the completed Work, prior to acceptance of such equipment or facilities by OWNER and assignment of such warranties to OWNER.

10.4 Mutual Waiver of Consequential Damages. Neither party to this Contract will be liable to the other party for any consequential, incidental, or special damages, except where such damages arise due to a party's negligent or willful behavior; and each party hereby waives any claims for such damages except where they have arisen due to other party's such negligent or willfully behavior. For purposes of this Section:

(a) OWNER's consequential damages consist of damages incurred by OWNER for loss of use, loss of income, profit, financing, business and reputation, and loss of management or employee productivity or of the services of such persons. OWNER's consequential damages specifically excludes penalties, fines, or costs that are assessed by any federal or state agency having permitting or enforcement authority relating to the Treatment Plants or their operation.

(b) CM's consequential damages include (i) damages for home office or other indirect expenses incurred by CM including home office personnel, except where such expenses are eligible for reimbursement herein as Cost of Work; (ii) losses of financing, business, and reputation; and (iii) loss of profit except anticipated profit arising directly from the Work and within the scope of this Contract.

ARTICLE 11 – BOOKS AND RECORDS

11.1 **Books and Records.** CM will keep and maintain under generally accepted accounting principles full, true and complete records, as are necessary to fully disclose to OWNER or to federal or state agencies that are participating in the funding of the Work, such as through State Revolving Fund loans, or their respective authorized representatives, upon audits or reviews, sufficient information to determine compliance with the terms and conditions of this Contract and all state and federal regulations and statutes.

11.2 **Inspections and Audits.** CM agrees that all relevant records related to this Contract or any Work Product under this Contract, including practices of its Subcontractors, will be subject, at any reasonable time, to inspection, examination, review, audit, and copying at any office or location of CM where such records may be found. All Subcontracts will reflect the requirements of this Section 11.2.

11.3 **Records Retention.** All records relevant to this Contract will be retained for a minimum of 7 years. This retention period runs from the date of payment for the relevant goods or services by OWNER, or from the date of termination of the Contract, whichever is later. Retention time will be extended when an audit is scheduled or in progress for a period reasonably necessary to complete an audit and/or to complete any administrative proceeding or litigation which may ensue.

ARTICLE 12 - NOTICES

12.1 Where the Contract Documents authorize or require the CITY to provide notice to CM, notice may be provided by delivery by hand to CM's designated Superintendent at the Project Site, or in the absence or unavailability of the Superintendent to any other person on the Project Site who holds himself or herself out as managing the Work on behalf of CM, or in lieu of either of these, by a written notice provided in a manner that complies with Section 12.3.

12.2 Where the Contract Documents authorize or require CM to provide notice to the CITY, notice may be provided only by a written notice provided in a manner that complies with Section 12.3.

12.3 Written notice is valid only if sent by certified United States mail, return receipt requested, or by recognized courier such as Federal Express with confirmation receipt requested. All such notices will be deemed to have been duly given and provided on (i) the date of receipt, (ii) upon receipt or refusal of delivery if transmitted by registered or certified mail, return receipt requested, or (iii) the first business day after the date of deposit, if transmitted by reputable overnight courier service, whichever occurs first. Written notices will be sent to the following persons:

If to the CITY:

Attn: Jo Ann Macrina, Deputy Utilities Director
The City of Daytona Beach
25 Basin St.
Daytona Beach, FL 32114

If to the CONTRACTOR:

Attn: Dan Nawrocki
PCEO, Inc.
10154 Division Drive
Raleigh, NC 27603

Either Party may by written notice change the address designated for receipt of written notices. Such notice will be effective 5 business days after being given.

ARTICLE 13 - DISPUTE RESOLUTION

If a dispute exists concerning this Contract, the Parties agree to use the following procedure prior to pursuing any judicial remedies, in lieu of any other procedures including arbitration procedures as referenced in SGTCs Section 4.4.

13.1 **Negotiations Required.** A Party will request in writing that a meeting be held between representatives of each Party within 14 days of the request or such later date that the Parties may agree to. Each Party will attend and will include, at a minimum, a senior level decision maker (an owner, officer, or employee of each organization) empowered to negotiate on behalf of their organization. The purpose of this meeting is to negotiate the matters constituting the dispute in good faith. The Parties may mutually agree in writing to waive this step and proceed directly to mediation as described below.

