

CONSTRUCTION MANAGEMENT AGREEMENT

(Guaranteed Maximum Price)

BY AND BETWEEN

EQX JACKSON SQ HOLDCO LLC
(OWNER/DEVELOPER)

AND

(CONSTRUCTION MANAGER)

FOR THE FOLLOWING PROJECT:

425 Washington Street - 530 Sansome Street Project
San Francisco, CA 94103

DATED: _____

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CONSTRUCTION MANAGEMENT AGREEMENT

AGREEMENT, by and between EQX JACKSON SQ HOLDCO, LLC, having an address of 44 MONTGOMERY STREET, SUITE 1300, SAN FRANCISCO, CA 94104 (“Owner/Developer”), and _____ (“Construction Manager”).

WITNESSETH:

WHEREAS, Owner/Developer is the owner of the improved real property located at 425 – 445 Washington Street in San Francisco, California, APN Nos. 0206-013, 0206-014 (“425 Washington”);

WHEREAS, the City and County of San Francisco (“City”) is the owner of the improved real property located at 530 Sansome Street in San Francisco, California, APN No. 0206-017 (“530 Sansome”);

WHEREAS, Owner/Developer intends to ground lease 530 Sansome from the City and develop and construct an approximately 303,095 sq.ft. mixed-use development on the combined 17,733 sq.ft. (0.41 acre) site encompassing the 425 Washington and 530 Sansome Street properties (the “Project Site”), which will include a four-story San Francisco Fire Department Station No. 13 (“Fire Station No. 13”) and an approximately 218’ tall mixed-use (hotel or residential) building on the 530 Sansome (the “Building”) (collectively, the “Project”);

WHEREAS, following completion of the Project, Owner/Developer will convey Fire Station No. 13 to the City and the City will convey the remainder of the Project to Owner/Developer;

WHEREAS, Construction Manager has been advised that, under separate agreement, Owner/Developer has retained the services of Skidmore, Owings & Merrill and such other architects, engineers and consultants as deemed necessary by Owner (collectively, “Architect”), to prepare plans, specifications, working drawings and other construction documents for the Project (the “Construction Documents”);

WHEREAS, Construction Manager understands that (a) Owner/Developer may obtain construction financing for the Project through lenders (institutional or otherwise) or other sources (collectively “Lender”); and (b) as a condition to the procurement of such financing, Lender’s review and approval of this Agreement, as well as the design and construction of the Project, may be required;

WHEREAS, Construction Manager understands that a portion of the Project involves the construction of a new San Francisco Fire Department Station No. 13 (“Fire Station Project”) for the City and County of San Francisco (the “City”), and the City’s review and approval of this Agreement, as well as the design and construction of the Project, may be required;

WHEREAS, Owner/Developer and Construction Manager agree that the City is and shall be a third-party beneficiary to this Agreement between Owner/Developer and Construction Manager and shall have the right to enforce any of its terms to the extent the City may deem such enforcement necessary or advisable to protect the City’s rights or interests hereunder.

WHEREAS, Construction Manager has been advised that, pursuant to this Agreement, Owner/Developer intends to retain the services of Construction Manager (a) to consult with Owner/Developer, Architect and Consultants (as defined in Article XVII hereof) in the preparation of the Construction Documents; and (b) to perform construction related services and arrange for, monitor, supervise, administer and contract for the construction of all or any portion of the Project (collectively the “Work”), all as more particularly set forth in Article II hereof; and

WHEREAS, Construction Manager desires to be retained by Owner/Developer to perform, or cause to be performed, the Work;

WHEREAS, the Work as it relates to this Construction Management Agreement shall encompass the interior structure and/or improvements to Fire Station No. 13, the Fire Station Project, but shall not include the Building, which work shall be the subject of a separate agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, Construction Manager and Owner/Developer hereby agree as follows.

ARTICLE I

Contract Documents

1.01 The contract documents (collectively, the “Contract Documents”) shall consist of the following:

(a) This Agreement, including all the Exhibits annexed hereto and made a part hereof, and all duly executed amendments (including Change Orders and Emergency Change Orders, as such terms are defined in Article XXII hereof) and modifications (in both cases with attachments) issued after execution of this Agreement;

(b) The Construction Documents identified in **Exhibit A** hereto, and such other Construction Documents as may hereafter be approved in writing by Owner/Developer;

(c) The City and County of San Francisco General Conditions referenced in Exhibit A;

(d) The Progress Schedule (as defined in Section 7.01(k) hereof) to be initially prepared for the Work by Construction Manager and submitted to Owner/Developer for its approval in accordance with the provisions of Section 7.01(k) for the construction and Substantial Completion and Final Completion (as such terms are defined in Section 6.01 hereof) of the Work, as the same may be updated, modified or extended, subject to Owner/Developer’s prior approval, in accordance with the applicable provisions of this Agreement. A copy of the preliminary schedule, as of the date of this Agreement, is attached hereto as **Exhibit F**; and

(e) The Trade Contractor Approval Letter set forth in **Exhibit B** (the “Trade Contractor Approval Letter”), annexed hereto and made a part hereof, or such other form of approval letter as Owner/Developer may use to evidence its approval of the award of written trade contracts for items of the

Work to be performed and/or materials, supplies and equipment to be furnished in connection with the Project to trade contractors, materialmen, and suppliers (collectively, the "Trade Contractors").

(f) The payment or performance bonds or Subcontractor Default Insurance program ("SDI "Program") required to be provided by Construction Manager in accordance with the provisions of Article XV.

The Contract Documents form the contract between Owner/Developer and Construction Manager. References in the Contract Documents to "the contract" or "this contract" shall be deemed to include all of the Contract Documents. References to "this Agreement" or "the Agreement" shall refer to this instrument, which is one of the Contract Documents. In resolving any conflicts among the Contract Documents, the above listed order of priority shall control, with item (a) having the overriding priority, except to the extent subsequently altered by a Change Order or modification; and within each category, the newer Contract Documents shall be given precedence.

1.02 The intent of the Contract Documents is to include in the Work all labor, materials and supplies, insurance, tools, equipment, all permits (excluding building permits which shall be paid for by Owner/Developer), licenses, taxes, fees, tariffs, approvals, transportation, testing and field surveying (customarily furnished by general contractors) and other services and items required in connection with the satisfactory performance, execution and Final Completion of the Work in accordance with the Contract Documents. Matters not expressly included in the Contract Documents but which are reasonably inferable therefrom shall be deemed included as a part of the Work. An item of work shall be deemed reasonably inferable, if it is a required component of a specific assembly and necessary for the proper execution and completion of the Work.

1.03 The Contract Documents are complementary and cumulative and what is called for by one shall be as binding as if called for by all.

1.04 Words and abbreviations which have well known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings.

1.05 If any conflicts or ambiguities exist in or between the Construction Documents, the Construction Documents and any of the Contract Documents, or the Construction Documents and existing conditions at the Project Site, Construction Manager shall, immediately upon discovery of such conflict or ambiguity, bring the same to the attention of Owner/Developer, in writing, for resolution. It is expressly understood and agreed that Owner/Developer, in consultation with Architect, shall be the interpreter of the Construction Documents and shall resolve any such conflicts and ambiguities. The Construction Manager and the relevant Trade Contractor shall be required to provide the better or more inclusive of the conflict or ambiguity as directed by Owner/Developer. Any Work relating to any such conflict or ambiguity which is performed by Construction Manager's own forces or any Trade Contractor after discovery by Construction Manager but before Owner/Developer has had a reasonable time to respond to or address such condition, as provided herein, shall be at Construction Manager's or such Trade Contractor's sole risk, cost and expense. Construction Manager shall not be responsible for code compliance of the drawings and specifications prepared by the Architect and its design team unless, pursuant to the standard of care

identified in Section 2.04 below, it knew or should have known of such error/omission based on its review of the Contract Documents and failed to notify Owner/Developer, subject to Section 29.01.

1.06 Modifications to parts of the Contract Documents are for the purpose of varying, modifying, rescinding or adding to the Contract Documents. All modifications should be read together with the portions of the Contract Documents to which they relate.

1.07 The drawings and specifications and all other documents comprising the Construction Documents are complementary. Anything shown in any of the drawings and not mentioned in the specifications, or mentioned in any of the specifications and not shown in the drawings, shall have the same effect as if shown or mentioned in both.

1.08 A typical or representative detail indicated on the Construction Documents shall constitute the standard for workmanship and materials throughout corresponding parts of the Work, unless otherwise shown.

1.09 The layout of mechanical, plumbing, fire protection, and electrical systems, equipment, fixtures, piping, ductwork, conduits, specialty items and accessories indicated on the Construction Documents is diagrammatic. The actual scope of the Work shall be carried out at no additional costs and so as not to affect the architectural and structural integrity and limitations of the Project and shall be performed in such sequence and manner so as to avoid conflicts and provide clear access to all control points, including valves, strainers, control devices and specialty items of every nature related to such systems and equipment in conformance with all applicable codes. Subject to the provisions of Section 29.01 hereof, if Construction Manager discovers or has knowledge of (a) conflicts in the Construction Documents, or (b) any conflicts between existing conditions at the Site (which Construction Manager is aware of or by testing as agreed to by Owner/Developer) and the Construction Documents which, in Construction Manager's opinion, are of a nature that may affect the architectural or structural integrity or limitations of the Project, Construction Manager immediately shall bring the same to the attention of Owner/Developer, in writing, for resolution in the manner provided in Section 1.05 hereof. Any Work relating to any such conflict which is performed by Construction Manager or by any Trade Contractor after discovery but prior to the resolution of the same shall be borne by the responsible party in accordance with Section 1.05. The Architect is responsible for coordination of the Drawings, Plans and Specifications and for final coordination of the design work of the Construction Manager's design/build and design/assist Specifications, if any. Notwithstanding, design/build and design/assist Trade Contractors shall assist with Architect's coordination efforts through issuance of 100% Construction Development drawings, and Construction Manager shall provide BIM clash analysis and solutions, which shall be subject to Architect's final approval.

ARTICLE II

Scope of the Work

2.01 Construction Manager shall perform all construction management services described in this Agreement in connection with the construction of the Work. The general scope of the Work, as initially

reflected in the Construction Documents, will be developed into a detailed design and construction program and further refined as the preparation of the Construction Documents progresses so as to include, and further define, (a) the scope, parameters and anticipated timing for the Work, and (b) Owner/Developer's and Construction Manager's understanding of the quality of the materials and workmanship required and expected. Construction Manager represents that (a) it has fully acquainted itself with the general design concept and scope of the Work, as reflected in the Construction Documents, (b) it has visited the Project Site and existing buildings, if any, including the location of adjacent structures and utilities, and is familiar with access to the Project Site and with the observable condition of any existing buildings. Owner/Developer shall be responsible for obtaining all consents, licenses and easements as may be required from adjoining property Owners. Notwithstanding anything to the contrary stated herein, Construction Manager has not, and will not, perform any subsurface investigations. Construction Manager has reviewed data of subsurface conditions provided to Construction Manager by Owner/Developer, which Construction Manager shall be entitled to rely upon in good faith. Construction Manager shall not be responsible for any subsurface conditions that differ materially from those identified in the data provided to the Construction Manager by Owner/Developer, except for those known to the Construction Manager or any Trade Contractor or ordinarily found to exist and generally recognized as inherent in the construction activities of the character provided in the Contract Documents.

2.02 In addition to the services referred to in Section 2.01 hereof, Construction Manager shall perform and furnish, or cause to be performed and furnished all labor, materials, plant, power, light, heat, water, telephone, tools, supplies, equipment, services, transportation, scaffolding, permits (excluding building permits which shall be paid for by Owner/Developer), licenses, supervision and shall perform or cause to be performed all of the General Conditions Work Items identified in **Exhibit C** annexed hereto and made a part hereof ("General Conditions Work Items") and shall provide all services, business administration and supervision, necessary for, or incidental to, the successful prosecution and Final Completion of the Work in the most expeditious and economical manner, consistent with best industry accepted standards, strict and complete compliance with codes and ordinances having jurisdiction over performance of the Work, lawful construction practices and the interests of Owner/Developer relating to quality, timely, economical completion of the Work, to the extent made known to Construction Manager. The Work shall be performed and executed in a customary and workmanlike manner by qualified and efficient workers, in conformance with the Contract Documents and best industry trade practices.

