

49.2 Permanent openings or thoroughfares for the introduction of Work and materials to the structure and construction site shall be protected so that upon completion, the entire Work will be delivered to the Owner in proper, whole and unblemished condition.

#### GC 50 PROTECTION OF EXISTING PROPERTY

50.1 Construction Manager shall so conduct its operations as not to damage, close, or obstruct any utility installation, highway, road or other property until permits therefore have been obtained. If facilities are closed, obstructed, damaged or rendered unsafe by Construction Manager's operations, Construction Manager shall, at its expense, make such repairs and provide temporary guards, lights and other signals as necessary or required for safety and as will be acceptable to Owner and/or its Insurance Representative.

50.2 Construction Manager shall conduct its operation so as not to damage any existing buildings or structures. The Construction Manager shall verify that means and methods of construction used inside, adjacent to, under or over existing buildings will not cause damage. The Construction Manager shall provide protection methods which are acceptable to the Owner and/or its insurance representatives.

50.3 Unless otherwise specifically provided in the Contract, Construction Manager shall not do any Work that would disrupt or otherwise interfere with the operation of any pipeline, telephone, electric, radio, gas, transmission line, ditch or other structure, nor enter upon lands in their natural state until approved by Owner. Thereafter, and before it begins such Work, Construction Manager shall give due notice to Owner of its intention to start such Work. Construction Manager shall not be entitled to any extension of time or any extra compensation on account of any postponement, interference or delay caused by any such line, ditch or structure on or adjacent to the site of Work.

50.4 Construction Manager shall preserve and protect all cultivated and planted areas and vegetation such as trees, plants, shrubs and grass on or adjacent to the premises, which, as determined by Owner, do not reasonably interfere with the performance of this Contract.

50.5 Construction Manager shall be responsible for damage to any such areas and vegetation and for unauthorized cutting of trees and vegetation, including, without limitation, damage arising from the performance of its Work through operation of equipment or stockpiling of materials. All cost in connection with any repairs or restoration necessary or required by reason of any such damage or unauthorized cutting shall be borne by Construction Manager.

#### GC 51 LABOR

51.1 Construction Manager is solely and exclusively responsible for the supervision and control of all Construction Manager's personnel on site. Construction Manager shall employ only competent and skilled personnel to perform the Work. Construction Manager shall, if requested to do so by Owner, remove from the jobsite any personnel of Construction Manager working in violation of any provision of this Contract.

51.2 Disputes between the Construction Manager and its subcontractors regarding work assignments and the settlement of jurisdictional disputes shall conform with either the “Rules, Regulations and Procedures of the Plan for Settlement of Jurisdictional Disputes in the Construction Industry”, and any successor agreement thereto, or any other mutually established method of determining work assignments and settling jurisdictional disputes.

51.3 Construction Manager is solely and exclusively responsible for ensuring and providing for jobsite safety and conditions. Construction Manager shall enforce all Owner jobsite condition safety rules and regulations which directly affect the performance of the Work including but not limited to starting and quitting time, smoking regulations, check-in and check-out procedures, job site safety regulations and security regulations, emergency plans and procedures, and daily clean-up.

51.4 The Construction Manager and subcontractors shall be bound by and comply with all Federal, State and local laws with regard to minimum wages, overtime work, hiring, and discrimination. All Work necessary to be performed after regular working hours, on Sundays or legal holidays, shall be performed without additional expense to the Owner. The Construction Manager shall comply with the Copeland Anti-Kick Back Act (19 U.S.C. 874) as supplemented in the Department of Labor Regulations (29 CFR Part 3). This act provides that each contractor or subcontractor shall be prohibited from inducing by any means, any person employed in the construction, completion or repair of public work, to give up any part of the compensation to which he is otherwise entitled.

51.5 Construction Manager shall submit a “Contractor’s Daily Report” (See Appendix A of these General Conditions) for each day Work is accomplished. Reports shall be submitted daily to Owner.

#### GC 52 EQUAL EMPLOYMENT OPPORTUNITY

52.1 During the performance of this Contract, the Construction Manager agrees as follows:

- A. The Construction Manager will not discriminate against any employee or applicant for employment because of race, color, religion, disability, sex, age, national origin, ancestry, marital status, sexual orientation, gender identity or expression, familial status, or genetic information. The Construction Manager will take affirmative action to ensure that applicants and employees are treated during employment without regard to their race, color, religion, disability, sex, age, national origin, ancestry, marital status, sexual orientation, gender identity or expression, familial status, or genetic information. Such action shall 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. The Construction Manager agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Owner setting forth provisions of this nondiscrimination clause.

- B. The Construction Manager will, in all solicitations or advertisements for employees placed for, by, or on behalf of the Construction Manager, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, sexual orientation, gender identity or expression, familial status, or genetic information.
- C. The Construction Manager will send to each labor union or representatives of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the Owner, advising the labor union or workers' representative of the Construction Manager's commitments under Section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- D. The Construction Manager will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- E. The Construction Manager will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the Owner and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- F. In the event of the Construction Manager's noncompliance with the nondiscrimination clauses of this Contract or with any of such rules, regulations, or orders, this Contract may be cancelled, terminated or suspended in whole or in part and the Construction Manager may be declared ineligible for further contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- G. The Construction Manager will include the provisions of paragraphs A through F in every subcontract or purchase unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Construction Manager will take such action with respect to any subcontractor or vendor as may be directed to the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the Construction Manager becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Construction Manager may request the United States to enter into such litigation to protect the interest of the United States.
- H. The Construction Manager shall comply with all regulations, guidelines, and standards lawfully adopted under the governing statutes.

#### GC 53 SAFETY & PROTECTION OF PERSONS & PROPERTY

### 53.1 Responsibility For Safety And Health

53.1.1 The Construction Manager shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work to be performed under the terms of the Contract. The Construction Manager shall take all precautions and follow all procedures for the safety of, and shall provide all protection to prevent injury to, all persons involved in any way in the Work and all other persons, including, without limitation, the employees, agents, guests, visitors, invitees and licensees of the Owner and Users who may be affected thereby. The Construction Manager shall set forth in writing its safety precautions and programs in connection with the Work and submit the same to the Owner. The Owner may, but shall not be obligated to, make suggestions and recommendations to the Construction Manager with respect thereto.

53.1.2 All Work, whether performed by the Construction Manager, its Subcontractors or Sub-subcontractors, or anyone directly or indirectly employed by any of them, and all equipment, appliance, machinery, materials, tools and like items incorporated or used in the Work, shall be in compliance with, and conform to:

- A. all applicable laws, ordinances, rules, regulations and orders of any public, quasi-public or other authority relating to the safety of persons and their protection against injury, specifically including, but in no event limited to, the Federal Occupational Safety and Health Act of 1970, as amended and all State, Local, City and County rules and regulations now or hereafter in effect; and
- B. all codes, rules, regulations and requirements of the Owner and its insurance carriers relating thereto. In the event of conflicting requirements, the more stringent shall govern.

53.1.3 The Construction Manager is solely and exclusively responsible for worksite safety. If the Owner receives notice or is made aware that the Construction Manager has failed to provide a safe area for the performance of the Work or any portion thereof, then the Owner shall have the right, but not the obligation, to suspend Work in the unsafe area until the Construction Manager remedies the unsafe conditions. All costs of any nature resulting from the suspension, by whomsoever incurred, shall be borne by the Construction Manager.

53.1.4 The Construction Manager is solely and exclusively responsible for supervising all workers at the job site including ensuring the use of proper safety equipment by the workers for the duties performed. The Construction Manager shall provide, or cause to be provided, to each worker on the Job Site the proper safety equipment for the duties being performed by that worker and will not permit any worker on the job site who fails or refuses to use the same. If the Owner receives notice or is made aware that the Construction Manager has failed in its duty to ensure that proper safety equipment is used by the workers then the Owner shall have the right, but not the obligation, to suspend Work until the Construction Manager corrects the unsafe work practice. All costs of any nature resulting from the suspension, by whomsoever incurred, shall be borne by the Construction Manager.

53.1.5 To the extent permitted by, and in accordance with the provisions of Florida Statute 725.06,

the Construction Manager shall defend, indemnify and hold the Owner, Design Professional, the Owner's Representative and their respective officers, directors, agents, employees and assigns, harmless from and against any and all liability, public or private, penalties, contractual or otherwise, losses, damages, costs, attorneys' fees, expenses, causes of action, claims or judgments resulting either in whole or in part from any failure of the Construction Manager, its subcontractors or sub-subcontractors or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, to comply with the provisions of this General Condition.