13.2 **Non-Binding Mediation.** Mediation is a forum in which an impartial person, the mediator, facilitates communication between parties to promote reconciliation, settlement, or understanding among them. Within 30 days after the procedure described above proves unsuccessful or the Parties mutually waive the procedure, the Parties will submit to a non-binding mediation. The mediation, at a minimum, will provide for (i) conducting an on-site investigation, if appropriate, by the mediator for fact gathering purposes, (ii) a meeting of all Parties for the exchange of points of view and (iii) separate meetings between the mediator and each Party to the dispute for the formulation of resolution alternatives. The Parties will select a mediator trained in mediation skills and certified to mediate by the Florida Bar, to assist with resolution of the dispute. The Parties will act in good faith in the selection of the mediator and give consideration to qualified individuals nominated to act as mediator. Nothing in this Contract prevents the Parties from relying on the skills of a person who also is trained in the subject matter of the dispute or a contract interpretation expert. Each Party will attend and will include, at a minimum, a senior level decision maker (an owner, officer, or employee of each organization) empowered to negotiate on behalf of their organization.

If the Parties fail to reach a resolution of the dispute through mediation, then the Parties are released to pursue any judicial remedies available to them.

ARTICLE 14 -TERMINATION; OWNER'S RIGHT TO PERFORM CONSTRUCTION MANAGER'S OBLIGATION

In addition to rights of termination provided in the GTCs, the Parties will have the right to terminate this Contract as follows:

14.1 Termination by the CM. If the Project is stopped for a period of 30 days under an order of any court or other public authority having jurisdiction or as a result of an act of government, such as a declaration of a national emergency making materials unavailable, through no act or fault of the CM, or if the Project should be stopped for a period of 60 days by the CM for the OWNER's failure to make payments thereon, then the CM may, upon 7 days' written notice in advance to the OWNER, terminate this Contract and request payment for all Work executed and the CM's fees earned to date and for any proven loss sustained, as of the date of termination, upon any materials, equipment, tools, construction equipment, and machinery, including reasonable profit and termination expenses incurred by the CM.

14.2. *Reserved.*

14.3 Termination by OWNER. OWNER may terminate this Contract: (i) as provided in the GTCs; (ii) for cause as provided below; and/or (iii) when an existing material breach by CM has remained unresolved for at least 15 days after notice from OWNER.

14.4 Termination by OWNER for Cause. Upon written notice to CM and its surety, OWNER may, without prejudice to any right or remedy, terminate this Contract and take possession of the Job Site and of all materials, equipment, tools, construction equipment, and machinery thereon owned by CM under any of the following circumstances, each one of which will be considered a material breach of this Contract. Accept assignment of subcontracts pursuant to this Contract; and Complete the Work by whatever reasonable method the OWNER may deem expedient.

14.4.1 Inadequate Workmen and/or Materials. Failure or refusal, except during complete or partial suspensions of Work authorized under the Contract, to supply enough properly skilled workmen or proper materials.

14.4.2 Violation of Legal Requirements A violation, whether discovered or asserted before or after the Effective Date, of any Legal Requirements.

14.4.3 Failure to Timely Deliver Services or Construct the Project. The failure of CM to timely deliver the services set out herein or timely complete the Project in accordance with the Contract Documents or the failure of CM to furnish to OWNER, upon request, evidence of ability to perform, as hereinafter provided. If OWNER at any time has reasonable grounds to believe that CM is in default, or likely to default, in the performance of its obligations under this Contract, OWNER may request in writing, and CM will provide to OWNER in writing within 10 days after receipt of OWNER's request, adequate assurance of CM's present and future ability to

perform its obligations, failing in which, CM will be deemed to be in material default of this Contract. CM's written response to such request will include evidence sufficient to demonstrate CM's ability to perform to the reasonable satisfaction of OWNER. OWNER's determination that CM has failed to provide evidence sufficient and satisfactory to constitute adequate assurance of its ability to perform hereunder will not be subject to challenge if CM has failed to cure a condition of default specifically referenced in OWNER's written demand to cure in accordance with the GTCs.

14.4.4 **Failure to Remedy.** Failure to timely remedy defective Work.

14.4.5 **Endangerment.** Creating endangerment to the safety of employees, Subcontractors, or any other members of the public or of the Work.

14.4.6 **Bonds and Insurance.** Failure to timely obtain and deliver, or maintain any required bonds or any required proof of insurance, pursuant to the Contract Documents.

14.4.7 **False Statement.** The falsity of any material statement, warranty or representation when given or made by CM to Owner or Design Engineer, whether in this Contract, in CM's Response to RFP, or otherwise, or any such statement, warranty or representation becoming materially false at any time during the term of this Contract, or any fraud committed by CM or its members, officers, agents, or principals in connection with the procurement of this Contract or the delivery of the Services.