2.03 Construction Manager agrees to furnish efficient business administration with emphasis on budget control, construction scheduling, coordination of the Work, supervision and construction management in an expeditious and economical manner consistent with the interests of Owner/Developer and shall assist Owner/Developer in developing and maintaining a climate of understanding and good will with all governmental and quasi-governmental agencies affected by the Project (particularly including the City with regard to the Fire Station), the local communities adjacent to the Project Site, and the public at large. Construction Manager shall require all Trade Contractors to comply with Construction Manager's instructions related to storage of materials and scheduling. Construction Manager shall generally advise and assist Owner/Developer on all matters concerning the construction of the Project upon which Owner/Developer requests advice and assistance and also about all matters concerning which Construction Manager, being familiar with the construction industry, might normally be consulted. All recommendations to be rendered by Construction Manager shall be in writing when requested, stating advantages and

disadvantages and evaluating alternatives and shall be in sufficient detail to enable Owner/Developer to analyze such recommendations and make informed decisions with respect thereto. Without limiting the foregoing, Construction Manager's obligations are more fully described herein.

2.04 Construction Manager accepts the relationship of trust and confidence established between it and Owner/Developer by this Agreement and covenants to Owner/Developer to furnish its best professional skill, judgment and efforts in performing its duties under this Agreement and to cooperate with Owner/Developer, Architect and Consultants in furthering the interests of Developer as made known to Construction Manager. For the purpose of this Agreement, "standard of care", "best skill" or "best judgment" or "best efforts" shall be deemed to mean those efforts that a qualified and diligent construction manager performing work on a four-story fire station in downtown San Francisco and similar to Construction Manager would use to fulfill Owner/Developer's objectives considering the high degree of trust and confidence Developer has placed in Construction Manager as an experienced and capable construction manager. Construction Manager understands that it is Owner/Developer's intent to construct the Project at a reasonable cost and in the most expeditious fashion given budgetary considerations. Accordingly, Construction Manager will devote its best efforts (consistent with the Construction Budget and Progress Schedule) toward (a) maintaining the cost level of the Project at the lowest possible point consistent with good construction practices, (b) carrying out Owner/Developer's intent and direction of Architect's and Consultants' Construction Documents; and (c) achieving the most rapid and efficient construction and completion of the Project. Construction Manager will use its best efforts to bring to Owner/Developer's attention any possibilities for savings that may present themselves during the course of Construction Manager's performance under this Agreement and will confer with Owner/Developer periodically in order to determine whether there are any areas where, by design change or otherwise, costs may be reduced. It shall be considered a material breach if Construction Manager shall knowingly accept for its own account any trade discounts, rebates, refunds, except to the extent permitted by Article IX, contributions, or deal with (or recommend that Owner/Developer deal with) any firm in which Construction Manager has any financial or other interest, or undertake any activity or employment which would or could create a conflict of interest or compromise Construction Manager's judgment or prevent Construction Manager from serving the best interests of Owner/Developer. If Construction Manager shall become aware of any facts which are or may be in violation of the preceding sentence or shall have any financial or other interest in any firm with which Owner/Developer is dealing or proposes to deal with in connection with the Project, Construction Manager shall immediately advise Owner/Developer thereof in writing. It shall be deemed a conflict of interest and a material breach of the terms of this Contract, for Construction Manager to knowingly employ at the Project, or knowingly recommend acceptance of bids from Trade Contractors employing, with respect to the Project, any relatives (including in-laws) of any of the officers or directors, or executives of Construction Manager. Any breach hereunder shall constitute an "Event of Default" and entitle Developer to terminate this Agreement for Cause in accordance with the provisions herein.

2.05 For the avoidance of doubt, the Work subject to this Agreement encompasses the Fire Station Project as shown in the Construction Documents identified in **Exhibit A** hereto, specifically including the interior structure and improvements of Fire Station No. 13, but shall not include or encompass the construction of the Building, which work shall be the subject of a separate agreement. To the extent the term "Project" is further used herein, it shall refer to the Fire Station Project.

ARTICLE III

Guaranteed Maximum Price

3.01 As consideration for the full and complete performance of the Work and all of Construction Manager's obligations hereunder, Owner/Developer shall pay to Construction Manager a sum of money ("Contract Sum") equal to the total of:

- (a) a fee ("Construction Manager's Fee"), which includes all overhead (including home office personnel and expenses not otherwise reimbursable under Section 3.07 hereof) and profit;
- (b) general conditions costs incurred by Construction Manager ("General Conditions Costs"), as provided in Section 3.03;
- (c) Reimbursable Costs, as defined in Article IV hereof; and
- (d) Contingency, as provided in Section 3.12

3.02 Construction Manager's Fee, which includes all costs not otherwise identified in this Agreement and profit, shall be equal to _____ (___%) (the "Fee") of the total of (a) Reimbursable Costs as provided in Article IV. Construction Manager shall be entitled to a separate lump sum fee for preconstruction services as listed in Section 7.01 which services are performed prior to the Notice to Proceed ("NTP") date in the amount of _____, which shall be included in the Construction Manager's first Application for Payment.

3.03 Construction Manager's General Conditions Costs are more fully defined in Section 3.07 below and shall be fixed in the amount of _____.

3.04 Construction Manager shall be entitled to an extension in Contract Time and additional General Conditions Costs as defined in Article 6 below. All Change Orders shall be marked up for insurance, SDI and applicable taxes. Owner shall be entitled to receive written notice of all circumstances that cause delay within forty-eight (48) hours of the occurrence of the event causing the delay. Failure of Construction Manager to provide such notice will cause Construction Manager to forfeit its right to additional General Conditions for the delays caused by such event.

3.05 Payments on account of Construction Manager's Fee and General Conditions Costs, shall be paid monthly, simultaneously with each progress payment made to Construction Manager under Article XI hereof. The proportion of Construction Manager's Fee and General Conditions Costs earned at the date of any Application for Payment (as such term is defined in Article XI hereof) shall be calculated as defined in Section 3.02 above for the Work completed in such Application for Payment. Construction Manager's Fee, General Conditions Costs and Reimbursable Costs shall be reimbursed as incurred by Construction Manager, subject to the provisions of Section 3.06 regarding retention on Trade Contract Costs.

3.06 Unless otherwise agreed to by Developer and Construction Manager, Owner/Developer shall make progress payments to Construction Manager pursuant to the provisions of Article XI hereof,

subject to retention on the Trade Contract Costs (including payments to Trade Contractors for the performance of General Conditions Work Items pursuant to Trade Contracts) in an amount equal to ten percent (10%) of such Trade Contract Costs. When Owner/Developer determines that the Work is ninety-eight percent (98%) or more complete, the Owner/Developer may reduce retention funds to an amount equal to two hundred percent (200%) of the estimated work value of work yet to be completed, plus any amounts necessary to cover offsets by the Owner/Developer for liquidated damages, defective Work, stop notices, forfeitures, and other charges.

3.07 The General Conditions Costs, shall include the following:

(a) The direct wages of labor directly on Construction Manager's Field payroll. "Field" means, for purposes of this Agreement, the location of the Project Site;

(b) Salaries and benefits of Construction Manager's employees, including but not limited to project manager(s), superintendent(s), whose full-time services are required for the Work, paid for such portions of their time as may be devoted to the Work;

(c) To the extent not included in Section 3.07(a) or 3.07(b) above, payroll taxes and contributions for federal old age benefits, unemployment insurance, family leave or other employee benefits required by law, and such other applicable actual or accrued fringe benefits;

(d) Costs and expenses incurred in connection with telephones (and charges), fax, messenger service, blueprinting, Xeroxing, photographs, field office, trailers, correspondence and other similar petty cash items directly related to the Work;

(e) Costs of all Project Office temporary structures and their maintenance, less the reasonable salvage value obtainable on such items which are used but not totally consumed in the performance of the Work; provided, however, that at Owner/Developer's option and its direction, Construction Manager either shall (i) deliver all such temporary structures to Developer, (ii) use reasonable efforts to sell the same for the account of Owner/Developer, or (iii) discard the same in the manner set forth in Section 6.05 hereof;

(f) Rental charges of all project office machinery and equipment (exclusive of hand tools) used at the Project Site and maintenance expenses for any temporary project office structure necessary in connection with the performance of the Work, together with costs incurred, including the installation thereof, and the dismantling, erection, removal, transportation and delivery costs thereof;

(g) Costs incurred by Construction Manager in performing General Conditions Work Items listed in Exhibit C hereof by Construction Manager's own labor force or by Trade Contractors retained by Construction Manager to perform the same;

(h) License fees necessary for the management of the Work.

3.08 Construction Manager acknowledges that the Construction Documents identified in **Exhibit A** annexed hereto are incomplete and are being developed by Architect. However, Construction Manager

represents that the documents identified in **Exhibit A** contain sufficient information so as to provide Construction Manager with an understanding of the scope of the Work and the level of finishes required for the Project.

3.09 The Contract Sum shall be subject to a Guaranteed Maximum Price (“GMP”), which shall be the sum of the following: (i) all Reimbursable Costs, including all Trade Contract Costs, add-alternate allowance items identified as such, as well as insurance, bond and SDI Program costs, (if any); (ii) all General Conditions Costs and (iii) the Contingency.

3.10 Unless adjusted by Change Order pursuant to Article XXII below, in no event shall the Contract Sum exceed the GMP of _____.

3.11 If Construction Manager completes the Work for less than GMP, then Owner/Developer shall be entitled to receive an amount equal to one hundred percent (100%) of such savings, and Construction Manager shall be entitled to receive an amount equal to zero percent (0%) of such savings.

3.12 The GMP shall include a Contingency in the amount of three percent (3.00%) of the GMP amount minus the General Conditions, Preconstruction, Bond, Subguard, Insurance, Gross Receipt Tax and Fee Costs. The Contingency is available to cover costs that would increase Construction Manager’s costs and result from: (a) errors by Construction Manager in estimating time or money, (b) overruns in General Conditions Costs and guaranty work not performed or back chargeable to Subcontractors, up to a maximum of One Hundred Fifty Thousand Dollars (\$150,000.00), (c) additional costs incurred as a result of the default by Trade Contractors or items omitted by Construction Manager in the formulation of the GMP, (d) correction of minor defects, (e) time extensions or costs for overtime to maintain or accelerate the Project Schedule, not back chargeable to Subcontractors or to the extent not provided for by this Agreement, (f) costs to the extent the actual sum of the Trade Contract Costs exceed the line item sum of the Trade Contract Costs in the GMP, and (g) casualty losses and related expenses, not compensated by insurance or otherwise, and sustained by Construction Manager in connection with the Work. No sums may be charged to the Contingency except with prior written approval of Owner/Developer, which approval will not be unreasonably withheld. The Contingency is not intended to cover design errors, Change Order Work, overtime requested by Owner/Developer unless such overtime is caused by Construction Manager’s inability or refusal to perform in accordance with the Progress Schedule as defined in Article VII below, concealed conditions or Hazardous Materials not brought onto Project Site by Construction Manager. No sums may be charged to Contingency for work for which Construction Manager is entitled to a Change Order hereunder. No sums may be charged to the Contingency for any losses or expenses for which Construction Manager would have been indemnified or compensated by insurance, but for the failure of Construction Manager to procure and maintain insurance in accordance with the requirements of this Agreement, the failure of Construction Manager to comply with the requirements of any insurance carriers providing coverage for the Project, as set forth in Exhibit D hereof, or the failure of Construction Manager to notify Owner/Developer or its insurance carrier, if applicable, of the events which results in claim to the Contingency resulting in coverage disclaimer. No sums may be charged to the Contingency for costs which arise out of Construction Manager’s intentional misconduct, gross negligence or a material breach of this Agreement. Construction Manager is not entitled to payment of sums which are otherwise property chargeable to the Contingency to the extent (a) such sums are successfully and

properly chargeable to a Trade Contractor or other responsible person or entity, or (b) such sums exceed the available Contingency set forth in the GMP. Any unused portion of the Contingency shall accrue fifty percent (50%) to Owner/Developer and fifty percent (50%) to Construction Manager.