53.1.6 To the extent permitted by, and in accordance with the provisions of Florida Statute 725.06, the Construction Manager shall not raise as a defense to its obligation to indemnify under this General Condition any contributing negligence of any of those indemnified hereunder, it being understood and agreed that no such contributing negligence shall relieve the Construction Manager from its liability to so indemnify nor entitle the Construction Manager to any contribution, either directly or indirectly, by those indemnified hereunder.

53.1.7 In any and all claims against those indemnified hereunder by any employee of the Construction Manager, any subcontractor or sub-subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this paragraph shall not be limited in any way to any limit(s) on the amount or type of damage, compensation or benefits payable by or for the Construction Manager or any subcontractor or sub-subcontractor under any workers' compensation acts, disability benefit acts or other employee benefit acts.

53.1.8 The indemnity provisions of this Section shall survive the termination or expiration of this Contract.

## 53.2 Protection Of Work And Property; Responsibility For Loss

53.2.1 The Construction Manager shall, throughout the performance of the Contract, maintain adequate and continuous protection of all completed Work and temporary facilities against loss or damage from whatever cause, shall protect the property of the Owner and third parties from loss or damage from whatever cause arising out of the performance of the Contract and shall comply with the requirements of the Owner and its insurance carriers and with all applicable laws, codes, rules and regulations with respect to the prevention of loss or damage to the property. The Owner, their representatives or insurance carriers may, but shall not be required to, make periodic patrols of the job site as a part of its normal safety, loss control and security programs. In such event, however, the Construction Manager shall not be relieved of its aforesaid responsibilities and the Owner shall not assume, nor shall it be deemed to have assumed, any responsibility otherwise imposed upon the Construction Manager by this Contract.

53.2.2 Until final acceptance of the Work by the Owner pursuant to GC 72, of this Contract, the Construction Manager shall have full and complete charge and care of and, except as otherwise provided in this subparagraph, shall bear all risk of loss of, and injury or damage to, the Work or any portion thereof (specifically including Owner furnished supplies, equipment or other items to be utilized in connection with, or incorporated in, the Work) from any cause whatsoever.

53.2.3 The Construction Manager shall rebuild, repair, restore and make good all losses of, and injuries or damages to, the Work or any portion thereof (specifically including Owner furnished supplies, equipment or other items to be utilized in connection with, or incorporated in, the Work and including improvements disturbed outside the limits of construction) before final acceptance of the Work. Such rebuilding, repair or restoration shall be at the Construction Manager's sole cost and expense unless the loss, injury or damage requiring such rebuilding, repair or restoration:

- A. is directly due to errors in the Construction Documents which were not discovered by the Construction Manager and which the Construction Manager could not have discovered through the exercise of due diligence;
- B. is caused by the agents or employees of the Owner (unless (1) the Construction Manager has waived its rights of subrogation against the Owner on account thereof as provided in the Contract, or (2) such loss or damage would be covered by any policy or policies of insurance which the Construction Manager is required to maintain hereunder, whether the Construction Manager actually maintains such insurance or not, or (3) is otherwise covered by a policy or policies of insurance maintained by the Construction Manager (whether or not required hereunder).

### 53.3 Surface And Subsurface Water

53.3.1 Surface or subsurface water or other fluid shall not be permitted to accumulate in excavations or under or in the structures. Should such conditions develop or be encountered, the water or other fluid shall be controlled and suitably disposed of by means of temporary pumps, piping, drainage lines and ditches, dams or other methods approved by the Owner in writing. The proposed location and coordination of temporary channels and conduits conducting accumulated water from the job site shall be permitted by the proper regulatory agency and submitted to the Owner for its prior written approval. All such Work shall be done at the sole expense of the Construction Manager.

### 53.4 EMERGENCIES

53.4.1 In any emergency affecting the safety of persons or property, or in the event of a claimed violation of any federal or state safety or health law or regulation, arising out of or in any way connected with the Work or its performance, the Construction Manager shall act immediately to prevent threatened damage, injury or loss to persons or to property or to remedy said violation, whichever is applicable. Failure by Construction Manager to take necessary emergency action shall entitle the Owner to take whatever action it deems necessary including, but not limited to, suspending the Work as provided in GC 23.

53.4.2 The Owner may offset any and all costs or expenses of whatever nature, including attorneys' fees, paid or incurred by the Owner in taking such emergency action against any sums then or thereafter due to the Construction Manager. The Construction Manager shall defend, indemnify and hold the Owner harmless against any and all costs or expenses pursuant to this Paragraph, by whomsoever incurred. If the Construction Manager shall be entitled to any additional compensation or extension of time claimed on account of emergency Work which is not

due to the fault or neglect of the Construction Manager or its subcontractors or sub-subcontractors, it shall be handled as a claim as provided in GC 65.

53.4.3 The indemnity provisions of this Section shall survive the termination or expiration of this Contract.

### 53.5 Owner's Standards

53.5.1 The Owner reserves the right, but assumes no duty, to establish and enforce standards, and to change the same from time to time, for the protection of persons and property, with which the Construction Manager shall comply, and to review the efficacy of all protective measures taken by the Construction Manager. The exercise of or failure to exercise any or all of these rights by the Owner shall not relieve the Construction Manager of its duties and responsibilities under this Contract, and the Owner shall not thereby assume, nor be deemed to have assumed, any such duties or responsibilities of the Construction Manager.

## GC 54 PROJECT SITE PROTECTION

54.1 Construction Manager, at its expense, shall maintain such protection as provided in General Conditions Section (GC 53) titled SAFETY & PROTECTION OF PERSONS & PROPERTY in a satisfactory condition until removal is authorized by Owner. Construction Manager, at its expense, shall make all necessary repairs to property damaged by construction operations. Repairs shall be made in a manner satisfactory to Owner. The Construction Manager, at its expense, will provide parking for its employees within the designated work areas. Construction Manager employees will not be allowed to park in areas which are used by any facilities which remain in operation.

## GC 55 FIRE PREVENTION

55.1 Construction Manager shall, at its expense, conform to all Federal, State, and local laws and regulations pertaining to burning, fire prevention and control within or adjacent to the Project. Necessary precautions to avoid and eliminate fire hazards shall be the responsibility of the Construction Manager. This includes keeping the Project work area clear of all trash at all times.

55.2 All tarpaulins used for any purpose during construction of any Work shall be made of material resistant to fire, water and weather and shall bear UL labels. Lighting of any fires on premises is strictly forbidden. Controlled burning shall be with the consent of the Owner. Construction Manager shall provide portable fire extinguishers properly labeled, located and compatible with the hazard of each work area and shall instruct its personnel in their use. Wherever welding and burning are conducted, inflammable materials shall be protected and a fire watch shall be provided by Construction Manager to be present during the burning and welding operation to ensure that protective measures are taken and that no fires result from such operation. The fire watch shall have fire extinguisher equipment readily available and know-how for proper use.

## GC 56 ILLUMINATION

56.1 When any Work is performed at night or where daylight is shut off or obscured, Construction Manager shall, at its expense, provide artificial light sufficient to permit Work to be carried on efficiently, satisfactorily and safely, and to permit thorough inspection. During such time periods the access to the place of Work shall also be clearly illuminated. All wiring for electric light and power shall be installed and maintained in a first-class manner, securely fastened in place at all points, and shall be kept as far as possible from telephone wires, signal wires, and wires used for firing blasts.

#### GC 57 BEST MANAGEMENT PRACTICES

57.1 Construction Manager shall be responsible for evaluating the site before construction is initiated to determine if any site conditions may pose particular problems for the handling of any Regulated Substances. For example, handling Regulated Substances in the proximity of water bodies or wetlands may be improper.

57.2 Regulated Substances are substances that may cause significant harm to human health and the environment (including surface and groundwater). The Unified Land Development Code (ULDC) Section 9.3, Wellfield Protection, regulates the storage, handling, use and production of Regulated Substances within wellfield zones which may impair present and future drinking water suppliers. In addition, the ULDC, Section 9.6, Excavation, requires that "Best Management Practices for the Construction Industries" be followed for Agricultural Area, TYPE II, TYPE IIIA and TYPE IIIB excavation activities.

57.3 If any Regulated Substances are stored on the construction site, they shall be stored in a location and manner which will minimize any possible risk of release to the environment. Any storage container of 55 gallons, or 440 pounds, or more containing Regulated Substances shall have constructed below it an impervious containment system constructed of materials of sufficient thickness, density and composition that will prevent the discharge to the land, groundwaters, or surface waters, of any pollutant which may emanate from said storage container or containers. Each containment system shall be able to contain 150% of the contents of all storage containers above the containment system.