14.4.8 **Bankruptcy, Insolvency, and/or Debtor Relief.** CM (i) makes an assignment for the benefit of creditors; (ii) files a voluntary proceeding seeking protection from creditors under any bankruptcy or other law; (iii) is the subject of an involuntary proceeding under any bankruptcy or other similar law and such proceeding is not dismissed within 60 days; or (iv) makes any admission of its inability to pay its debts generally as they become due.

14.4.9 **Appointment of Trustee.** The appointment of a trustee, receiver, or liquidator for CM.

14.4.10 **Unauthorized Use of Unapproved Item of Material or Equipment.** The use of or otherwise incorporating an item of material or equipment into the Project that is not specified by the Drawings or Specifications, or otherwise Approved pursuant to the procedures set out in the requirements for substitutions and equivalents. The CM may make substitutions only with the Approval, after evaluation by the Design Engineer and, if a change in the Guaranteed Maximum Price or an extension of the construction schedule is involved, in accordance with the applicable procedure for requesting a Change Order. CM may submit for OWNER's consideration proposed substitutions of materials, equipment or processes previously Approved by OWNER as part of a Guaranteed Maximum Price. Submittals of proposed substitutions will include value analysis data, including procurement and impact costs and schedule impact information associated with the substitution, and will be issued with reasonable promptness to allow OWNER and the Design Engineer to determine whether the proposed substitution is in fact equal or of better value than the requirements of the Construction Documents. If the CM fails to promptly propose a substitution

within a reasonable time after recognizing the need for it, CM will pay from the CM's Contingency for the cost to have the Design Engineer evaluate it.

14.4.11 **Failure to Timely Comply.** Failure to timely comply with any other requirements of the Contract Documents.

ARTICLE 15 - ASSIGNMENT AND GOVERNING LAW

15.1 **Limitations on Assignments.** Neither the OWNER nor the CM will assign their respective interests in this Contract without the express written consent of the other except as to the assignment of proceeds. The CM's assigning or subletting this Contract will not relieve the CM or the CM's surety from any contract obligations.

15.1.1 **Change in Controlling Interest.** For purposes herein, any change in the controlling interest of CM will be deemed to be an assignment requiring OWNER's Approval.

15.1.2 **Name and Organizational Changes.** CM must provide OWNER with written notification of all name changes and organizational changes relating to the CM including, but not limited to, merger, acquisition, or sale, no later than 10 business days of such change. CM, in its notice, will describe the circumstances of the name change or organizational change, state its new name, provide the new Tax Identification Number, and describe how the change will impact its ability to perform under the Contract. If the change entails personnel changes for personnel performing the responsibility of the Contract for CM, CM will identify the new personnel and provide resumes to OWNER, if resumes were originally required by the solicitation. OWNER may request other information about the change and its impact on the Contract and CM will supply the requested information within 5 working days of receipt of the request. All written notifications of organizational change must include a detailed statement specifying the change and supporting documentation evidencing continued right of CM or successor entity, as applicable, to maintain its status as a party to this Contract.

15.2 **Governing Law/Venue.** This Contract will be governed by the Laws of the State of Florida. The venue for all civil actions against the OWNER arising out of this Contract will be Volusia County, Florida, if filed in state court; and in the Middle District Court, Orlando, if filed in federal court. CM hereby irrevocably waives any objection, including any objection to personal jurisdiction or the laying of venue or based on the grounds of forum non conveniens, which it may now or hereafter have to the bringing of, or responding to, any action or proceeding in such jurisdiction with respect to this Contract or any document related hereto.

ARTICLE 16 - NOTICE OF CLAIM: WAIVER OF REMEDIES

16.1 **Notice Required.** OWNER's liability to CM for any claims arising out of or related to the subject matter of this Contract, whether in contract or tort, including, but not limited to, claims for extension of construction time, for payment by the OWNER of the costs, damages, or losses because of changed conditions under which the Work is to be performed, or for additional Work (collectively for purposes of this Section 16.1, "Claims"), will be governed by the following provisions:

16.1.1 All claims must be submitted as a Request for Change Order in the manner as provided herein.

16.1.2 The CM must submit the Request for Change Order in writing to the Contract Administrator within 20 days of when the CM was aware of the occurrence of the event giving arise to the claim.

16.1.3 The Request for Change Order must contain all information reasonably required by OWNER to review the merits of the Claim.

16.1.4 All applicable requirements and conditions of the GTCs and SGTCs will apply. For Requests for Change Order based on delays, the Request for Change Order will constitute the written notice required by GTCs Article 11, and must contain (or be followed up within a reasonable time to include) all of the information required therein. In addition, a Request for Change Order seeking additional costs or fees in association with a delay, must contain the information required by Section 6.7 of this Contract.