Savings realized following buyout and contracting of subcontractors, resulting in a lower contract price than that currently carried in the GMP line items for each respective trade, shall not be added to the GMP Contingency, but rather, shall accrue to the TI Allowance, solely for the benefit of Owner/Developer.

3.13 Unless otherwise agreed to by Owner/Developer and Construction Manager, and subject to City approval, Owner/Developer shall make progress payments to Construction Manager pursuant to the provisions of Article XI hereof, subject to hold back (“retainage”) on the Subcontract Costs (herein defined) (including payments to Subcontractors for the performance of General Conditions Work Items included in such Subcontracts) in an amount equal to ten percent (10%) of each such Subcontractor Cost included in each Application for Payment. Payments of the Construction Manager’s Fee shall be subject to retainage of ten percent (10%) of each payment of the Construction Manager. Upon Substantial Completion of the Work, as defined in Article VI below, the hold back shall be reduced to two hundred percent (200%) of the estimated value of all remaining Punch List Items. Retainage shall not be withheld from General Conditions Costs and Reimbursable Costs incurred directly by the Construction Manager, material-only subcontractors or professional service subcontractors. Owner/Developer shall release retainage within thirty (30) days of Construction Manager’s satisfactory completion and Owner/Developer’s, Architect’s and City’s acceptance of the Work and Construction Manager’s delivery of all required close out documents specific to the individual scope for early trades to Owner/Developer. Early release of retention may be granted on a case-by-case basis subject to City and Owner/Developer approval, which shall not be unreasonably withheld.

ARTICLE IV

Reimbursable Costs

4.01 The GMP shall include the following the actual costs necessarily incurred by Construction Manager in the proper performance of the Work (hereinafter the “Reimbursable Costs”), which Reimbursable Costs shall be at rates not higher than those that are competitive and prevailing in the locality for work and services similar to the Work and shall be comprised of the following costs:

(a) Payments made by Construction Manager for work performed and materials, supplies and equipment furnished pursuant to Trade Contracts and/or purchase orders (and Change Orders) approved by Owner/Developer in accordance with the provisions of this Agreement (“Trade Contract Costs”);

(b) Federal, state and local sales, use, excise, personal property and other similar taxes, if any, which may be required to be paid by Construction Manager in connection with the Work exclusive of Trade Contracts, except taxes applicable, directly or indirectly, to Construction Manager’s Fee;

(c) Actual costs reasonably and necessarily incurred due to an emergency, not compensated by insurance, affecting the safety of persons or property, except to the extent caused by Construction Manager's negligence or Construction Manager's failure to comply with the terms of this Agreement. As a condition precedent to payment for such costs Construction Manager must give written notice to Owner/Developer within forty-eight (48) hours after incurring such costs;

(d) Premiums for insurance Construction Manager is required to obtain and maintain, if any, as set forth in **Exhibit D** annexed hereto, which shall be paid monthly at a rate equal to one and one-third percent (1.33%) of the sum of the General Conditions Costs, Execution of Work Costs, General Requirement Costs and Trade Contract Costs minus Preconstruction; and

(e) Premiums for all payment and performance bonds, or the Subcontractor Default Insurance Program, if any, required to be carried by Construction Manager pursuant to Article XV hereof. Should a Subcontractor Default Insurance Program be implemented, premiums associated with that program shall not be charged to Owner/Developer for Trade Contractors which are a subsidiary or entity of Construction Manager, however third-tier or applicable vendors under such agreements would apply to the insurance premium and reimbursed.

4.02 Construction Manager shall use its best efforts to minimize the Reimbursable Costs incurred in the performance of the Work, consistent with the intent and purpose of this Agreement, sound business practice and the reasonable instructions of Owner/Developer. Owner/Developer and Construction Manager will develop a mutually agreeable process for review and approval of costs that Construction Manager considers to be reasonable and necessary to perform the Work in a safe and efficient manner before proceeding with such Work.

ARTICLE V

Non-Reimbursable Costs

5.01 Except to the extent included in **Exhibit C**, or Article IV, Owner/Developer shall not reimburse Construction Manager for any of the following costs, all of which shall be borne by Construction Manager at its sole cost and expense:

(a) salaries or other compensation of any executives, principals, branch office heads, and any other offsite employees of Construction Manager;

(b) expenses of operating Construction Manager's home and branch offices, including overhead and administrative expenses;

(c) any part of Construction Manager's capital expenses, including interest on capital employed in connection with the Work;

(d) costs not reimbursed by insurance, due to (i) the negligent acts or omissions or willful misconduct of Construction Manager or any Trade Contractor, (ii) Construction Manager or Trade

Contractor's failure to perform its obligations under this Agreement or (iii) the violation by Construction Manager or Trade Contractor of any federal, state or local laws, ordinances or statutes;

(e) casualty losses and related expenses sustained by Construction Manager in connection with tools, equipment, supplies and other personal effects owned or rented by Construction Manager;

(f) other costs which would have been insured but for the failure of Construction Manager to carry the insurance required to be carried hereunder or the failure of Construction Manager to comply with the requirements of any insurance carriers providing insurance coverage for the Project, as set forth in **Exhibit D** hereof;

(g) costs of uncovering, correcting or replacing defective or non-conforming Work by Trade Contractors.

(h) losses, costs, and expenses (including attorneys' fees and disbursements) incurred by Construction Manager in connection with, or as a result of, the occurrence of any event expressly provided for under the terms of this Agreement wherein Construction Manager agrees to indemnify and hold harmless Owner/Developer against such losses, costs and expenses;

(i) General Conditions Costs which are or which may be back-charged to or deducted from any Trade Contractor for any reason;

(j) costs incurred by reason of Construction Manager's failure to comply with its obligations under this Agreement, including costs in the form of penalties, fines or other similar charges (subject to Section 3.07(h)), as well as any and all costs incurred in contravention of laws, rules and regulations attributable to Construction Manager's negligence;

(k) except as otherwise provided in Section 4.01 hereof, premiums for other insurance carried by Construction Manager;

(l) costs of any item expressly excluded from, or not expressly included within, the items referred to in Section 3.07, **Exhibit C** or Section 4.01 hereof; and

(m) costs of any item or expense which this Agreement provides are to be paid or borne by Construction Manager at its sole cost and expense.

ARTICLE VI

Schedule of the Work and Early Occupancy

6.01 Construction Manager shall promptly and diligently perform its responsibilities hereunder so that the Work shall be (a) substantially completed on or before _____ Calendar Days subject to adjustment as hereinafter provided (the "Substantial Completion Date"), and (b) finally

completed on or before the date which is _____ calendar days from Substantial Completion (the “Final Completion Date”).

(a) The Work shall be deemed substantially completed (“Substantial Completion”) on the date when: (i) Architect certifies that the Project is substantially complete; (ii) the Project is sufficiently complete in accordance with Contract Documents and applicable laws so Owner/Developer can use the Project without interference for all of its intended purposes, with only minor Punch List items (as such terms is defined in Section 7.02 hereof) incomplete; and (iii) a Temporary Certificate of Occupancy (“TCO”) has been issued by the appropriate local governmental authority for the entire Project, unless a delay to TCO is outside of Construction Manager’s control.

(b) The Work shall be deemed finally completed (“Final Completion”) on the date when the Work is fully and satisfactorily completed and conveyed to Owner/Developer for closing, and Owner/Developer shall have received satisfactory evidence, that:

(i) all Work, including all items set forth on the Punch Lists (as defined in Section 7.02), has been fully and satisfactorily completed in a good and workmanlike manner, in conformance with the Contract Documents and in full compliance with all applicable laws, rules, requirements and regulations of all governmental authorities having jurisdiction over the Work, provided, however, that if the Work does not comply with aforesaid laws, rules, requirements and regulations by reason of the fact that the Construction Documents do not so comply and Construction Manager had no actual knowledge of such non-compliance, nothing herein shall be deemed to shift any liability on account of such non-compliance from Architect to Construction Manager, unless Construction Manager knew of or should have known of such non-compliance and failed to promptly notify Owner/Developer subject to Section 29.01. To the extent that Construction Manager fails to so perform Punch List work, Owner/Developer, in addition to any other right it may have, shall have the right to arrange for the performance of such work by other forces and pay all costs thereof from retention, and if inadequate, to deduct all costs from the GMP, to the extent applicable and available, or to charge Construction Manager therewith;

(ii) all final certificates of approval relating to the Work, including a final Certificate of Occupancy (“CO”) for the entire Work and the contemplated uses of the Project, including, without limitation, all necessary certifications of any entity having jurisdiction thereof or any successor thereto, shall have been issued and delivered to Owner/Developer, unless the failure to obtain such approvals is not due to any fault of Construction Manager, its Trade Contractors or anyone for whose acts they may be liable; it being expressly understood that the making of final payment by Owner/Developer to Construction Manager hereunder shall be conditional upon the deliverance by Construction Manager of the foregoing to Owner/Developer unless the failure to obtain any of the above is due to causes beyond the reasonable control of Construction Manager;

(iii) all required receipts, releases of liens, stop payment notices or payment bond rights, affidavits, waivers, guarantees, warranties, bonds, as-built drawings and any other documents required under this Agreement and/or the Trade Contracts shall have been issued and delivered to Owner/Developer; and

(iv) all Trade Contracts shall have been closed out by Construction Manager and all Trade Contractor close-out packages shall have been delivered to Owner/Developer and approved as complete by Developer.

6.02 Anything contained in the foregoing provisions of this Article VI to the contrary notwithstanding, if and to the extent that there are hindrances to, or delays in, the performance of the Work by reason of Contemplated Delays (as such term is defined herein) and if Construction Manager demonstrates that the Work is actually hindered or delayed thereby, the Substantial Completion Date or the Final Completion Date, as the case may be, shall be postponed by the actual number of days attributable to each such demonstrated cause. For purposes of this Agreement, "Contemplated Delays" (a) shall be deemed to include delays or hindrances not the fault of the Construction Manager caused by (i) industry-wide strikes, (ii) fire, (iii) acts of the public enemy, (iv) unavailability of, or inability to obtain, labor or materials by reason of industry-wide shortages which affect the supply or availability of labor or materials, (v) floods, (vi) rebellions, riots, insurrections or sabotage, (vii) industry-wide labor disputes provided such disputes are beyond Construction Manager's control and provided Construction Manager takes all responsible steps to remediate them, (viii) severe weather conditions, (ix) unknown concealed conditions, (x) Hazardous Materials not previously disclosed to Construction Manager, or (xi) suspensions, stoppages, and/or interruptions pursuant to Section 14.03; and (b) shall be recognized only if Construction Manager has used its best efforts to minimize the period of delay or hindrance by means which include, without limitation, seeking alternate sources of labor or materials or acceleration of Work, but such efforts shall not require Construction Manager to incur any additional costs. If Construction Manager wishes to make claim for an extension of the Substantial Completion Date or the Final Completion Date by reason of a Contemplated Delay, Construction Manager shall give notice (in accordance with the provisions of Section 29.07 hereof) to Owner/Developer of such claim within three (3) working days after knowledge of occurrence of any Contemplated Delay, with full back-up provided fifteen (15) calendar days thereafter, which notice shall set forth in detail the nature of each Contemplated Delay, the date or dates upon which each cause of delay began (and ended), the number of days of delay attributable to each cause, and the action taken, or to be taken, by Construction Manager to minimize the period of delay if possible. In such event, Construction Manager and Trade Contractors may be entitled to an extension of time and may submit for additional compensation. Any such extension of time and increase in cost shall be deemed accepted by Owner/Developer only if reflected in a validly issued Change Order. Construction Manager's Trade Contractors shall not be entitled to any additional compensation for Contemplated Delays, and Construction Manager shall include an express provision in its Trade Contracts providing for such waiver except with respect to Contemplated Delays resulting solely from events falling into categories (ix) through (xi), above.