57.4 Construction Manager shall familiarize itself with the manufacturer's safety data sheet supplied with each material containing a Regulated Substance and shall be familiar with procedures required to contain and clean up any releases of the Regulated Substance. Any tools or equipment necessary to accomplish same shall be available in case of a release.

57.5 Upon completion of construction, all unused and waste Regulated Substances and containment systems shall be removed from the construction site and shall be disposed of in a proper manner as prescribed by law.

#### GC 58 DUST CONTROL

58.1 The Construction Manager shall, for the duration of the Work, maintain, at its expense, all excavations embankments, haul roads, access roads, plant sites, waste disposal areas, borrow areas, and all other Work areas free from dust. Industry-accepted methods of dust control suitable for



the area involved and approved by Owner will be permitted.

58.2 Construction Manager shall, for the duration of the Work, protect all fixtures, equipment, devices, and surfaces from any dust or debris within any facility which is affected by the Work and shall comply with the Owner's direction to insure dust control is being managed and maintained.

#### GC 59 WATER POLLUTION

59.1 Construction Manager shall, at its expense, provide suitable facilities to prevent the introduction of any substance or materials into any stream, river, lake or other body of water which may pollute the water or constitute substances or materials deleterious to fish and wildlife.

#### GC 60 AIR POLLUTION

60.1 The Construction Manager shall, at its expense, so perform its Work as not to discharge into the atmosphere from any source whatever smoke, dust, or other air contaminants in violation of the laws, rules and regulations of all Federal, State and local air and water pollution requirements including, but not limited to: Registering with the Palm Beach County Health Department, Air Pollution Board, any equipment requiring operating permits by said Board; Adhering to all Palm Beach County Air Pollution Board Regulations.

#### GC 61 EXPLOSIVES & HAZARDOUS MATERIALS

61.1 Construction Manager shall obtain all required Federal, State and local permits and licenses and shall be responsible for the safe and proper handling, transporting, storage and use of any explosive or hazardous materials brought onto or encountered within the site, and make good any damage caused by its handling, transporting, storage and use. The Construction Manager will notify the Owner immediately if explosive or hazardous materials are encountered on the site. Transporting explosive or hazardous materials onto the site will require prior written approval from the Owner. The Construction Manager shall maintain and post as necessary Material Hazard Data Sheets for all applicable hazardous materials used in the course of its Work.

61.2 In the event that hazardous material is improperly handled or stored by the Construction Manager, its subcontractors, any sub-subcontractors, or any employee or agent of any of the aforementioned which results in contamination of the site, Construction Manager shall immediately notify the Owner and the appropriate governmental authority and shall take whatever action is necessary or desirable to remediate the contamination at the Construction Manager's sole cost and expense. Further, Construction Manager shall indemnify and hold harmless the Owner from any and all cost, expense, action, or liability whatsoever resulting from such contamination and/or remedial activities.

61.3 The indemnification provisions of this Section shall survive the termination or expiration of this Contract.

#### 61(a) ASBESTOS NOTIFICATION

61(a).1 Prior to the renovation of any structure, the Owner conducts an inspection for asbestos-containing building materials (ACBM), through a review of current surveys or the request for a new survey. All asbestos surveys are conducted under the direction of Florida licensed asbestos consultants contracted by the Owner.

61(a).2 Prior to the renovation of any structure, the Owner facilitates the removal of all ACBM that may be disturbed during the renovations, (except bituminous roofing materials), unless stated otherwise in the Contract. All asbestos removal is conducted by a Florida licensed asbestos contractor contracted by the Owner.

61(a).3 An asbestos summary report may be included as part of the Contract. If not attached, it is the Construction Manager's responsibility to contact the Owner and request the report.

61(a).4 Licensed asbestos contractors are not required for removing or repairing asbestos containing roofs, except for transite (cementitious) shingles. If the Work specified will disturb asbestos containing roofing materials, the Construction Manager must comply with all requirements of OSHA 1926.58 and ASBESTOS NESHAPS. A summary of these requirements are outlined by the National Roofing Contractors Association (NRCA). A licensed roofer who has training as an asbestos competent person is required for projects disturbing asbestos roof materials. The Owner will provide an asbestos survey of the roof.

61(a).5 If materials are discovered that are suspected asbestos materials that were not previously sampled, CM must stop all work that will disturb these materials and immediately notify the Owner.

#### GC 62 INSPECTION: REJECTION OF MATERIALS AND WORKMANSHIP

62.1 All materials and equipment furnished and Work performed shall be properly inspected by Construction Manager, at its expense, and shall at all times be subject to quality surveillance, observations or quality audit by Owner. The Owner has the right but not the obligation to perform such quality surveillance, observations or quality audit as the Owner deems necessary. Construction Manager shall provide safe and adequate facilities and all samples, drawings, lists and documents necessary for such quality surveillance, observation or quality audit. For this purpose Owner, its agents, employees, and designees shall be afforded full and free access to the shops, factories or places of business of Construction Manager and its subcontractors and suppliers for such quality surveillance, observation or quality audit and to determine the status of the Work. Owner, its agents, employees, and designees shall be entitled to conduct such surveillance, observation, or quality audits in such a manner and with such frequency and for such duration as Owner, in its sole discretion, shall determine is appropriate. If Construction Manager covers all or any portion of the Work prior to any quality surveillance or test by Owner, the cost of any necessary uncovering and replacing shall be borne by Construction Manager. Owner has no duty or responsibility to inspect or audit Construction Manager's work and in doing so does not assume any liability or responsibility for Construction Manager's materials and workmanship. Neither the failure to make such quality surveillance, observance or quality audit, nor to discover defective workmanship, materials, or equipment, nor acceptance of or payment to Construction Manager for

such Work, materials or equipment shall prejudice the rights of Owner thereafter to correct or reject the same as hereinafter provided.

62.2 If any material, equipment or workmanship is determined by Owner, either during performance of the Work or on final quality surveillance, or during any applicable warranty period (expressed or implied), to be defective or not complying with the requirements of this Contract, Owner shall notify Construction Manager in writing that such material, equipment or work is rejected and the Owner reserves the right to withhold payment on any such item. Thereupon, Construction Manager shall, at its own expense, immediately remove and replace or correct such defective material, equipment or Work by making the same comply strictly with all requirements of the Contract.

#### GC 63 TESTING

63.1 Unless otherwise provided in the Contract, drawings and specifications shop testing of materials or Work shall be performed by the Construction Manager at its expense and in accordance with the technical specifications. Field testing of materials or Work shall be performed by Owner. Should tests in addition to those required by the Specifications be desired by Owner, Construction Manager will be advised in reasonable time to permit such testing. Such additional tests will be at Owner's expense unless such additional tests are required due to Construction Manager's Work or materials having failed any initial test. In this event, such additional (re-test) tests shall be at Construction Manager's expense. Construction Manager shall furnish samples as requested and shall provide reasonable assistance and cooperation as necessary to permit tests to be performed on materials or Work in place including reasonable stoppage of work during testing. Construction Manager shall provide reasonable and accurate notice of when construction activities which require Owner's testing services are required. Construction Manager shall be responsible for stand-by and other costs associated with the testing agency if that construction activity is delayed or canceled.

#### GC 64 PROGRESS

64.1 Construction Manager shall give Owner full information in advance as to its plans for performing each part of the Work. If at any time during the progress of Work, Construction Manager's actual progress is inadequate to meet the requirements of the Contract, Owner may so notify Construction Manager who shall thereupon take such steps as may be necessary to improve its progress. If within a reasonable period as determined by Owner, Construction Manager does not improve performance to meet the currently approved contract construction schedule, Owner may require an increase in Construction Manager's labor force, the number of shifts, overtime operations, additional days of work per week and an increase in the amount of construction plant; all without additional cost to Owner. Neither such notice by Owner nor Owner's failure to issue such notice shall relieve Construction Manager of its obligation to achieve the quality of work and rate of progress required by the Contract.

64.2 Failure of Construction Manager to comply with the instructions of Owner may be grounds for determination by Owner that Construction Manager is not prosecuting its Work with such diligence as will assure completion within times specified. Upon such determination, Owner may terminate Construction Manager's right to proceed with the performance of the Contract, or any

separable part thereof, in accordance with the applicable provisions of this Contract.

## GC 65 CHANGES

65.1 Owner may, at any time, without invalidating the Contract and without notice to the surety(ies), make changes in the Work by issuing a Change Order. In the event that additive Change Orders increase the total contract amount of a “bond waiver contract” over the County’s bond waiver limit of \$200,000, the contract will continue to be exempt from the bonding requirements if the change order is for a nominal amount. If there is a material change in project costs through a change order above the bond waiver limit of \$200,000 then a bond will be required. In the event deductive Change Orders decrease the total contract amount of a “bonded contract” below the County’s bond waiver limit of \$200,000, bonding will continue to be required.