16.1.5 The CM agrees that the OWNER will not be liable for any Claim that the CM fails to properly submit as a Request for Change Order as provided in this Section 16.1. CM also agrees that nothing herein will make OWNER liable for Claims based on an unexcused delays, or Claims for time extensions or cost increases for occurrences that are due to CM'S failure to meet CM's obligations under this Contract.

16.2 Deadline for OWNER's Response. Within 20 days after receipt of a Request for Change Order, the OWNER, in consultation with the Design Engineer, will deliver to the CM its written response to the claim.

16.3 OWNER's Right to Have CM Proceed. CM will be responsible for continuing the Work while CM's Request for Change Order is under review. In addition, in the event the OWNER and CM are unable to agree on the terms of a Change Order, the OWNER will have the option to require the CM to proceed with the Work. In that event, the OWNER will agree to pay for those parts of the Work, the scope and price of which are not in dispute. The balance of the disputed items in the order to proceed will be resolved after completion of the Work.

ARTICLE 17 - GENERAL PROVISIONS

17.1 Interest. ANY MONIES NOT PAID WHEN DUE TO EITHER PARTY UNDER THIS CONTRACT WILL BEAR INTEREST AT THE STATUTORY RATE PER FLORIDA STATUTES § 55.03(1).

17.2 Harmony. CM is advised and hereby agrees that the CM will exert every reasonable and diligent effort to assure that all labor employed by CM and Subcontractors for Work on the Project will Work in harmony with and be compatible with all other labor being used by building and construction contractors now or hereafter on the site of the Project.

CM further agrees that this provision will be included in all subcontracts of the Subcontractors as well as the CM's own contract; provided, however, that this provision will not be interpreted or enforced so as to deny or abridge, on account of membership or non-membership in any labor union or labor organization, the right of any person to Work as guaranteed by Article 1, Section 6 of the Florida Constitution.

17.3 Apprentices. If the CM employs apprentices on the Project, the behavior of the CM will be governed by the provision of Chapter 44, Florida Statutes, and by applicable standard and policies governing apprentice programs and agreements established by the Division of Labor of the State of Florida Department of Labor and Employment Security. The CM will include a provision similar to the foregoing sentence in each subcontract.

17.4 CM's Project Records. The CM's Project Records will be maintained as prescribed hereinabove for the minimum period required by Federal Law, and will be made available to the OWNER or OWNER's authorized representative at mutually convenient times.

17.5 Limitation on Waivers. Failure by either Party or both Parties to enforce any provision of this Contract will not be deemed a waiver of such provision or modification of this Contract. A waiver of any breach of a provision of this Contract will not be deemed a waiver of any subsequent breach and will not be construed to be a modification of the terms of the Agreement.

17.6 Interpretive Rules.

17.6.1 Any paragraph and/or section headings used in the Contract Documents are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content or intent of this Contract.

17.6.2 If any provision or any part of a provision of the Contract Documents will be finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to any applicable Legal Requirements, such determination will not impair or otherwise affect the validity or enforceability of the remaining provision or parts of the provision of the Contract Documents, which will remain in full force and effect as if the unenforceable provision or part were deleted.

17.6.3 In case of litigation arising out of this Contract where the meaning of one or more provisions is at issue, the City will not be penalized by virtue of its having drafted this Contract. The CM has carefully reviewed and had the opportunity to seek advice of legal counsel prior to executing this Contract.

17.7 Relationship of Parties. CM is associated with OWNER only for the purposes and to the extent specified in this Contract, and with respect to performance of the contracted services pursuant to this Contract, CM is and will be an independent contractor. Subject only to the terms of this Contract, CM will have the sole right to supervise, manage, operate, control, and direct performance of the details incident to its duties under this Contract. OWNER has no right or obligation to control the methods and means of performing the Work except as to the obligation to ensure compliance with the Contract Documents. The divisions and sections of the Specifications and the identifications of any Drawings will not control CM in dividing the Work among Subcontractors or delineating the Work to be performed by any specific trade. Nothing

contained in this Contract will be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create any liability for OWNER whatsoever with respect to the indebtedness, liabilities, and obligations of CM or any other party. CM will be solely responsible for, and OWNER will have no obligation with respect to: (i) withholding of income taxes, FICA, or any other taxes or fees; (ii) industrial or workers' compensation insurance coverage; (iii) participation in any group insurance plans available to employees of the OWNER; (iv) participation or contributions by the OWNER to its employees retirement funds; (v) accumulation of vacation leave or sick leave; or (vi) unemployment compensation coverage provided by OWNER.