6.03 In furtherance of the provisions of Sections 6.01 and 6.02 hereof, Construction Manager shall include in all Trade Contracts, whether for labor or materials or both, a provision entitling Construction Manager to terminate or cancel such Trade Contract in the event of a breach thereby by the Trade Contractor or any other occurrence or omission thereunder which would result in a delay in, or hindrance to, the timely progress of the Work.

6.04 Construction Manager shall notify Owner/Developer promptly and in writing, if the Work will not be completed within the time provided for in the Progress Schedule. If Construction Manager so

notifies Owner/Developer, or if, in the opinion of Owner/Developer reasonably exercised, Construction Manager falls behind in the Progress Schedule for any reason other than a Contemplated Delay, Construction Manager shall take appropriate action to improve the progress of the Work and shall, if requested by Developer, submit operational plans to demonstrate the manner in which the lost time may be regained if possible. **Construction Manager acknowledges that if it fails to complete the Work within the time provided in the Progress Schedule, together with extensions permitted pursuant to this Agreement, due to its own fault or the fault of parties for whom Construction Manager is responsible including any Trade Contractor, it would be difficult, if not impossible to determine actual damages to Owner/Developer. Consequently, the parties agree that if Substantial Completion has not been achieved by the Substantial Completion Dates specified in the Progress Schedule, by reason of such delay, Construction Manager shall be required to pay to Owner/Developer, as and for liquidated damages (and not as a penalty) incurred by Owner/Developer as a result of such delayed completion, an amount of _____ for each day Substantial Completion is delayed beyond the Substantial Completion Date specified in the Progress Schedule. Any liquidated damages required to be paid by Construction Manager pursuant to this Section 6.04 shall (a) be in satisfaction of any actual damages to which Owner/Developer would otherwise be entitled as a result of the occurrence of Construction Manager’s delay and shall be the sole and exclusive remedy to Owner/Developer for late Project delivery; (b) be paid promptly by Construction Manager on demand of Owner/Developer; and (c) survive termination of Construction Manager to complete the Work within the scheduled completion dates set forth in this Agreement. Notwithstanding the foregoing or anything elsewhere set forth in this Agreement, at Owner/Developer’s option all or any portion of such liquidated damages may be deducted from the amount of any payment required to be made by Owner/Developer to Construction Manager under this Agreement. To the extent Construction Manager is delayed and achieves Substantial Completion (as defined herein) of a portion of the Project, the aforementioned liquidated damage amount shall be reduced pro rata based upon valuation of income to the extent Substantial Completion has been achieved.**

**OWNER/DEVELOPER
INITIAL HERE:**

**CONSTRUCTION MANAGER
INITIAL HERE:**

By: _____
Name:
Title:

By: _____
Name:
Title:

6.05 On or before the Substantial Completion Date, Construction Manager shall clear, or cause to be cleared, the Project Site and the Project of any debris, construction materials, rubbish, rubble, discarded equipment or spillage caused by Construction Manager or its Trade Contractors of solid or liquid waste in full compliance with all applicable environmental laws, shall remove all tools, construction equipment, machinery and surplus materials not belonging to Owner/Developer, and shall, except to the

extent necessary to achieve Final Completion, maintain the Project free of such items until Final Completion. In addition, on or before the Substantial Completion Date, Construction Manager shall clean, or cause to be cleaned in broom clean condition the Project, as provided in the Construction Documents. If the Project or the Project Site are injured or damaged by Construction Manager, in the course of Construction Manager's cleaning or removal, Construction Manager, to the extent applicable, promptly shall repair and restore the portion thereof so damaged or injured to its condition immediately prior to such damage or injury in a manner satisfactory to Developer and Architect. If Construction Manager fails to undertake or cause the undertaking of the aforesaid cleaning, removal and repairs, in such event, Owner/Developer may, at Owner/Developer's sole option, avail itself of any of the remedies provided in this Agreement and, subject to giving forty-eight (48) hours' prior written notice to Construction Manager, Owner/Developer may also perform, or cause to be performed, the aforesaid cleaning, removal and repairs and, in such event, all additional expenses incurred by Developer in connection therewith, at Owner/Developer's option, shall be reimbursed to Owner/Developer either by (a) Owner/Developer not paying Construction Manager monies then due or next becoming due from Owner/Developer to Construction Manager hereunder, or (b) Construction Manager paying such amounts to Owner/Developer on demand, after rendition of a bill or statement therefor.

6.06 Prior to Substantial Completion of the Work, Owner/Developer or Owner/Developer's designees, including the City, shall have the right to use or occupy all or any portion of the Project or to install or cause the installation of furniture, furnishings and equipment therein, provided that such occupancy shall not materially interfere with Construction Manager's performance of its obligations hereunder and, provided further, that Owner/Developer, City, or Owner/Developer's designees, as the case may be, shall be liable for any delay, or personal injuries to, or death of, any person and for property damage, to the extent the same is caused by the acts or omissions of Owner/Developer, City or Owner/Developer's designees, as the case may be, in connection with their aforesaid use of occupancy of the Project. Such use or occupancy by Owner/Developer, City or Owner/Developer's designees shall not (a) constitute acceptance by Owner/Developer or the City of any element of the Work or the space, systems, materials or equipment incorporated in the Project, (b) be construed as a waiver of any right or claim by Owner/Developer in connection with any Work, or (c) affect the obligations of Construction Manager or any Trade Contractor for any Work which is not in accordance with this Agreement, the respective Trade Contracts or the Contract Documents. Construction Manager shall continue performance of the Work in a manner which shall not unreasonably interfere with the aforesaid use, occupancy and operation by Owner/Developer, City or Owner/Developer's designees. Construction Manager agrees that it shall not unreasonably interfere with, or object to, such use or occupancy by Owner/Developer, City or Owner/Developer's designees and that it shall cooperate with Owner/Developer, City and any designated occupants to facilitate such early occupancy. If Contractor considers area being occupied as Substantially Complete, they can request inspection and sign off as Substantially Complete prior to partial occupancy.

6.07 Owner/Developer, City and Owner/Developer's designees shall have the right of access to the entrances, loading facilities and such other services as Construction Manager shall be using or providing to the Project. Such right of access shall be subject to the reasonable rules of Construction Manager, which rules (a) shall be for the sole purpose of coordinating such access and for observing all safety and precautionary measures, and (b) shall not hinder, prohibit or interfere with such access. In addition, Owner/Developer may require the use and operation of any completed heating, ventilating or air

conditioning equipment at the time that Owner/Developer, City or Owner/Developer’s designees occupy or use any portion of the Project.

ARTICLE VII

Construction Manager's Work

7.01 Pre-Construction Phase. Construction Manager agrees that during the pre-construction phase of the Work (the “Pre-Construction Phase”), it shall perform the following services:

- (a) consult with Owner/Developer, City and Architect to ascertain Owner/Developer’s needs and goals and the requirements of the Work;
- (b) thoroughly review all preliminary plans and specifications, and all revisions and additions thereto, for the purpose of preparing and submitting to Owner/Developer a preliminary budget (the “Construction Budget”), to be in such form and contain such detail as required by Owner/Developer and which Construction Budget shall be revised as requested by Owner/Developer;
- (c) provide assistance to, and cooperate with Owner/Developer, City and Architect in obtaining all necessary approvals of governmental authorities having jurisdiction over the Project;
- (d) thoroughly investigate existing surface conditions at the Project Site and consult with and advise Owner/Developer, City and Architect concerning all materials and major design, building systems and construction elements to be incorporated in the Work, taking into consideration costs, availability, lead time for ordering materials, speed of construction and maintenance;
- (e) review estimates, if any, of Architect and Consultants with respect to the costs of the Work;
- (f) review the Construction Documents as they are being prepared for the purpose of making recommendations, and make recommendations to Owner/Developer and Architect with respect to the following:
 - (i) the availability of labor, materials and supplies;
 - (ii) elimination of possible conflicts and/or overlapping jurisdictions among the various trades or overlapping responsibilities among Trade Contractors;
 - (iii) patent conflicts and omissions, and variations from customary construction practices and methods which, in the opinion of Construction Manager, may cause difficulties or occasion delay in the performance of the Work, it being expressly understood that by review of the Construction Documents, Construction Manager shall not thereby assume responsibility for design errors and omissions;

(iv) discrepancies and deficiencies in the Construction Documents, or between the Construction Documents and existing conditions at the Project;

(v) conduct of construction operations under good construction practices;

(vi) costs of labor, supplies, materials, equipment, and Trade Contracts to be used in the performance of the Work and any such costs that will exceed budgeted or allowed amounts;

(vii) unit prices and alternates;

(viii) required temporary and Project support facilities;

(ix) construction detailing; and

(x) construction economies through alternative methods, materials, or concepts, consistent with Developer's requirements and sound construction practice;

(g) establish, implement and observe all safety, health and environmental protection measures during performance of the Work, consistent with the requirements of all applicable federal, state and local laws, rules and regulations; submit to Owner/Developer for approval, and periodically update, as necessary, appropriate or may be required, safety plans for the Project showing the manner in which the aforesaid measures are to be implemented;

(h) in consultation with Owner/Developer and Architect, develop the most favorable way of bidding the Work, including, without limitation, the size and scope of each bid package, and dates of bidding and use of "fast-track" methods;

(i) if applicable, make recommendations regarding, and render assistance necessary for, the development and administration of an effective labor relations program for the Work and the avoidance of labor disputes during the performance of the Work and assist in negotiating any agreements with labor unions;

(j) in consultation with Owner/Developer and Architect and as expeditiously as is required for the orderly and timely completion of the Project, prepare and submit to Owner/Developer for its approval, a progress schedule for the performance of the Work, make such modifications thereto as Owner/Developer may reasonably request and, upon Owner/Developer's approval of the same (which, subsequent to such approval is hereinafter referred to as the "Progress Schedule"), make no further modifications thereto without first in each instance obtaining Owner/Developer's prior approval thereof. The Progress Schedule shall also (i) set forth a construction time schedule which identifies all major and critical components of the Project and the Work, including Architect's preparation of design documents, all major and critical design details and all matters relating to Trade Contractors and Trade Contract awards, and which identifies Owner/Developer's responsibilities, if any, with respect to the design documents, and (ii) from and after the date that the same is available, incorporate the information described in this Section 7.01. Construction Manager agrees that the Progress Schedule shall not be amended, modified or extended without Owner/Developer's prior written approval;

(k) advise and make recommendations to Owner/Developer and Architect regarding the best order and sequence for the development of the Construction Documents;

(l) maintain written records of all communications with, and recommendations made to, Architect, and Architect's responses thereto; make the same available for inspection by Owner/Developer at all times and promptly furnish to Owner/Developer copies of all correspondence between Construction Manager and Architect relative to the Work and the Project;

(m) advise and consult with Owner/Developer and obtain Owner/Developer's approval of, Trade Contractors qualified to bid the various packages of the Work as well as methods of, and the form of, Trade Contract awards, and award Trade Contracts all in the manner set forth in Article VIII hereof;

(n) review with Trade Contractors all methods and materials that may be used in connection with the Work and make recommendations to Owner/Developer and Architect regarding changes, if any, to the Construction Documents;

(o) make a materials survey, including an analysis of all materials and equipment required for the Work and a forecast of the availability thereof as and when needed, including advice of any factors or potential occurrences then known by Construction Manager which might affect the future availability of such materials and equipment and coordinate all purchases of materials and equipment; and

(p) implement the pre-purchasing of any long-lead materials and/or equipment necessary to be incorporated in the Work.

Construction Manager agrees to perform such other and additional services similar in type and obligation to those listed above, prepare such other reasonably requested schedules, reports, budgets and other technical data, and attend such meetings during the Pre-Construction Phase as Owner/Developer may reasonably request in order to assist in the preparation of the Construction Documents, cost estimates, updated Progress Schedules and any other documents and instruments relative to the Work and the Project, to the end that completion of the Work may be brought and maintained within the Construction Budget, to the extent applicable, and Substantial Completion Date.