65.2 Owner will issue written orders to Construction Manager for any changes except that in the event of an emergency which Owner determines endangers life or property, Owner may issue oral orders to Construction Manager for any Work required by reason of such emergency. Such orders will be confirmed in writing as soon as practicable. Such orders, whether written or oral, may be accompanied by drawings and data as are necessary to show the extent of such ordered Work.

65.3 Construction Manager shall commence such changed Work so that all dates set forth in Construction Manager's current construction schedule as accepted by Owner will be met. In the event of an emergency which Owner determines endangers life or property, Construction Manager shall immediately commence such changes as required by Owner in order to mitigate or remove the emergency condition. Failure to commence any such change in timely fashion shall entitle Owner to invoke the provisions of GC25 entitled TERMINATION FOR DEFAULT.

65.4 Unless otherwise required, Construction Manager shall, within twenty-one (21) calendar days following receipt of a written contract Field Bulletin, submit in writing to Owner a Contract Change Proposal for accomplishing such change, which proposal shall reflect the increase or decrease, if any, in cost to Owner of performing the change under the Contract in comparison to what the cost would have been, had such change not been offered.

65.5 The proposal shall state the Construction Manager's added and/or deleted compensation in detail, including but not limited to:

- A. Material quantities and unit prices
- B. Labor man-hours and wages by craft
- C. Equipment type and size and rental rate
- D. Overhead and profit percentage
- E. Subcontract costs with back-up detail as specified in items A, B, C, and D above.
- F. Time extension, if any;
- G. A detailed description of any impacts this change will have on any activities on the Critical Path which would affect any of the Milestone Dates;
- H. Proof of payment of any tax liability resulting from a specific change (if requested by Owner).

65.6 Under no circumstances shall Construction Manager apply for or be entitled to recover consequential damages including, but not limited to, extended home office overhead costs associated with a change in the Work, whether or not calculated in accordance with the Eichleay Formula. Unless directed by the Owner, there will be no extensions of time in connection with any changes to the Work. Therefore, the Construction Manager should reflect this in pricing all requested changes related to the Contract substantial completion date.

65.7 If Construction Manager does not propose the method of compensation for such change or any part thereof within the time required, or if any proposed method is not acceptable, or if a method of compensation for such change, or any part thereof cannot be agreed upon, Owner may direct and Construction Manager shall proceed upon direction (Construction Change Directive) with such change.

65.8 A Construction Change Directive (CCD) is a written order prepared by the Architect/Engineer of Record and signed by the Owner, directing a change in the Work and stating a proposed basis for adjustment, if any, in the Contract Sum or Contract Time, or both. A CCD may be used in the absence of total agreement on the terms of Change Order or to complete Work which, if not accomplished, could adversely affect a critical path activity. Upon receipt of the CCD, the Construction Manager shall promptly proceed with the change in the Work involved and advise the Architect/Engineer of Record of the Construction Manager's agreement or disagreement with the method, if any, provided in the CCD for determining the proposed adjustment in the Contract Sum or Contract Time. When the Owner and Construction Manager agree with the determination made by the Architect/Engineer or Record concerning the adjustments in the Contract Sum and/or Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be recorded by the preparation of a Change Order. The Construction Manager shall not seek payment for Work performed pursuant to a CCD until it has been converted to a Change Order.

65.9 If, at any time after Construction Manager commences such change, a method of compensation other than time and material is agreed upon, such compensation will be made in accordance with such agreement. In any event, Construction Manager shall keep accurate records of the actual cost to Construction Manager for such change. Costs for which Construction Manager shall be entitled to compensation on a time and material basis as described above, are as follows:

Direct Labor Cost - Payment will be made for all manual classifications up to and including foremen, but shall not include superintendents, assistant superintendents, general foremen, office personnel, time-keepers and maintenance mechanics. The time charged to changes will be subject to the daily approval of Owner and no charges shall be accepted unless evidence of such approval is submitted by Construction Manager with its billing.

Labor rates used to calculate the direct labor costs shall be those rates in effect during the accomplishment of the change. In addition to the direct payroll costs, the direct labor costs shall include payroll taxes and insurance, vacation allowance, subsistence, travel time and overtime premium and any other payroll additives required to be paid by Construction Manager by law or collective bargaining agreements. Copies of certified pertinent payrolls shall be submitted to Owner.

Equipment Costs - Payment for the rental and operation of the equipment furnished and

used by Construction Manager shall be made for all construction and automotive equipment or tools with a new cost greater than one thousand dollars each. Equipment time charged to changes will be subject to daily written approval of Owner and no charges will be accepted unless evidence of such approval is submitted with Construction Manager's billing. The equipment rental and operation rates include costs for rental, fuel, oil, grease, repair parts, service and maintenance of any kind, and necessary attachments. Such charges do not include costs for operating labor and transportation to and from the location of the change. Equipment rental rates for Construction Manager-owned equipment used in this Contract shall be those contained in the RENTAL RATE BLUE BOOK as published by Equipment Watch, 1735 Technology Drive, Suite 410, San Jose, California 95110-1333, (800-669-3282) and current at the time work for any specific change is performed. When equipment is used for time and materials changes which does not reasonably resemble Blue Book rental rates, the rental rate shall be negotiated and agreed upon in writing.

If Construction Manager-owned equipment is not available and equipment is rented from outside sources, payment will be computed on the basis of actual invoice cost. Rental rates for non-owned equipment must be approved in advance by Owner.

When the operated use of equipment is infrequent and, as determined by Owner, such equipment need not remain at the site of the work continuously, payment shall be limited to actual hours of use. Equipment not operating but retained at the location of changes at Owner's direction shall be paid for at a standby rate.

Unless otherwise provided in the Contract, all equipment rental rates shall be agreed upon in writing before commencing any change. When a specific piece of rental equipment, normally used to perform unchanged contract work is used for time and material changed work, the applicable rental rate shall be the actual rate paid by the Construction Manager at the time the work is performed.

Transportation costs for bringing equipment to the jobsite and for returning equipment to the point of origin, exclusively for use on time and material work, will be reimbursed to Construction Manager based on invoices, provided that prior written approval has been given to Construction Manager.

Overtime shall be paid as per Method 2 described in said RENTAL RATE BLUE BOOK.

No compensation will be made to the Construction Manager for equipment repair or equipment maintenance.

Material Costs - Payment for the cost of materials furnished by Construction Manager for use in performing the change will be made, provided such furnishing and use of materials was as specifically authorized and the actual use was verified by Owner. Payment will be the net cost to Construction Manager delivered at the job and vendor's invoice shall accompany the billing along with the verification by Owner of such use of such materials.

Contract and Outside Service Costs - Payment for work and services subcontracted by

Construction Manager in the performance or completion of the change will be made only when both the subcontractor and the terms of payment to such subcontractor have been approved in writing by Owner before the subcontractor starts to work on the change.

Tools and Equipment - Payment will be made for tools and equipment with a new cost of One Thousand Dollars, or less, each, only upon approval by the Owner.

For purposes of any and all changes made pursuant to this provision (whether lump sum or time and material) as to all supplies, overhead, supervision and profit, the Construction Manager is entitled to an overhead and profit fixed fee not to exceed a maximum of fifteen percent (15%) (the Maximum Percentage) of the estimated direct labor and material costs pertaining to each change which amount will be converted to a lump sum before Work begins. The agreed upon percentage (not to exceed the Maximum Percentage), including but not limited to overhead and profit which may be added to the estimated Change Order costs for changes in the Work shall be as follows:

1. If the CM is authorized by the Owner to perform work with its own forces, the Construction Manager may add an overhead and profit fixed fee as agreed upon with Owner up to 10% of its estimated Change Order costs which amount will be converted to a lump sum before the Change Order is issued and before Work begins.

2. For all Work done by subcontractors, the respective subcontractors may add an overhead and profit fixed fee as agreed upon up to 10% of their estimated costs which amount will be converted to a lump sum before the Change Order is issued and before Work begins. The construction manager may add an overhead and profit fixed fee as agreed upon up to 5% of the subcontractors' total estimate which amount will be converted to a lump sum before the Change Order is issued and before Work begins.

65.10 For any changes involving deductive items, the following shall apply to the amount of allowable overhead and profit:

1. For deductive changes only (those which contain no additive items), there will be no reduction in overhead and profit and, likewise, no addition by the Construction Manager for processing.
2. For changes containing both additions and deductions covering related Work or substitutions, the overhead and profit shall be figured on the net increase if any, with respect to that change.