17.8 Limitation on Authority and No Other Obligations. CM will have no authority to act for or on behalf of OWNER except as expressly provided for in this Contract; no other authority, power, or use is granted or implied. CM may not incur any debts, obligations, expenses, or liabilities of any kind on behalf of OWNER.

17.9 Survival of Terms. Termination of the Contract for any reason will not release CM from any liability or obligation set forth in the Contract that is expressly stated to survive any such termination or by its nature would be intended to be applicable following any such termination, including the provisions regarding confidentiality, indemnification, transition, records, audit, property rights, dispute resolution and invoice and verification.

17.10 Force Majeure. Any delays in or failure of performance by either party, except in respect of the obligation of payments under this Contract, will not constitute default hereunder if and to the extent such delays or failure of performance are caused solely by occurrence(s) beyond the reasonable control of the party affected, and which by the exercise of due diligence such party is unable to prevent, herein called "Force Majeure" including acts of God or the public enemy, sabotage, war, revolution, civil unrest, riots, strikes, lockouts, fires, accidents breakdowns, or floods, earthquakes, hurricanes, or any other natural disaster, or governmental actions.

17.10.1 Notice. In any such event, the party claiming Force Majeure will notify the other party of the Force Majeure event in writing within 48 hours of the commencement of the Force Majeure event, and within 48 hours of the termination of the Force Majeure event. In the event said party fails to timely provide either of the above- described notices, such failure will constitute, without further notice or action, a waiver of the right to claim Force Majeure for such event. If possible, such notice will set forth the extent and duration thereof.

17.10.2 Due Diligence. CM will exercise due diligence to prevent, eliminate, or overcome such Force Majeure event where it is possible to do so and resume performance at the earliest possible date. However, if nonperformance continues for more than 30 days, OWNER may terminate this Contract immediately upon written notification to CM. Changes in the schedule or in the design or scope of the Project as a result of any Force Majeure which affect the cost of the CM's services under this Contract require Approval by OWNER by amendment to this Contract.

17.11 Work Made for Hire. All Work will constitute the exclusive property of OWNER. All right, title and interest in and to said Work will automatically and without further notice or action vest in OWNER upon creation and will be deemed to be a work for hire and made in the course of the services rendered pursuant to this Contract. To the extent that title to any such Work may not,

by operation of law, vest in OWNER, or such Work may not be considered a work made for hire, all rights, title and interest therein are hereby irrevocably and unconditionally assigned to OWNER. OWNER will also have the right to obtain and to hold in its name any and all patents, copyrights, registrations or such other protection as may be appropriate to the subject matter, and any extensions and renewals thereof. CM must give OWNER and/or the State of Florida, as well as any person designated by OWNER and/or the State of Florida, all assistance reasonably necessary to effectuate the intent of this section and to perfect the rights and interests defined herein without any charge or expense to OWNER beyond those amounts payable to CM for the services rendered under this Contract

17.12 No Waiver of Sovereign Immunity. Nothing in the Contract will be construed as a waiver of sovereign immunity; nor constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to the OWNER. The failure to enforce, or any delay in the enforcement, of any privileges, rights, defenses, remedies, or immunities available to the State of Florida under the Contract or under applicable law will not constitute a waiver of such privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel.

17.13 No Third-Party Beneficiaries. This Contract is made solely and specifically among and for the benefit of the parties named herein and their respective successors and assigns, and no other Person will have any right, interest, or claims hereunder or be entitled to any benefits pursuant to or on account of this Contract as a third-party beneficiary or otherwise.

17.14 Further Assurances. CM will take such actions and execute such other and additional documents as are reasonably necessary or desirable in order to carry out the purposes and intent of this Contract.

17.15 Multiple Counterparts. This Contract may be executed in any number of counterparts, each of which will be an original, and each such counterpart will together constitute but one and the same agreement.

(Remainder of page intentionally left blank. Contract continues on following page.)

17.16 **Integration.** This Contract represents the entire and integrated agreement between the CITY and CM with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral.

IN WITNESS WHEREOF, the parties hereto have executed this agreement on the day and year first above written above.

THE CITY OF DAYTONA BEACH

CONSTRUCTION MANAGER

By: _____
Derrick L. Henry, Mayor

By:  _____
Title: President/COO

Attest: _____
Letitia LaMagna, City Clerk

Attest:  _____
Corporate Secretary

APPROVED AS TO LEGAL FORM

By: _____
Robert Jagger, City Attorney