7.02 Construction Phase. Construction Manager agrees that during the Construction Phase of the Work (the "Construction Phase"), which Construction Phase shall commence on the date of commencement of construction of any portion of the Work, upon which Owner/Developer gives notice to Construction Manager and provided that Owner/Developer has obtained the necessary construction financing and building permits required by Authorities having jurisdiction for such Work (unless otherwise agreed by Owner/Developer and Construction Manager), and shall terminate on the date of Final Completion of the Work, it shall perform the following services:

(a) establish procedures for the orderly and expeditious performance and Final Completion of the Work in accordance with the terms of this Agreement; perform or require to be performed, all Work necessary in connection therewith; establish procedures for administration of Trade Contracts; and maintain coordination among Trade Contractors;

(b) prepare Project Site organization and lines of authority in order to carry out the Work on a coordinated basis;

(c) organize all staff and assign personnel (beyond staff pre-approved in **Exhibit C**), as approved by Owner/Developer in writing, to various areas to provide a positive and efficient means by which the Work may be controlled, coordinated and expedited;

(d) in consultation with Owner/Developer and Architect, update the latest Construction Budget prepared in the course of the Pre-Construction Phase, setting forth in such manner and detail as Owner/Developer may require, all anticipated costs of the Work for (i) all Trade Contractors performing labor or furnishing materials under Trade Contracts, other than Trade Contracts awarded solely for the performance of General Conditions Work Items, on a trade-by-trade and square foot basis, and (ii) all of Construction Manager's personnel and labor referred to in Section 3.07 hereof, and (iii) all General Conditions Work Items broken down on an itemized, line item, basis, and segregated to reflect those portions of said General Conditions Work Items which are to be performed by Construction Manager and those portions which are to be performed by Trade Contractors; update monthly, in consultation with Owner/Developer and Architect, and submit to Owner/Developer for its approval, such Construction Budget, and make such adjustments thereto, including adjustments by reason of approved Change Orders and Emergency Change Orders, to keep Owner/Developer currently informed as to the anticipated aggregate Costs of the Work. Construction Manager agrees that if there exists any factor, event or occurrence of any kind which in Construction Manager's opinion, inhibits or prevents the furnishing of accurate cost forecasts, then and in such event, Construction Manager promptly shall so advise Owner/Developer in writing;

(e) coordinate the scheduling of the Work;

(f) require submission of, and review, progress schedules of Trade Contractors and make adjustments to such schedules as appropriate in an effort to continue the expeditious Final Completion of the Work within the time periods set forth in the Progress Schedule;

(g) except as otherwise provided in Article XXII hereof, obtain Owner/Developer's written approval of any changes in the Work and any approvals or other documents necessary in connection therewith;

(h) conduct necessary job and coordination meetings, which job meetings shall be held not less often than weekly unless not required and which coordination meetings shall be held as required, and attend all such meetings;

(i) prepare agendas and detailed written minutes of each job and coordination meeting and furnish copies thereof to Owner/Developer and Architect;

(j) prepare and maintain a Project record keeping system, including records of all changes in the Work necessitated by reason of Change Orders, Emergency Change Orders, Work progress schedules, daily manpower breakdown, shop drawing logs, material lists, records of all pertinent communications with, and recommendations made to, Architect and its responses thereto, and daily reports

(subject to Article 10.02) recording manpower breakdowns on a trade-by-trade basis with a description of the Work being performed each day by each trade, equipment and material deliveries, visitors, special occurrences, weather conditions, and other Work related information and make such on-Project Site records available for inspection to Owner/Developer (and, if required by Owner/Developer, to the City, Architect and/or Consultants). In addition, copies of all correspondence pertaining to the Work shall be maintained by Construction Manager and shall be made available at all times to Owner/Developer;

(k) submit to Owner/Developer on a bi-monthly basis the following: (i) the financial condition of the Work, including Trade Contract awards, Construction Budget modifications, anticipated cost summary and Change Order summary; (ii) construction status, including updated Progress Schedules with projected critical dates compared with original milestone dates, status of job progress to date, current Work activity, projected Work activity for the following month, and status of materials required and Procurement Logs; and (iii) drawing status, including status of shop drawings, shop drawing schedule, status of coordination drawings, coordination drawing routing schedule, status of RFI Logs, and coordination meeting minutes;

(l) require that Trade Contractors submit and assemble and review, brochures, guarantees, certificates of compliance and other agreements and instruments;

(m) obtain and review for constructability (but not as a substitute for Architect's technical review) all shop drawings, samples and catalog cuts submitted by Trade Contractors and comment to Owner/Developer and Architect on their form and any significant inconsistencies between the shop drawings and the Construction Documents; and after Construction Manager shall so review said documents it shall promptly submit the shop drawings to Architect for review and approval. After return of the shop drawings from Architect, Construction Manager shall review Architect's comments to the shop drawings; and distribute them to the submitting Trade Contractor and all other affected parties. Architect shall review and return to Construction Manager all shop drawings and other submittals within ten (10) business days, if submitted in accordance with an approved submittal schedule as provided by the Construction Manager and reviewed with the Architect and Owner/Developer within thirty (30) days of the execution date of this Agreement. Construction Manager shall (i) hold the submitting Trade Contractor responsible for the accuracy and adequacy of the shop drawings, and (ii) ensure that the submitting Trade Contractor makes, at no additional cost, any revisions to the shop drawings that are necessary to implement Architect's comments so that the Work may be properly coordinated and implemented into the Project. Construction Manager acknowledges and agrees that as part of its obligations under this Agreement, Construction Manager and its Trade Contractors are to prepare and submit shop drawings and other submissions, conduct coordination meetings and prepare coordination drawings for the purpose of coordinating the work required of Construction Manager and its Trade Contractors. Owner/Developer shall require the attendance of Architect at coordination meetings, when requested by Construction Manager. This process, in part, is intended to recognize and resolve design conflicts in advance of fabrication and installation of the various components of the Work. Construction Manager agrees that it shall expeditiously and thoroughly prepare and submit shop drawings and conduct and conclude the coordination effort at the earliest possible time so as to facilitate the recognition and resolution of conflicts, including errors in the Construction Documents, such that any adverse effects on the progress of the Work are avoided to the fullest extent reasonably possible. Similarly, the proposal of substitutions in accordance with Article XXI

of this Agreement shall be conducted at the earliest possible time. Nothing herein shall relieve Construction Manager from its own failure to comply with its obligations with respect to shop drawings, samples and catalog cuts;

(n) at the Project Site, on a current basis:

(i) maintain, and make available to Owner/Developer, City, Architect and/or Consultants, copies of any records with respect to Trade Contracts, shop drawings, samples, operating manuals, the Construction Documents, equipment and any and all other related documents and any revisions to any of the foregoing which may arise out of, or be related to, this Agreement;

(ii) maintain and provide, and make available to Owner/Developer, Architect and/or Consultants, any photos, including progress photos taken on a monthly basis according to a plan, as previously approved by Owner/Developer; and

(o) upon final completion of the Work, deliver to Owner/Developer copies of a complete set of marked "Record Drawings", with respect to all Trade Contract documents and Construction Documents, as actually completed, together with copies of all operating instructions and maintenance manuals (bound and indexed);

(p) establish and coordinate with Owner/Developer a system for processing, expediting and administering all Trade Contracts for the purchase of materials, supplies and equipment. Manage the procurement and delivery of critical materials to the Project Site and coordinate the deliveries with the progress of the Work;

(q) notify Owner/Developer and Architect of the progress of the Work, and advise Owner/Developer, in accordance with the provisions of Article VI hereof, of any delays or serious potential delays which may affect Substantial Completion of the Work and of Construction Manager's recommendations regarding such delays;

(r) inspect and coordinate the work of all Trade Contractors, enforce the terms of their respective Trade Contracts and enforce strict discipline and good order among all Trade Contractors in an effort to see that the Work is performed in accordance with the terms of such Trade Contracts, the Contract Documents, recognized trade standards and the applicable laws, rules and regulations of governmental authorities having jurisdiction over the Work and endeavor to guard Owner/Developer against any delays, increased costs and defects and deficiencies in the Work. In connection with the foregoing, Construction Manager shall (i) require any Trade Contractor to stop the performance of any Work which Construction Manager observes is not in compliance with the requirements of its respective Trade Contract, the Contract Documents, recognized trade standards or the applicable laws, rules and regulations of any governmental authorities having jurisdiction over the Work; (ii) reject and require to be corrected, those portions of the Work which Construction Manager discovers does not conform to the requirements of the applicable Trade Contract, the Contract Documents, recognized trade standards or the applicable laws, rules and regulations of any governmental authorities having jurisdiction over the Work; (iii) inspect all materials, supplies and equipment delivered or installed in connection with, or pursuant to, any Trade Contract in an effort to

determine that the same are in compliance with the requirements of the applicable Trade Contract, the Contract Documents, recognized trade standards and the laws, rules and regulations of all governmental authorities having jurisdiction over the Work and reject and require replacement of all non-conforming materials, supplies and equipment; and (iv) not employ on the Work any person or Trade Contractor unfit for or unskilled in the assigned task and, remove such unfit or unskilled employee or such Trade Contractor from the Project Site;

(s) enforce at all times on or about the Project Site a strict no smoking policy;

(t) employ a “zero tolerance” policy regarding the use or presence at the Project Site of alcohol, drugs, controlled substances, and firearms, and take immediate appropriate action upon discovery of any employee or personnel who is or may be under the influence or otherwise in possession of any of the foregoing. Should Owner/Developer determine in its sole but not arbitrary discretion that any person employed by Construction Manager or a Trade Contractor is unfit to remain at the Project Site, Owner/Developer shall so advise Construction Manager who immediately shall take all required steps to remove that person from the Project Site at once, and to replace that person, as required, with a suitable person;

(u) not load or permit any part of the Work to be loaded so as to endanger its safety;

(v) arrange for all cutting, fitting or patching that may be required to complete the Work or to make its several parts fit together properly;

(w) use best efforts to resolve disputes between Trade Contractors relative to the performance of their work or the furnishing of materials, supplies or equipment in connection with the Work;

(x) arrange for the storage of all materials, supplies, systems and equipment provided in connection with the performance of the Work;

(y) maintain the Project Site in a safe and orderly fashion and ensure Trade Contractors provide Project Site clean-up of the Work on a regular basis during the course of construction, and also upon Substantial Completion and Final Completion, as provided in this Agreement;

(z) implement all necessary and prudent safety, health and environmental protection procedures (including, but not limited to, federal including OSHA, state and locally mandated programs and statutory requirements) during performance of the Work, which shall include, but is not limited to: the erection and maintenance of temporary systems; the posting of danger signs and other warnings against hazards; the conducting of inspections; and enforce the requirement that all Trade Contractors comply with applicable laws relating to safety, health, and environmental protection in connection with the Work;

(aa) prepare a schedule of values and Applications for Payment in a form reasonably approved by Owner/Developer, Lender and City; determine, prior to the submission of each Application for Payment, whether and to what extent the sums requested herein are due and payable; and certify to the

best of Construction Manager's knowledge, information and belief the same to Owner/Developer, Lender and City;

(bb) make recommendations with respect to any changes Construction Manager may consider necessary or desirable in connection with the Work (including, but not limited to, events of force majeure or Contemplated Delay), it being understood and agreed that, except as otherwise provided in Section 22.05 and 22.06 hereof, no changes to the Contract Documents may be made in connection with the Work without the prior written approval of Owner/Developer;

(cc) issue to Trade Contractors (i) all Change Orders approved by Owner/Developer, and (ii) all Emergency Change Orders in the manner and in accordance with the provisions set forth in Article XXII hereof;

(dd) with respect to portions of the Work to be performed pursuant to a Change Order an Emergency Change Order, on a time and material, unit-cost or other similar basis, keep and require the keeping of records and computations thereof and maintain accurate cost accounting records, and provide copies thereof to Owner/Developer;