65.11 No change order or CCD shall be valid until approved and signed by the Owner. The Architect/Engineer of Record is not authorized to bind the Owner to changes relative to changes in contract cost and or time. The Architect/Engineer may only recommend acceptance or rejection. If a proposed change is deemed beneficial to the Project and is within the limits set forth in the Contract, the Owner may cause to be issued an appropriate change order to the Contract with or without the Construction Manager's signature.

65.12 The Architect/Engineer of Record will have the authority to order minor changes in the Work which do not involve adjustment to the Contract Sum or Contract Time and are not inconsistent with the intent of the Contract. Such changes shall be effected by written order and

shall be binding on the Owner and Construction Manager. The Construction Manager shall carry out such written orders promptly, and the Construction Manager shall receive no additional compensation therefore, nor shall there be any change in the Contract Time. The Architect/Engineer shall immediately provide notices of all minor changes in the Work to the Owner.

65.13 Execution of change order acknowledges final settlement of, and releases, all claims for costs and time associated, directly or indirectly, with the stated modification(s), including all claims for cumulative delays or disruptions resulting from, caused by, or incident to such modification(s), and including any claim that the modification(s) constitutes, in whole or part, a cardinal change to the Contract.

## GC 66 RECORD DRAWINGS AND SPECIFICATIONS

### A. Drawings:

1. Conformed Documents - Prior to the first application for payment, Construction Manager shall show proof of conformed documents with all Bid addenda identified on the record drawings and on its field set of drawings. Supplemental information following the bid shall be included and updated monthly for review with the application for payment.
2. Progress Records - During construction, Construction Manager shall keep a marked-up and up-to-date set of drawings showing as-built conditions on the site as an accurate record of all deviations between work as shown and work as installed. These drawings shall be available to Owner for inspection at any time.
3. Final Records - Prior to request for Substantial Completions, the Construction Manager shall furnish to Owner a complete set of marked-up as-builts with RECORD clearly printed on each sheet. Owner, at its expense, will furnish Construction Manager with drawings for mark-up by Construction Manager. Construction Manager shall, by use of professional draftsman, accurately and neatly transfer all deviations from progress as-builts to final as-builts. Record information necessary to establish utility services shall be provide by the Construction Manager a minimum of 30 days prior to the needed utility services.

### B. Specifications:

1. Progress Records - During construction, Construction Manager shall keep a marked-up and up-to-date set of specifications showing as-is conditions on the site annotated to clearly indicate all substitutions that are incorporated into the Work. Where selection of more than one product is specified, annotation shall show which product was installed. These specifications shall be available to Owner for inspection at any time.



2. Final Records Prior to request for Substantial Completion, the Construction Manager shall furnish to Owner a complete set of marked-up as-built specifications with RECORD clearly printed on cover. Owner, at its expense, will furnish Construction Manager a set of specifications for mark-up by Construction Manager. Construction Manager shall accurately and neatly transfer all annotations from progress as-builts to final as-builts.

C. Manuals and Training:

1. Manuals - As a condition precedent to Substantial Completion, the Construction Manager shall furnish to Owner three complete sets of manuals and applicable operating instructions as referenced in technical specifications.
2. Unless otherwise specified, manuals to be bound in 3-ring binder with contents clearly indicated on outside cover.
3. Training: Where Owner training is required by the technical specifications, Construction Manager shall video and audio record the training and provide Owner with one copy of recording.

D. Endorsement:

1. Construction Manager shall sign each final record drawing and the cover of the record specifications and shall note thereon that deviations and annotations are complete and accurate.
2. The Construction Manager shall provide a signed and notarized affidavit indicating that no asbestos containing materials were used or installed during the course of construction as a condition precedent to Final Acceptance.

E. Fixed Asset Equipment and Fixture Information:

1. Prior to Final Acceptance, Construction Manager shall provide the Owner with a list (in electronic format and hard copy) of each piece of equipment having an individual value greater than \$1,000. The list shall include, at a minimum; a) the name, make and model number, b) the quantity installed, and 3) the value of the equipment.

## GC 67 MEASUREMENT OF WORK FOR PAYMENT

67.1 Estimates and all support data shall be prepared by Construction Manager and submitted in writing for Owner's approval on or about the end of each month covering the amount and value of Work satisfactorily performed by Construction Manager up to the date of such estimate. Such

estimates shall be based on the construction schedule completed activity cost, as approved, and may be confirmed by actual measurement of the Work in place. Estimates shall be based on cumulative total quantities of Work performed. Estimates may include materials or equipment not incorporated into the Work provided the requirements set forth below are met. A format for such estimates shall be determined by the Owner according to type of Contract Work and shall be agreed upon prior to, or no later than, application for the first progress payment.

The quantity of Work to be paid for under any item for which a unit price is fixed in the Contract shall be the amount or number, approved by Owner, of units of work satisfactorily completed with the Contract and computed in accordance with applicable measurement for payment provisions of the Contract.

Progress Payments for "general conditions will be based on the percentage of Work completed to date, except Bonds and Insurance which may be requested in full. Separate payments for shop drawings and deposits for materials will not be allowed.

67.2 Partial payments may be made to the extent of the delivered cost of materials to be incorporated in the Work, provided such materials meet the requirements of this Contract, plans, and specifications and are delivered to acceptable locations at the Project Site or to other sites in Palm Beach County that are acceptable to the Owner (i.e. bonded warehouse). Such material must be stored in a secure manner, acceptable to the Owner, and in accordance with any manufacturer's recommendations.

Delivered cost of such stored or stockpiled materials may be included in any subsequent payment request once the Construction Manager meets the following conditions:

1. An applicable purchase order or supplier's invoice is provided listing the materials in detail, cost of materials and identifying this specific contract, by name.
2. The material is insured against loss or damage (from whatever source) or disappearance prior to incorporation into the Work.
3. Once any stored material is paid for by Owner, it shall not be removed from the designated storage area except for incorporation into the Work.
4. Evidence that Construction Manager has verified quantity and quality of materials delivered (verified packing list).

It is not the intent of this section to pay for stored materials that are intended for day-to-day inventory i.e. small diameter piping, fittings, conduit, etc. Payment for stored materials under this section shall be limited to finished prefabricated products, piece-marked, and customized for the Project. Any payment for stored materials is subject strictly to the sole discretion of the Owner.

It is further agreed between the parties that the transfer of title and the Owner's payment for any stored or stockpiled materials pursuant to this General Condition shall in no way relieve the Construction Manager of the responsibility of ensuring the correctness of those materials and for furnishing and placing such materials in accordance with the requirements of this Contract, plans and specifications.

67.3 Construction Manager shall make all surveys necessary for determining all quantities of Work

to be paid for under the Contract. Copies of field notes, computations, and other records made by Construction Manager for the purpose of determining quantities shall be furnished to Owner upon request. Construction Manager shall notify Owner prior to the time such surveys are made. Owner, at its discretion, may arrange to have its representative witness and verify all surveys made by Construction Manager for determining quantities of Work to be paid for under the Contract. Measurements and computations shall be made by such methods as Owner may consider appropriate for the class of Work measured.

67.4 The dividing limits, lines or planes between adjacent items or classes of excavation, concrete, or other types of Work where not definitely indicated on the drawings or in the specifications, shall be determined by Owner.

67.5 No payments of invoices (or portions thereof) shall at any time constitute approval or acceptance of the Work under this Contract, nor be a waiver by Owner of any of the terms contained herein.

#### GC 68 PROGRESS PAYMENT PROCEDURES

68.1 The Construction Manager shall prepare a schedule of values by phases of Work to show a breakdown of the Contract Sum corresponding to the payment request breakdown and progress schedule line items. The schedule of values must also show dollar value for each unit of Work scheduled. Change Orders shall be added as separate line items.

Prior to the initial payment request, the following must be submitted and approved by the Architect/Engineer of Record and Palm Beach County Capital Improvements Division.

1. List of principal subcontractors and suppliers.
2. Schedule of values.
3. Shop drawing log.
4. Project schedule.
5. Certified copy of recorded bond. The County's contract number will be provided after award of the Contract and the Construction Manager shall include this number on the bond prior to recording the bond. County will not make any payment to Construction Manager until Construction Manager has complied with this requirement.