(ee) review all Trade Contractors' insurance documents for compliance with the provisions of their respective Trade Contracts. Inform Owner/Developer of any deficiencies in said coverage;

(ff) assist Owner/Developer in determining when Substantial Completion of the Work has taken place; subsequent to Substantial Completion of the Work, prepare (in consultation with Architect) lists of incomplete or unsatisfactory Work ("Punch Lists"). The parties agree that it is anticipated that if applicable, certain areas of the Fire Station may have its own Punch List as required by the Owner/Developer and City. Construction Manager shall perform or cause to be performed, and supervise all work necessary to complete the items set forth on the Punch Lists; provided, however, that the failure to include any element of the Work on such Punch Lists shall not alter the responsibility of Construction Manager and/or Trade Contractors to complete the Work in accordance with the Contract Documents; and subsequent to the completion of all items set forth on the Punch Lists items and any other unfinished portions of the Work, provide written notice to Owner/Developer, Architect (and if requested by Developer, to Consultants), that the Work has reached the stage of Final Completion and is ready for final inspection;

(gg) perform the coordination and implementation of the initial startup, testing, commissioning, and operation of the Work and all systems comprising a portion of the same including the participation of Owner/Developer and City maintenance personnel in all activities;

(hh) prior to making final payment under any Trade Contract, (i) prepare a Trade Contract status summary indicating its financial status, complete with a summary of all approved Change Orders and payments made to date, and (ii) secure and deliver to Owner/Developer all required guarantees, affidavits, releases of liens, waivers, certificates, consent of any surety to final payment, as-built drawings,

maintenance manuals, operating instructions and other documents required to be delivered under this Agreement in connection with the Work;

(ii) secure and deliver to Owner/Developer all governmental consents, approvals, licenses and permits customarily obtained by a construction manager performing services and functions similar to the services and functions being performed by Construction Manager hereunder, including, but not limited to, obtaining a TCO unless the failure to obtain the TCO and/or CO is not due to any full or partial fault of Construction Manager, its Trade Contractors or anyone for whose acts they may be liable; it being expressly understood that the making of final payment by Owner/Developer to Construction Manager hereunder shall be conditional upon the deliverance by Construction Manager of the foregoing to Owner/Developer unless the failure to obtain any of the above is due to causes beyond the reasonable control of Construction Manager;

(jj) establish and implement in a consistent and conscientious manner a quality control system, and to the extent Owner/Developer elects to use an automated quality assurance/quality control program, utilize such program to identify and track incomplete and/or deficient items; include within the logistics plan and review with Owner/Developer prior to implementation the placement and phased removal of on-Site shanties, trailers and storage areas; coordinate with all mechanical Trade Contractors and Architect as required to verify that all shut-off valves and controls are outside of occupied spaces (as identified to Construction Manager) and readily accessible; require that Construction Manager's superintendent is present and specifically approves the placement of all mechanical equipment with regard for functional accessibility, maintenance and replacement; and at all times be responsible for and maintain proper security and weather tight conditions at all hoist and all other temporary building openings;

(kk) The following tasks shall be included within Construction Manager's scope of Work;

(i) Eliminate or if elimination is not possible then minimize to the greatest extent possible any exterior scaffold work in front of windows of any areas turned over to Owner/Developer for occupancy; and

(ii) Note (in the field and on drawings) locations of all shut-off or balancing valves, volume or fire dampers, etc. to assure that access doors are installed in the proper locations, including any plumbing, HVAC, electric or sprinkler system control valves, dampers, balancing valves, switches, electric or control ties in points/splices.

7.03 Notwithstanding the division of Construction Manager's work into the Pre-Construction and Construction Phases as provided in this Article VII, Construction Manager understands and agrees that the Fire Station Project may proceed on a "fast-track" basis and that portions of the Work to be performed by Construction Manager in the Pre-Construction Phase may overlap and be combined with portions of the Work to be performed in the Construction Phase.

7.04

(a) Construction Manager and all Trade Contractors shall warrant and represent that all materials and equipment incorporated in the Work shall be new and that the Work shall be of good quality, free from improper workmanship and defective materials and in strict conformance with the Contract Documents, and all applicable laws, rules, requirements and regulations of any governmental authorities having jurisdiction over the Work. Owner/Developer may determine any Work not conforming to these requirements, including substitutions not properly approved and authorized, to be defective, in which case Construction Manager shall promptly correct any such defective Work;

(b) Construction Manager and all Trade Contractors shall guarantee all Work or portion thereof for a period of one (1) year after the earlier of Substantial Completion of the Work or beneficial occupancy of any portion thereof or such longer period as prescribed by the Construction Documents or governing laws and statutes. In the event the Work or any portion thereof is found defective or not in accordance with the Contract Documents within such time period, Construction Manager shall require the appropriate Trade Contractor to correct it promptly after written notice from Owner/Developer to do so unless Owner/Developer has previously given written acceptance of such condition. Owner/Developer shall give such written notice promptly after discovery of the same. All warranties/guarantees for longer than one (1) year shall be assigned to the City.

(c) Nothing contained in subparagraph (b) of this Section 7.04 shall be construed to establish a period of limitation with respect to any other obligation which Construction Manager might have under the Contract Documents. The establishment of the time periods noted in subparagraph (b) of this Section 7.04, relates only to the specific obligation of Construction Manager to require the appropriate Trade Contractor to correct the Work, and has no relationship to the time within which Construction Manager's or a Trade Contractor's obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish Construction Manager's liability with respect to Construction Manager's obligations.

7.05 If conditions are encountered at the site that are (a) subsurface or otherwise concealed physical conditions that differs materially from those indicated in the Contract Documents or (b) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then notice by the observing party shall be given to the other party promptly upon knowledge thereof or before conditions are disturbed. Owner/Developer will promptly investigate such conditions and, if they differ materially and cause increase or decrease in Construction Manager's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both, as a Change Order.

ARTICLE VIII

Trade Contracts

8.01 Unless otherwise agreed upon in writing by Owner/Developer, all items of the Work to be performed and all materials, supplies and equipment to be furnished in connection therewith shall be performed by Trade Contractors, approved by Owner/Developer, pursuant to written Trade Contracts awarded by Construction Manager, which Trade Contracts shall be written on Construction Manager's trade contract form (the "Trade Contract Form"). Trade Contract Forms shall be submitted to Owner/Developer for approval in writing prior to issuance to any Trade Contractors. Prior to awarding any Trade Contract, Construction Manager shall consult with Owner/Developer with respect to Trade Contractors qualified to bid the various portions of the Work, as well as the methods of, and form of, Trade Contract awards. Thereafter, Construction Manager shall (a) prepare, in consultation with Owner/Developer and subject to its approval (and, if requested by Owner/Developer, in consultation with Architect), the invitation for bid, bid package and a bidder's list, setting forth at least three (3) Trade Contractors for each trade (the "Bid List"), (b) request bids from the various Trade Contractors on the Bid List, (c) conduct, in cooperation with Owner/Developer, formal pre-bid meetings with bidders of each trade involved in the performance of the Work for the purpose of explaining the scope of the Work, and (d) open all Trade Contract bids obtained, and review the same, in the presence of and in conjunction with Owner/Developer. Also, prior to awarding any Trade Contract, Construction Manager shall consult with Owner/Developer with respect to Construction Manager's evaluation of Trade Contract bids and the awarding of Trade Contracts and, subject to the approval of Owner/Developer, shall negotiate the most favorable price and terms to be included in such Trade Contracts. Thereafter, Construction Manager shall, by letter in a form approved by Owner/Developer (the "Trade Contract Award Letter"), advise Owner/Developer of (a) which Trade Contract bids it intends to request for approval, (b) the price of the proposed Trade Contract awards and (c) any proposed material differences between the provisions of the Trade Contract Form and the terms of the Trade Contract that Construction Manager proposes to enter into with said Trade Contractor. For purposes hereof, the term "material difference" shall be deemed to mean changes to the Trade Contract Form that (a) permit the Trade Contractor thereunder to observe a lesser standard of care in the performance of its obligations to Construction Manager under the Trade Contract than Construction Manager is obligated to observe under the terms of this Agreement, (b) any other difference which is similar in nature to the aforesaid or is a difference that may have a cost, liability or other consequence to Owner/Developer. Upon receipt by Owner/Developer of Construction Manager's Trade Contract Award Letter, Owner/Developer shall countersign the Trade Contract Award Letter, setting forth Owner/Developer's acceptance, rejection or other comment regarding the difference between the proposed Trade Contract and the Trade Contract Form. Construction Manager, upon receipt of Owner/Developer's Trade Contract Approval Letter, promptly shall make all required changes in the proposed Trade Contract and award the Trade Contract in question. All Trade Contracts shall be executed in triplicate by Construction Manager and shall be promptly delivered to Owner/Developer in a manner as requested by Owner/Developer.

8.02 Each Trade Contract shall require that all Work performed or materials, supplies or equipment furnished pursuant thereto shall comply with the Contract Documents, the building permit and the trade standards, laws, rules, regulations and requirements of all governmental authorities having

jurisdiction over the Work. It is expressly understood and agreed that no portion of the Work shall be performed, and no materials or equipment required on account of the Work shall be furnished, by any Trade Contractor unless and until a Trade Contract for the same is entered into between Construction Manager and the Trade Contractor in question in accordance with the provisions of Section 8.01 hereof and a copy thereof is delivered to Owner/Developer, unless Owner/Developer expressly waives, in each instance, the requirement that the same be delivered as aforesaid.

8.03 It is expressly understood and agreed that, except as otherwise provided in Article XV hereof, each Trade Contract to be entered into by Construction Manager in connection with the Work shall (a) require the Trade Contractor to obtain and execute, unless expressly waived in writing by Owner/Developer in each instance, payment and performance bonds in the form of bond annexed hereto as **Exhibit E** and made a part hereof, and (b) contain the following:

(i) provisions for Retainage as required by Section 3.06, and provisions for mark-up on Change Orders as required by Section 22.01(a)(i);

(ii) an obligation on the part of the Trade Contractor promptly to repair, at no additional cost to Owner/Developer, any latent defects and to replace any defective materials, supplies or equipment;

(iii) a requirement that each Trade Contractor provide and maintain in full force and effect, until final payment is made under its Trade Contract, the insurance more particularly described in the approved Trade Contract; and

(iv) a provision that if this Agreement is terminated by Owner/Developer pursuant to Article XIV hereof, the Trade Contract, at the option of Owner/Developer, shall be assigned by Construction Manager to Owner/Developer, City or such entity or entities as Owner/Developer or City may direct and, in such event, the assignee shall assume all of Construction Manager's liabilities thereunder arising from and after the date of such assignment; provided, however, that nothing contained herein shall be deemed to release Construction Manager from liability to such Trade Contractor or to Owner/Developer or such other entity or entities with respect to claims arising prior to the date of such termination.

8.04 Owner/Developer may request that Construction Manager contract with certain Trade Contractors of Owner/Developer's choosing ("Developer-selected Trade Contractors"). In such event, Construction Manager agrees to contract with Developer-selected Trade Contractors provided that they (a) satisfy Construction Manager's standard Trade Contractor prequalification process, including approval for enrollment into the SDI Program; and (b) agree to assume all obligations and liabilities set forth in this Agreement as applicable to their respective scopes of Work (e.g., agrees to assume their proportional share of any liquidated damages; agree to the limitations on claims for damages resulting from Contemplated Excusable Delays).

ARTICLE IX

Discounts, Rebates and Refunds

9.01 With submission of Construction Manager's monthly Application for Payment, Construction Manager is obligated to inform Owner/Developer of any cash discounts which are anticipated in the upcoming pay period. All cash discounts shall accrue to Owner/Developer provided Owner/Developer makes payment to Construction Manager within the period necessary to secure such discounts. Construction Manager promptly shall inform Owner/Developer of the availability of all cash discounts so as to afford Owner/Developer the opportunity to obtain the same. All trade discounts, rebates, refunds and gratuities, if any, and all returns from the sale of surplus materials and equipment shall accrue to Owner/Developer and Construction Manager shall take such steps as are necessary to insure that Owner/Developer receives all of the foregoing.