68.2 The Construction Manager will prepare and submit three (3) original copies of monthly invoices for Work completed during the one month period. Pay applications shall be submitted in the format and wording of the form contained in Appendix A to these General Conditions. All information must be completed for the pay application to be accepted. Owner's account number(s) for the Project will be given at the Pre-Construction meeting and will be placed at the top right hand corner of each application. These payment applications will be reviewed by all parties in attendance at the monthly pay application meetings. Prior to formal submission of the application the Construction Manager shall submit a rough draft plus two extra copies for the Owner and Architect/Engineer of Record to review. The Construction Manager shall submit four (4) final approved copies to: the Architect/Engineer of Record, whose approval is required prior to submission to the Owner.

68.3 If the pay estimate and support data are not approved, the Construction Manager is required to submit new, revised or missing information according to the Owner's instructions. Otherwise, the Construction Manager shall prepare and submit to Owner an invoice in accordance with the estimate as approved. Owner will pay Construction Manager, in accordance with Local Government Prompt Payment Act (FS 218.70). In the event any dispute with respect to any payment or pay request cannot be resolved between the Construction Manager and Owner's project staff, Construction Manager may, in accordance with the alternative dispute resolution requirements of Florida Statute section 218.72, et. seq., demand in writing a meeting with and review by the department director. In the absence of the department director, a deputy director may conduct the meeting and review. Such meeting and review shall occur within ten (10) business days of receipt by Owner of Construction Manager's written demand. The department director, or deputy director, shall issue a written decision on the dispute within ten (10) business days of such meeting. This decision shall be deemed the Owner's final decision for the purpose of the Local Government Prompt Payment Act.

Retainage, in the amount of 10%, will be withheld on the calculated value of any Work, with the exception of stored materials which may be paid at the supplier's invoiced cost. After 50% completion of the Work has been achieved and providing there are no good faith disputes, claims or demands of the Owner, the Construction Manager may request the payment of up to one-half of the retainage held by the Owner on previous pay requests.

After 50% completion of the Work has been achieved, and providing there are no good faith disputes, claims or demands of the Owner, the Owner will implement a reduction in retainage to 5% on all future pay requests. When retainage is reduced, Construction Manager may withhold more than 5% retainage from subcontractors or suppliers only when done in accordance with the provisions of the Local Government Prompt Payment Act, may not request such withheld funds from the County, and will be required to certify compliance with F.S. 218.70 *et. seq.* on each subsequent pay application.

The Construction Manager may request at any point the release of retainage from the Owner attributable to the labor, services, or materials supplied by one or more subcontractors or suppliers if the work of the subcontractor has been successfully completed or if the materials of the supplier have been inspected and accepted by the Construction Manager. The Construction Manager must submit the request in writing to the Owner.

Notwithstanding the foregoing, in no instance can the amount retained be less than the value of Owner's good faith claims plus the value of the Work the Owner determines remains to be put in place or required to be performed as remedial activities. For the purposes of this section, 50% completion shall be that point in time when A/E determines that half of the Work required by the Contract has been completed. In no event shall the Work be determined to be 50% complete before the County has paid 50% of the Contract amount and 50% of the Contract time has expired.

All retainage released by the Owner to the Construction Manager which is attributable to the labor, services or materials supplied by one or more subcontractors or suppliers must be timely remitted by the Construction Manager to those subcontractors or suppliers.

68.4 Each application for payment shall be accompanied by the following:

1. A notarized "Affidavit of Disbursement of Previous Periodic Payments to subcontractors" from the Construction Manager for the portion of work up to the date of that particular pay application.
2. An Owner approved construction schedule update.
3. SBE-M/WBE Construction Activity Report (Schedule 3).
4. SBE-M/WBE Payment Certification (Schedule 4).

68.5 Copies of Schedules 3 and 4 will be available at the Pre-Construction meeting.

68.6 If one or more "Notice of Non-Payment" is received by the Owner, no further payments will be approved until non-payment(s) have been satisfied and an original "Release of Claim" for each "Notice" has been submitted to the Owner. Upon request, Construction Manager shall furnish acceptable evidence that all such claims or liens have been satisfied. On bonded projects only, the Owner may allow, with consent of Surety and indemnification of the County against any claims, payment for Work on which there is an outstanding Notice of Non-Payment.

68.7 Any amount otherwise payable under the Contract may be withheld, in whole or in part if:

1. Any claims are made against Construction Manager by Owner or third parties, including claims for liquidated damages, or if reasonable evidence indicates the probability of the making of any such claim; or
2. Construction Manager is in default of any Contract condition; or
3. There is reasonable doubt that this Contract can be completed within the time specified or for the balance then unpaid; or
4. Defective work or material is not remedied; or
5. Construction Manager persistently fails to carry out the Work in accordance with the Contract; or
6. Construction Manager fails to submit the information required by this Contract; or
7. Construction Manager fails to submit an owner approved updated Schedule with each Application for Payment.

68.8 If claims or liens filed against Construction Manager or property of Owner connected with performance under this Contract are not promptly removed by Construction Manager after receipt of written notice from Owner to do so, Owner may remove such claims or liens and all costs in connection with such removal shall be deducted from withheld payments or other monies due, or which may become due, to Construction Manager. If the amount of such withheld payments or other monies due Construction Manager under the Contract is insufficient to meet such cost, or if any claim or lien against Construction Manager is discharged by Owner after final payment is made, Construction Manager and its surety or sureties shall promptly pay Owner all costs (including attorney's fees) incurred thereby regardless of when such claim or lien arose.

68.9 Following issuance, by the Architect/Engineer of Record, of a Certificate of Substantial Completion, Construction Manager may submit a special payment request, provided the following have been completed:

1. Obtain permits, certificates of inspection and other approvals and releases by governing authorities, required for the Owner's occupancy and use of the Project.
2. Complete final cleaning of the Work.
3. Submit record documents (record drawings).
4. Submit listing of work to be completed before final acceptance.
5. Settle liens and other claims.
6. Obtain Consent of Surety for partial release of retainage.
7. Settle Liquidated Damages due to Owner, if any.
8. Conditional Final Waiver and Release of Claim signed by Construction Manager.

68.10 Upon receipt by Owner of Construction Manager's written Notice of Final Completion of its Work under this Contract, in accordance with GC 72, Owner shall verify all Work has been completed on the Project. When all Work has been verified as complete, and the Construction Manager completes and submits the items listed below, the Construction Manager may submit a final invoice.

1. Complete all work listed on the punch list prepared in accordance with GC 71 and obtain Architect/Engineer certification of completed Work.
2. Submit proof of payment on fees, taxes or similar obligations.
3. Transfer operational, access, security and similar provisions to Owner; remove temporary facilities, tools and similar items.
4. Obtain Consent of Surety for final payment and/or partial release of retainage.
5. All information required by GC 66.
6. Obtain certification of as-built (record) drawings from Architect/Engineer of Record.
7. Final Waiver and Release of Claim signed by Construction Manager.

#### GC 69 USE OF COMPLETED PORTIONS OF WORK

69.1 Whenever, as determined by Owner, any portion of Work performed by Construction Manager is in a condition suitable for use, Owner may issue a certificate of Substantial Completion (Partial Utilization) for that portion and take possession of or use such portion. Such Certificate of Substantial Completion (Partial Utilization) will be issued in accordance with the applicable requirements of General Condition 71 "SUBSTANTIAL COMPLETION". Such use by Owner shall in no case be construed as constituting final acceptance, and shall neither relieve Construction Manager of any of its responsibilities under the Contract, nor act as a waiver by Owner of any of the conditions thereof, provided, that Construction Manager shall not be liable for the cost of repairs, rework, or renewals which may be required due to ordinary wear and tear resulting from such use. However, if such use increases the cost or delays the completion of remaining portions of Work, Construction Manager shall be entitled to an equitable adjustment in its compensation and/or schedule under this Contract.

69.2 If, as a result of Construction Manager's failure to comply with the provisions of the Contract, such use proves to be unsatisfactory to Owner, Owner shall have the right to continue such use until such portion of work can, without injury to Owner, be taken out of service for correction of defects, errors, omissions, or replacement of unsatisfactory materials or equipment,

as necessary for such work to comply with the Contract; provided that the period of such operation or use pending completion of appropriate remedial action shall not exceed twelve months unless otherwise mutually agreed upon in writing between the parties.

69.3 Construction Manager shall not use any permanently installed equipment unless such use is approved by Owner in writing. Where Construction Manager's written request is granted for the use of certain equipment, Construction Manager shall properly use and maintain, and upon completion of its use, and at its expense, recondition such equipment to the satisfaction of Owner. If Owner furnishes an operator for such equipment, such operator's services shall be performed under the complete direction and control of Construction Manager and shall be considered Construction Manager's employee for all purposes other than the payment of such operator's wages, workmen's compensation or other benefits paid directly or indirectly by Owner.