ARTICLE X

Accounting Records

10.01 Construction Manager shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Agreement; the accounting and control systems shall be reasonably satisfactory to Owner/Developer, Lender and City. Owner/Developer at its option may provide to Construction Manager a general ledger listing of components (in the nature of a cost segregation report, which Owner/Developer needs for purposes of computing depreciation) and Construction Manager shall utilize such listing in all financial reporting.

10.02 Construction Manager's Project staff shall maintain correspondence, minutes of meetings, schedules, invoices and requisitions which shall be maintained at the Project office, located at either: (a) Construction Manager's principal office, or (b) office trailers on the Project Site; and shall promptly be made available upon request for inspection and copying by Owner/Developer, Lender and/or the City.

10.03 Construction Manager's Project staff shall perform all accounting and bookkeeping services requested by Owner/Developer to the extent necessary for proper financial management under this Agreement in connection with the Work including processing of all requisitions, payroll records and invoice processing for all labor, materials and equipment utilized in the performance of the Work, and payment of all Trade Contractor requisitions by Construction Manager. Specific attention is called to Owner/Developer's cost segregation requirements, as set forth in Section 10.01.

10.04 Construction Manager's Project staff shall, as part of its record-keeping obligations under the Agreement, cause the Trade Contractors to maintain and supply to Owner/Developer records on a per Trade Contractor basis and for each Trade Contractor employee including the employee's name, address, telephone number, construction trade, employee identification number if and when assigned, social security number, race, sex, status (e.g. mechanic, apprentice, trainee, helper or laborer), date of change status, hours worked per week in the indicated trade, rate of pay and location at which Work was performed.

10.05 On reasonable notice from Owner/Developer to Construction Manager, Owner/Developer and City and their authorized representatives shall, be afforded full access to all Construction Manager's Project-related records, books, correspondence, instructions, Construction Documents, receipts, Trade Contracts, Change Orders, purchase orders, vouchers, memoranda and other data, and shall have the right to audit and photocopy such books and records. All books, records and other documents shall be in accordance with standard California building industry accounting practices. Such books and records to the extent that they relate to the Project shall be furnished to Owner/Developer in electronic form within three (3) months after completion of the Project.

ARTICLE XI

Applications for Payment

11.01 Owner/Developer shall make progress payments to Construction Manager at monthly intervals for reimbursement of the costs incurred by Construction Manager during the Construction Phase in the performance of the Work and in payment of Construction Manager's Fee, General Conditions Costs and Reimbursable Costs in accordance with the following procedures, which procedures may be amended at the request of Lender and/or the City:

(a) During the performance of the Work, Construction Manager and Owner/Developer, along with the Architect, Lender and City, shall meet at the Project Site on or before the first (1st) day of each month for the purpose of reviewing and approving Construction Manager's performance and completion of certain items of the Work and to review a draft of Construction Manager's application for partial payment. Based upon Owner/Developer's and City's review of such draft, on or before the fifth (5th) day of the calendar month following commencement of the Work and on or before the fifth (5th) day of each calendar month thereafter, with a pencil draft on the twenty-fifth (25th) of each month, Construction Manager shall submit to Owner/Developer, if required, for review and certification, its application for partial payment (the "Application for Payment"), in form satisfactory to Owner/Developer, setting forth in complete detail (i) the portion of Reimbursable Costs incurred by Construction Manager in connection with the Work during the immediately preceding thirty (30) calendar-day period for which Construction Manager is to be reimbursed as provided in Article IV hereof, and (ii) the amount of Construction Manager's Fee and General Conditions Costs attributable to such Reimbursable Costs payable that month. To the extent allowed by Owner/Developer under Article XX hereof, any materials which are stored but have not been incorporated into the Project shall be listed separately on each Application for Payment. Owner/Developer shall have the right to require that any or all Applications for Payment be accompanied by such documents (including written releases of lien from Construction Manager and/or Trade Contractors in the form annexed as **Exhibit H** and **Exhibit I**, as applicable, or in such other form as required by Owner/Developer) as Owner/Developer may require to evidence that title to the equipment or materials incorporated, in the Project, or pre-purchased as provided in Article XX hereof, is unencumbered. Unless otherwise directed or authorized in writing by Owner/Developer, all Applications for Payment and all supporting documents (including but not limited to waivers of lien and sworn statements) shall be in electronic format and shall be submitted to Owner/Developer using the Textura™ CPM payment management system. Construction Manager shall be responsible for the fees and costs associated with Construction Manager's use of the Textura™ CPM payment management system. Construction Manager

shall include a similar requirement in all Trade Contracts and purchase orders entered by Construction Manager;¹

(b) Each Application for Payment shall constitute a representation by Construction Manager that to the best of Construction Manager's knowledge, information and belief: (i) the partial payment then requested to be disbursed has been incurred by Construction Manager on account of the Work or is justly due to Trade Contractors on account thereof, (ii) the materials, supplies and equipment for which such Application for Payment is being submitted have been installed or incorporated in the Project, or have been stored at the Project Site or at such off-Project Site storage locations [approved beforehand by Owner/Developer], as shall have been allowed by Owner/Developer hereunder; (iii) the materials, supplies and equipment are not subject to any liens or encumbrances, (iv) no mechanic's, laborer's, vendors, materialman's or other liens have been filed in connection with the Project or any of the materials, supplies or equipment incorporated therein or purchased in connection thereto, or if such lien has been filed and served upon Construction Manager a statement to that effect and (v) the Work which is the subject of such Application for Payment has been performed in accordance with the Contract Documents. Construction Manager shall carefully examine all payment breakdowns and applications for payment submitted by Trade Contractors in an effort to eliminate "front-end loading"; shall report any attempts to so "front-end load" in writing to Owner/Developer; and shall under no circumstances, except with the specific prior written approval of Owner/Developer, request or allow payments to be made to any Trade Contractor which are "front-end loaded" and which do not accurately reflect the true value of the work performed or the materials, supplies or equipment actually furnished;

(c) Owner/Developer shall conditionally approve or disapprove all or a portion of Construction Manager's Application for Payment within twelve (12) calendar days of receipt. On the forty-fifth (45th) calendar day after Owner/Developer determines the amount properly payable to Construction Manager for Work completed to Owner/Developer's satisfaction, Owner/Developer shall pay to Construction Manager an amount equal to the amount approved by Owner/Developer and City less retention set forth in Section 3.06 hereof of the Trade Contractor Costs (including payments to Trade Contractors for the performance of General Conditions Work Items pursuant to Trade Contracts) with input by Architect, and Construction Manager's Fee and General Conditions Costs. With approval from Owner/Developer, Lender and City, Construction Manager may release Trade Contractor retention on a trade by trade basis upon final completion of a given Trade Contractor's work. Owner/Developer shall direct its Lender to disburse the loan proceeds in the amount approved directly to Construction Manager by wire transfer. Construction Manager shall process and make payments for all obligations to Trade Contractors, which are covered by the Application for Payment so paid by Owner/Developer within seven (7) calendar days of receipt of payment from Owner/Developer. This provision is strictly for the benefit of Owner/Developer in order that satisfactory morale and relations with Trade Contractors be maintained and shall not under any circumstances confer any right upon any third party. Should Owner/Developer disapprove all or a portion of any Application for Payment, Owner/Developer will provide Construction

¹ Project fees range from \$50 to \$50,000 based on the size of the Project. Subscription fees to Construction Manager range from \$55 to \$780 per month based on the size and number of projects Construction Manager is managing on the Textura CPM™ system. Fees to Trade Contractors are calculated as 0.18% (18 basis points) of contract value, with a minimum fee of \$50 and a maximum fee of \$2,500. Fees to Trade Contractors' subcontractors and suppliers are a fixed fee of \$100 per subcontract or supplier contract.

Manager with a written explanation of the basis of its disapproval and will approve for payment any undisputed portions of the Application for Payment;

(d) Following Substantial Completion of the Work and submission of an Application for Payment therefor by Construction Manager, Owner/Developer shall pay to Construction Manager an amount equal to the balance remaining unpaid to Construction Manager on account of Reimbursable Costs, together with the amount of Construction Manager's Fee and General Conditions Costs due and payable, after deducting from monies otherwise due therefrom (i) any retention in connection with any Trade Contracts (including Trade Contracts for the performance of General Condition Work Items) as Owner/Developer shall be entitled to hold back pursuant to the provisions of Section 3.06 hereof (or at Owner/Developer's election, such lesser amount with respect to any Trade Contract as Owner/Developer may determine), and (ii) a retention of two hundred percent (200%) of the amount necessary to complete Punch List items and replace defective work. Said Application for Payment shall also be accompanied (i) by written releases, executed by each Trade Contractor receiving final payment under their respective Trade Contracts, waiving their right upon final payment to file any mechanic's, vendors, laborer's, materialman's or other liens against the Project, and (ii) by such other certificates, as-built drawings, maintenance manuals, operating instructions, permits and other documents or instruments required to be delivered to Owner/Developer at Final Completion of the Work under this Agreement. Notwithstanding the foregoing, it is expressly understood and agreed that if, at any time after final payment with respect to a particular Trade Contract is released, any lien or claim is filed against the Project which relates to work performed or materials, supplies or equipment furnished by such Trade Contractor or its sub-Trade Contractors, Owner/Developer, at its option and provided Construction Manager does not bond or otherwise discharge such lien as required by Article XIII, shall be entitled either (i) to hold back from the sums then due or next becoming due to said Construction Manager an amount equal to all costs and expenses to be incurred in causing such lien or claim to be discharged of record, including, without limitation, attorneys' fees and disbursements, or (ii) to require that Construction Manager immediately discharge the same of record, at its sole cost and expense, except as provided in Article XIII, by payment, bonding or otherwise, or (iii) to require that Construction Manager pay to Owner/Developer, on demand, the amount necessary to cause such lien or claim to be discharged of record, together with all costs and expenses incurred by Owner/Developer in connection therewith, including, without limitation, attorneys' fees and disbursements;

(e) Following Final Completion of the Work, and upon submission of a final Application for Payment therefor by Construction Manager (accompanied by all as-built drawings, certificates, releases of lien and other documents and instruments not theretofore delivered to Developer as required under Sections 6.01 and 7.02 hereof) Owner/Developer shall pay to Construction Manager an amount equal to the aggregate of the balance remaining unpaid to Construction Manager on account of Reimbursable Costs and Construction Manager's Fee and General Conditions Costs, and the balance of any amounts retained under each Trade Contract. The acceptance by Construction Manager of final payment following Final Completion of the Work shall constitute a waiver of all those claims of which Construction Manager had knowledge unless the same is set forth in writing and identified by Construction Manager in the final Application for Payment as unsettled at the time of Final Completion; any claim so identified in the final Application for Payment shall survive only for a period of one (1) year and this

contractual statute of limitations is a material term negotiated between Owner/Developer and Construction Manager in this Agreement .

(f) Anything contained in this Agreement to the contrary notwithstanding, Owner/Developer, in its judgment reasonably exercised, may withhold from any payment due or to become due to Construction Manager any amount which Owner/Developer, in its good faith opinion, deems sufficient to reimburse Owner/Developer for its expenditures for the account of Construction Manager and to secure Owner/Developer's remedies in consequence of any default or breach by Construction Manager under this Agreement.

11.02 No payment by Owner/Developer (other than final payment) of any Application for Payment shall constitute acceptance by Owner/Developer of Work completed or material stored, and no such payment shall be construed as a waiver of any right or claim by Owner/Developer in connection with such Work or stored material.

ARTICLE XII

Assignment

12.01 Construction Manager shall not assign this Agreement or the performance of all or any of its obligations hereunder without the prior written consent of Owner/Developer, which consent may be given or withheld in Owner/Developer's sole and exclusive discretion. The provisions of this Section 12.01 may not be waived or otherwise modified except by a written instrument executed by Owner/Developer.