GC 70 NOT USED

#### GC 71 SUBSTANTIAL COMPLETION

71.1 The date of Substantial Completion is the date established by the Architect or Engineer (A/E) and approved by the Owner when the Project is sufficiently complete to permit the Owner to use it for its intended purpose, the County issues a certificate of Substantial Completion and the items listed below are complete. For the issuance of a certificate of Substantial Completion (Partial Utilization) in accordance with General Condition 69, the Owner and/or the A/E will notify the Construction Manager of which items listed below must be complete for partial utilization.

71.2 The Construction Manager shall notify the A/E in writing when the Construction Manager considers the Project Substantially Complete and attach a comprehensive list of incomplete work and items needing correction with dates indicating when the items listed will be completed.

71.3 Once the A/E has received notice and attachments from the Construction Manager, the A/E will promptly inspect the Work. The A/E may refuse to inspect the Work if the Work is obviously not substantially complete or when the Construction Manager's list is not complete.

71.4 The following items shall be completed prior to a request by the Construction Manager for inspection for Substantial Completion.

1. Certificate of Occupancy or Certificate of Completion, as applicable, shall be obtained from the proper Building Official.
2. All general construction completed.
3. All mechanical and electrical work complete, equipment and fixtures in place, connected, cleaned and ready for use.
4. All electrical circuits shall be scheduled in panels, and all panels and disconnect switches properly labeled.

5. All painting shall be completed; all signs installed.
6. All Project components including floors, glass and metal work shall be cleaned.
7. All finish hardware shall be installed, and all doors shall be in good working order. All keys and blanks shall have been provided.
8. Project site shall be cleared of the Construction Manager's excess equipment, storage shacks, trailers, and/or building supplies. All temporary construction shall be removed.
9. All mechanical and electrical systems including Fire Alarm and Security, shall be complete, fully functional, and demonstrated to the Owner. The Fire Alarm system must be 100% complete without exception.
10. All operations and maintenance manuals for all equipment shall have been submitted.
11. Manufacturers' certifications and warranties shall be delivered to Owner.
12. All operations and maintenance training related literature, software and back-up disks shall have been provided.
13. All required spare parts as well as any special tools shall have been provided.
14. All HVAC testing and balancing reports shall have been submitted and approved.
15. The Project record drawings and specifications shall be submitted in accordance with GC 66.

71.5 If Substantial Completion is not obtained at the inspection, called by the Construction Manager, for reasons which are the fault of the Construction Manager, the cost of any subsequent inspections requested by the Construction Manager for the purpose of determining Substantial Completion shall be the responsibility of the Construction Manager and shall be assessed against the final payment application.

71.6 Once Substantial Completion is achieved and within the time allowed by F.S. 218.70 *et seq.*, A/E and/or Owner will prepare the punch list required by the Local Government Prompt Payment Act. The punch list items shall be corrected by the Construction Manager within 30 calendar days and prior to any request for Final Inspection and Acceptance. The failure to include any corrective work or pending items not yet completed on the list does not alter the responsibility of the Construction Manager to complete the Work pursuant to the Contract.

## GC 72 FINAL INSPECTION AND ACCEPTANCE

72.1 When the Construction Manager considers that all Work under the Contract is complete as



previously referenced in GC 71, Construction Manager shall so inform Owner and A/E in writing, "Notice of Final Completion". When items on the punch list as recorded at the Substantial Completion inspection have been corrected and the Owner is satisfied that all Work under the Contract is completed and is in accordance with the requirements of this Contract, Owner shall notify Construction Manager in writing of final acceptance of its Work under this Contract.

The Owner will then make final payment to the Construction Manager in accordance with the terms of General Condition 68 of the amount remaining after deducting all prior payments and all amounts to be kept or retained under the provisions of the Contract, including the following items, for which a Change Order will be issued:

1. Liquidated Damages, as applicable.
2. At the discretion of the Owner, one and one-half times the value of outstanding items, corrective Work, and incomplete punch list. All such Work shall be completed or corrected to the satisfaction of the Owner within the time stated on the Certificate of Substantial Completion, or on the "final punch list", or any other "punch list", otherwise the Construction Manager does hereby waive any and all claims to all monies withheld by the Owner to cover the value of all such uncompleted or uncorrected items.

72.2 Neither final acceptance of the Work, nor payment therefore, nor any provision of the Contract shall relieve the Construction Manager of responsibility for defective or deficient materials or work or responsibility for full Contract compliance. If, within one (1) year or as provided for elsewhere in the General Conditions or technical specifications after Substantial Completion, any of the Work is found to be defective, deficient or not in accordance with the Contract, the Construction Manager shall correct, remove and replace it promptly after receipt of a written notice from the Owner and correct and pay for any damage to other Work resulting therefrom as set forth in General Condition 28 entitled "WARRANTY".

#### GC 73 DISPOSAL OF MATERIAL OUTSIDE PROJECT LIMITS

73.1 The Construction Manager shall make its own arrangements for disposal of materials outside the Project limits and the CM shall pay all costs involved. The Owner reserves the right to retain any salvage material or equipment scheduled for removal. Should the Owner elect to retain salvaged materials or equipment, the Construction Manager will provide appropriate on-site storage and protection. The Owner will be responsible for transporting from the site any materials or equipment it has elected to retain. Off-site disposal of any items not retained by the Owner shall be the responsibility of the Construction Manager.

73.2 When any material is to be disposed of outside the Project limits, the Construction Manager shall first obtain a written permit from the property owner on whose property the disposal is to be made and he shall file in writing with the Owner said permit or the certified copy thereof together with a written release from the property owner absolving the Owner of any and all responsibility in connection with the disposal of material on said property.

73.3 When material is disposed of as above provided and the disposal location is visible from the

Project, the Construction Manager shall dispose of the material in a neat and uniform manner to the satisfaction of the Owner.

#### GC 74 IDENTITY OF INTEREST WITH SUBCONTRACTORS/SUPPLIERS

74.1 The Construction Manager represents to the Owner that neither the Construction Manager, nor any officer, director, partner or shareholder who holds ten percent (10%) or more of the outstanding stock of the Construction Manager, has any financial interest in, or as an officer, director, partner or ten percent (10%) plus shareholder of any firm, person or entity which has been or may be contracted with to furnish labor, material, equipment or professional services in connection with the construction of the Project. Construction Manager agrees to give written notification and obtain the approval of the Owner before entering into any contract on this Project with any subcontractor or materialman where there exists any identity of interest.

#### GC 75 CLEANING UP

75.1 Construction Manager shall, at all times, at its expense, keep its work areas in a neat, clean and safe condition. Upon completion of any portion of the Work, Construction Manager shall, within 48 hours, remove all of its equipment, construction plant, temporary structures and surplus materials not to be used at or near the same location during later stages of Work.

#### GC 76 PROJECT SIGNS

76.1 Construction Manager, at no additional cost to the Owner, shall construct a project job sign as indicated and described on the "Site Sign Detail". Construction Manager shall coordinate location of sign with Owner's representative and install such sign within 21 days after Owner's issuance of "Notice to Proceed". Any deletion/addition of lettering during the life of the Project will be at the Construction Manager's expense. Construction Manager will remove and properly dispose of sign at Substantial Completion of the Project. With the exception of the right reserved by the Owner to erect a sign in connection with the Project and unless otherwise provided in the Contract, Construction Manager shall not display or permit to be displayed on or about the Project, any sign, trademark, poster or other advertising or identifying device, without prior written approval of Owner.

#### GC 77 SEVERABILITY

77.1 If any provision(s), or portion(s) of a provision(s) of this Contract, or the application thereof to any person or circumstance shall, to any extent, be held to be invalid, illegal or unenforceable for any reason whatsoever: the validity, legality and enforceability of the remaining provision(s), or part of the provision(s), shall not in any way be affected or impaired thereby; and shall be interpreted to the fullest extent possible to be enforceable and to give effect to the intent manifested by the provision(s), or portion(s) thereof, held invalid, illegal or unenforceable.

#### GC 78 PUBLIC RECORDS AND CONFIDENTIAL INFORMATION

78.1 Public Records Requests. Under Chapter 119, Florida Statutes (the Florida Public Records

Law), a request to inspect or copy public records relating to a public agency's contract for services must be made directly to the public agency.

## 78.2 Required Procedures for Protecting Confidential and Exempt Information.

- A. Records Exempt from the Public Records Laws. The Florida Public Records Law provides for certain exemptions to the Florida's Public Records Law to protect the security of specific governmental facilities, employees and visitors. For the same security reasons, the County has the statutory obligation to protect such records from public disclosure and only disclose confidential information to a licensed engineer, architect or contractor. The purpose of this Section is to facilitate the Construction Manager's Work by making specific documents available to individuals/firms while implementing controls on the distribution of records or information which is confidential and/or exempt from the Florida Public Records Law.
- B. Confidential Information. For purposes of this Section, "Confidential Information" shall include all information or material that is confidential and/or exempt according to the Florida Public Records Law. The exemptions most relevant to the Construction Manager include, but are not limited to:
- Plans, blueprints, drawings and diagrams which depict the internal layout and structural elements of a building or other structure owned or operated by the County;
  - Security system plans, including records, information, photographs, audio and visual representations, schematic diagrams, floor plans, surveys, as-built drawings, recommendations or consultations relating directly to the physical security of the facility or revealing security systems in whole or in part;
  - Threat assessments;
  - Emergency evacuation plans;
  - Sheltering arrangements; or
  - Manuals for security personnel, emergency equipment, security training; or otherwise containing narrative and/or graphic content of a security nature.
- C. Obligations.
1. Maintain the Confidentiality of the Confidential Information. The Construction Manager has an obligation to maintain the confidential status of Confidential Information. The Construction Manager shall hold and maintain the Confidential Information in the strictest confidence for the sole and exclusive benefit of the County. The Construction Manager shall restrict access to Confidential Information to: 1) the Construction Manager's employees, and/or 2) licensed architects, engineers, contractors, subcontractors (Third Parties) for the sole purpose of providing contractual services. Prior to releasing any Confidential Information to a Third Party, the Construction Manager shall require those Third Parties to execute nondisclosure restrictions at least as protective as those in this Section, and maintain a list of any Third Party to which the Construction Manager has distributed Confidential Information.  
**Other than as authorized above, the Construction Manager shall not, without**

**prior written approval of County, publish, copy, or otherwise disclose to others any Confidential Information.**

2. Disclosure Warning. If Confidential Information is in written form, the Construction Manager shall label or stamp the materials as they are created with the Disclosure Warning described below on each and every sheet of plans, documents or reports that contain exempt information. If the Construction Manager is distributing Confidential Information to authorized recipients, the materials and the correspondence related thereto should contain the following disclosure warning:

**DISCLOSURE WARNING.** THIS DOCUMENT IS EXEMPT AND CONFIDENTIAL UNDER SEC. 119.071, FLORIDA STATUTES. ANY ENTITY OR PERSONS RECEIVING SUCH INFORMATION SHALL MAINTAIN THE EXEMPT STATUS OF THE INFORMATION UNLESS OTHERWISE AUTHORIZED BY THE COUNTY. THESE DOCUMENTS SHALL NOT BE DISTRIBUTED, LOANED OR COPIED WITHOUT THE WRITTEN PERMISSION OF THE COUNTY IN ACCORDANCE WITH THE RELEVANT PROVISIONS OF FLORIDA LAW. THE COUNTY MUST BE ADVISED IMMEDIATELY AS TO ANY CHANGES IN CUSTODIAN FROM THOSE PERSONS LISTED IN CORRESPONDENCE FOR ORIGINAL DISTRIBUTION, IF THE DOCUMENTS ARE LOST OR STOLEN, OR IF THERE IS IMPROPER DISCLOSURE OR UNAUTHORIZED USE OF THE INFORMATION IN THE DOCUMENT. UPON COMPLETION OF USE, WORK, PROJECT, OR CONTRACT, THE CONTRACTOR/CONSULTANT SHALL SHRED OR BURN ANY DUPLICATE RECORDS.

3. Identifying Correspondence that May Contain Exempt or Confidential Information. In order to assist in the identification of electronic records, i.e. email, which may be exempt from Public Records Requests and protect information that is exempt from disclosure, the Construction Manager (as either the writer or receiver of an electronic document which may contain confidential and/or exempt information) must use the letters "PREX" (in caps) as the *first* four letters of the subject line of the electronic document. The PREX identifier should be used if the email contains confidential and/or exempt information in the body and/or an attachment.
4. Notification of Improper Disclosure. County must be notified immediately if the Confidential Information is lost or stolen or of any improper disclosure or unauthorized use of the Confidential Information. The Construction Manager shall make a report to the County not more than seven (7) business days after the Construction Manager learns of such an improper disclosure or unauthorized use of the Confidential Information. The Construction Manager's report shall identify, to the extent known, the nature of the improper disclosure or unauthorized use, the Confidential Information disclosed or used, who made the disclosure of or used the information, what the Construction Manager has done or shall do to mitigate any harmful effects of the improper disclosure or unauthorized use, and what corrective action the Construction Manager has taken or shall take to prevent future similar unauthorized use or improper disclosure. The Construction Manager shall provide any other such information about the unauthorized use or improper disclosure as reasonably requested by the County.

The Construction Manager shall take all steps the County deems advisable to mitigate, resolve and/or prevent the unauthorized use or improper disclosure of the Confidential Information.

- D. Survival. The nondisclosure provisions of this Section shall survive the termination of this Contract. The Construction Manager's duty to hold Confidential Information in confidence shall remain in effect until County sends the Construction Manager written notice releasing the Construction Manager from the provisions of this Section.
- E. Enforcement. The Construction Manager understands that non-compliance with the terms of this Section may result in debarment pursuant to the Palm Beach County Code as well as subject itself to any other remedies available to the County in law or equity.

**IF THE CONSTRUCTION MANAGER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSTRUCTION MANAGER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, PLEASE CONTACT: BUSINESS AND COMMUNITY AGREEMENTS MANAGER, FACILITIES DEVELOPMENT & OPERATIONS, 2633 VISTA PARKWAY, WEST PALM BEACH, FL 33411 OR BY EMAIL AT [FDORECORDSREQUEST@PBCGOV.ORG](mailto:FDORECORDSREQUEST@PBCGOV.ORG) OR BY TELEPHONE AT 561-233-0220.**

#### GC 79 LIQUIDATED DAMAGES

For purposes of the Contract Documents, Liquidated Damages means damages assessed for the Construction Manager's failure to substantially complete the Work within the Contract Time, including any change(s) to Contract Time authorized by Change Order(s) and Written Amendment(s). Should the Construction Manager or, in the event of its default, the Surety fail to achieve certification of Substantial Completion of the Work within the Contract Time, the Construction Manager or, in the event of its default, the Surety shall pay to the County, not as a penalty, but as Liquidated Damages in the daily amount(s) established in the GMP Amendment.

The Construction Manager hereby agrees and affirms that the amounts specified in this section reflect a fair compensable value for damages suffered by the County as a result of Construction Manager's delay, and that said amounts are not a penalty nor shall ever be contested as reflecting the imposition of a penalty against the Construction Manager.

The County shall have the right to apply as payment on such Liquidated Damages any money on any Project that is due the Construction Manager by the County, and, to deduct Liquidated Damages either incrementally from progress payment(s) or the Final Payment.

Permitting the Construction Manager to continue and to finish the Work, or any part of it, after the

expiration of Contract Time, shall in no way act as a waiver on the part of the County of the Liquidated Damages due under the Contract.

The number of days of default shall be determined by counting all calendar days. In case of default of the Contract and completion of the Work by the County, the Construction Manager and its Surety shall be liable for the Liquidated Damages under the Contract, but no Liquidated Damages shall be chargeable for any delay in the Substantial Completion of the Work by the County, due to an unreasonable action or delay on the part of the County.

GC 80 DISCLAIMER OF CONSEQUENTIAL DAMAGES

The County shall not be liable to the Construction Manager, whether in contract, tort, warranty or under any statute or on any other basis, for any consequential, incidental, indirect, special, punitive or exemplary damages suffered or incurred by the Construction Manager in connection with this Contract, even if the County has been advised of the possibility of such damages. Consequential damages shall include, by way of example and without limitation, opportunity costs, loss of use of facilities or other assets, consequential damage claims of subcontractors, lost profits, lost savings, lost business, lost bonding capacity, lost financing, lost reputation or lost goodwill.

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## APPENDIX A

Request for Information  
Field Instruction  
Field Bulletin  
Construction Change Proposal  
Change Order  
Construction Change Directive  
Submittal Transmittal  
Deficiency Report  
Non-Conformance Report  
Construction Manager's Daily Report  
Substitution Request Form  
Contingency Use Directive  
Application for Payment  
SBE-M/WBE Schedule 1  
SBE-M/WBE Schedule 2  
SBE-M/WBE Schedule 3  
SBE-M/WBE Schedule 4  
Living Wage Notice for Posting  
Certification of Compliance – Living Wage Ordinance

**CONTRACT EXHIBIT B  
SPECIAL CONDITIONS**