12.02 This Agreement shall be freely assignable by Owner/Developer with consent of the City (not to be unreasonably withheld) but without the consent of Construction Manager to an affiliate of Owner/Developer, or to any person or entity designated by Owner/Developer (hereafter referred to as a "Permitted Assignee"), provided (a) such Permitted Assignee agrees to assume Owner/Developer's obligations and liabilities hereunder; (b) Owner/Developer has paid all sums properly due to Construction Manager prior to the date of assignment; and (c) the Permitted Assignee has provided Construction Manager with satisfactory evidence of financing for the balance of the work. In all other cases, Owner/Developer's assignment of this Agreement is subject to the prior approval of the City and the Construction Manager, which approval shall not be unreasonably withheld or delayed and is subject to all of the requirements as a Permitted Assignee. If Owner/Developer shall assign this Agreement as aforesaid, Construction Manager agrees that it shall deal with such Permitted Assignee or other approved assignee in the place and stead of Owner/Developer and that it shall perform all of its obligations under this Agreement and perform and complete the Work in the manner required by this Agreement if Owner/Developer is not in default or if Permitted Assignee or other approved assignee cures the existing default. In such event, such Permitted Assignee or other approved assignee may, among other things, use the Contract Documents without payment of any additional fees or charges and may enforce the obligations of Construction Manager hereunder with the same force and effect as if Permitted Assignee or other approved assignee assumes the obligations and liabilities of Owner/Developer. Upon such assignment and assumption by the Permitted Assignee or approved assignee, provided Owner/Developer is current on all of its payment Obligations and there are not pending payment disputes, Owner/Developer shall be released from all of its

payment and other obligations and liabilities hereunder. Construction Manager shall certify, in the form reasonably required by any such Permitted Assignee or other approved assignee, that the undertakings contained herein as to the obligations in favor of such Permitted Assignee or other approved assignee shall run in favor of such Permitted Assignee or other approved assignee.

ARTICLE XIII

Liens and Claims

13.01 If, at any time, there is any lien or claim of any kind whatsoever filed against the Fire Station Project by a Trade Contractor, subcontractor or supplier, or anyone claiming under or through Construction Manager, for Work performed or materials, supplies or equipment furnished in connection with the Work for which Owner/Developer has paid or reimbursed Construction Manager, Construction Manager shall, within seven (7) calendar days after notice from Owner/ Developer, cause such lien or encumbrance to be canceled and discharged of record by bonding or otherwise, at Construction Manager's sole cost including but not limited to legal fees and expense.

13.02 If, at any time, there is any lien or claim of any kind whatsoever filed against the Project by a Trade Contractor or anyone claiming under or through Construction Manager or a Trade Contractor for work performed or materials, supplies or equipment furnished in connection with Work for which Owner/Developer shall not have paid or reimbursed Construction Manager by reason of Owner/Developer's proper exercise of its right to withhold payment to Construction Manager under the applicable provisions of this Agreement, then Construction Manager shall, within fourteen (14) calendar days after notice from Owner/Developer, cause such lien or encumbrance to be cancelled and discharged of record by bonding or otherwise, at Owner/Developer's sole cost and expense.

13.03 If any lien that Construction Manager is required to remove pursuant to Sections 13.01 or 13.02 hereof is not cancelled and discharged of record as aforesaid, Owner/Developer shall have the right to take such action as Owner/Developer shall deem appropriate (which shall include the right to cause such lien to be cancelled and discharged of record by bonding or otherwise), and in such event, all costs and expenses incurred by Owner/Developer in connection therewith (including, without limitation, premiums for any finance furnished in connection therewith, and reasonable attorneys' fees and disbursements) shall be paid by Construction Manager to Owner/Developer on demand, or at the option of Owner/Developer, deducted from any payment then due or thereafter becoming due from Owner/Developer to Construction Manager in accordance with the provisions of this Agreement.

ARTICLE XIV

Events of Default and Termination or Suspension of Agreement

14.01

- (a) Any of the following events shall constitute an event of default ("Event of Default")

(i) Construction Manager shall default in observing and performing any of its material obligations under this Agreement and such default shall not have been cured within seven (7) calendar days after Owner/Developer shall have given Construction Manager written notice thereof (or if not curable within seven (7) calendar days, provided Construction Manager has in good faith commenced to cure); or

(ii) Construction Manager becomes a party to any insolvency proceeding in a capacity as a debtor, and, in the case of any involuntary proceeding only, such proceeding is not stayed or discharged within thirty (30) calendar days after the commencement of same; the terms “insolvency proceeding” as used herein shall include the filing of a petition for relief under Chapter 11 of Title 11 of the United States Code by Construction Manager of any petition or action looking to, or seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any other present or future federal or state statute, law or regulation, or the appointment, with or without the consent of Construction Manager, of any trustee, custodian, receiver or liquidator of Construction Manager or of any of its property or assets or Construction Manager’s making an assignment for the benefit of creditors.

(b) Upon the occurrence of an Event of Default, Owner/Developer may serve written notice upon Construction Manager terminating this Agreement on date specified by Owner/Developer in said notice. In addition, at Owner/Developer’s option, exercised by written notice to Construction Manager, title to any or all materials, Work in process, dies and tools (whether on the Project Site or located at an off-Project Site location) which are necessary for, or useful in connection with, the Final Completion of the Work, as determined by Owner/Developer, shall vest in Owner/Developer and Owner/Developer may take possession of and utilize the same for Final Completion of the Work. Construction Manager shall be entitled to payment, after Final Completion of the Work, in an amount equal to (i) the aggregate of (x) the actual unpaid costs incurred by Construction Manager in its proper performance of the Work up to the date of termination, plus the portion of the Construction Manager’s Fee and General Conditions Costs attributable thereto (specifically excluding Fee and General Conditions Costs on unperformed Work), and (y) the fair market value of such tools and dies (less, if Owner/Developer elects to return the tools and dies to Construction Manager, the salvage value thereof), less (ii) an amount equal to the additional costs and expenses (including attorney’s fees and disbursements) incurred by Owner/Developer in excess of those which would have been incurred by it in connection with the Project had Construction Manager not defaulted hereunder, including, without limitation, the additional expense of engaging another construction manager/general contractor as well as additional compensation for Architect’s and any Consultant’s additional services made necessary by such default (including reasonable legal fees incurred). Owner/Developer shall have the right to set-off against the aforesaid payment any amounts then due and payable by Construction Manager to Owner/Developer hereunder or which may accrue as damages owing by Construction Manager to Owner/Developer under the terms of this Agreement;

(c) Upon the happening of any of the events set forth in subsection (a) of this Section 14.01, Developer shall have the right, in addition to all other rights and remedies, to complete or cause the Work to be completed, by such means, and in such manner, by contract or otherwise, as Owner/Developer reasonably deems advisable, subject, however, to the terms and conditions of the payment and performance bonds required of Construction Manager hereunder; and

(d) In the event of the happening of any of the events set forth in subsection (a) of this Section 14.01, Construction Manager shall not interfere, directly or indirectly, with Owner/Developer's right and attempt to complete the Work by others or any of the Trade Contractors.

(e) Upon the happening of any of the events set forth in subsection (a) of this Section 14.01, Owner/Developer shall have the right, in addition to all other rights and remedies, to demand Construction Manager assign all Trade Contracts to Owner/Developer or an Owner/Developer Permitted Assignee. In order to facilitate this provision, Construction Manager shall place in each Trade Contract a provision requiring the Trade Contractor to agree to assignment of its Trade Contract to Owner/Developer upon termination of the Construction Manager upon an Event of Default.

14.02

(a) Owner/Developer, at any time, and for any reason whatsoever in Owner/Developer's sole discretion, may terminate this Agreement for its own convenience. Any such termination shall be affected by delivering to Construction Manager a written notice of termination specifying the date upon which such termination shall become effective (which date shall be at least seven (7) calendar days prior to the effective date of such termination) and any specific portion of the Work to be completed by Construction Manager prior to such termination. Upon receipt of any such notice of termination, Construction Manager shall:

(i) stop all Work under this Agreement on the date, and to the extent, specified in the notice of termination;

(ii) enter into no further Trade Contracts except as may be necessary for completion of such portion of the Work under this Agreement, if any, which is not terminated;

(iii) unless directed otherwise by Owner/Developer, terminate all Trade Contracts entered into by Construction Manager to the extent that they relate to portions of the Work to be performed subsequent to the date specified in the notice of termination as the date upon which such termination shall become effective;

(iv) at Owner/Developer's option, assign to Owner/Developer, Lender, City or such other entity or entities as Owner/Developer may direct, in the manner, at the times, and to the extent directed by Owner/Developer, all of the right, title and interest of Construction Manager under any or all Trade Contracts entered into by Construction Manager in connection with the Work, in which case, Owner/Developer, Lender, City or such other entity or entities, as the case may be, shall assume all of Construction Manager's obligations arising under such Trade Contracts. Construction Manager shall include in each and every Trade contract a provision specifically contemplating and validating any such assignment and the Trade Contractor's agreement to continue to perform its services under the Trade Contract without interruption;

(v) to the extent required by Owner/Developer and subject to the prior written approval of Owner/Developer, settle all outstanding liabilities and all claims arising out of such termination of Trade Contracts, which approval by Owner/Developer shall be final for all the purposes of this Section

provided, however, that in the event of a termination of this Agreement pursuant to the provisions of this Section 14.02, no Trade Contractor shall be entitled to recover anticipated profits on account of Work unperformed, nor for reimbursement for losses arising out of matters covered by insurance, but shall be limited to recovering only the reasonable and actual out-of-pocket costs and expenses incurred by such Trade Contractor for Work satisfactorily performed or materials, supplies and equipment procured, ordered, fabricated, incorporated or installed in the Fire Station Project (plus overhead and profit) prior to the effective date of such termination along with reasonable and verifiable demobilization and closeout expenses;

(vi) if applicable, transfer title to Owner/Developer, to the extent not already vested in Owner/Developer, and deliver in the manner, at the times, and to the extent, if any, directed by Owner/Developer (x) fabricated or unfabricated parts, Work in progress, completed Work, supplies and other materials and equipment produced as a part of, or acquired in connection with the performance of, the Work terminated by such notice of termination, and (y) copies of the Contract Documents and other drawings, sketches, specifications, shop drawings, information and other relevant documentation directly related to the performance of the Work;

(vii) use its best efforts to sell, in the manner, at the times, to the extent, and at the price or prices directed or authorized by Owner/Developer, any property of the types referred to in clause (vi) of this Section 14.02(a); provided, however, that Construction Manager (x) shall not be required to extend credit to any purchaser, and (y) may acquire any such property under the conditions prescribed and at a price or prices approved by Owner/Developer; and provided, further, that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by Owner/Developer to Construction Manager under this Agreement or shall otherwise be credited to Reimbursable Costs or paid in such other manner as Owner/Developer may direct;

(viii) complete performance of such part of the Work as shall have been specified in the notice of termination to be completed on or before the effective date of such termination; and

(ix) prior to the effective date of such termination, take such actions as may be necessary, or as Owner/Developer may reasonably direct, for the protection and preservation of the property related to the Work and the Project which is in the possession of Construction Manager and in which Owner/Developer has or may acquire an interest.

(b) In the event of a termination of this Agreement, pursuant to this Section 14.02, Owner/Developer shall pay Construction Manager for (i) the actual unpaid Reimbursable Costs incurred by Construction Manager in connection with its performance of the Work up to the date of such termination and any reasonable demobilization costs, including costs associated with closing out of executed contracts and purchase orders, plus the portion of Construction Manager's Fee and General Conditions Costs attributable to Work properly performed up to the date of such termination (specifically excluding Fee and General Conditions Costs on unperformed Work), minus (ii) any sums properly deductible by Owner/Developer under the terms of this Agreement. In the event of a termination of this Agreement pursuant to this Section 14.02, Construction Manager shall remain responsible for all of its obligations and all Work performed prior to the date of such termination. Construction Manager agrees that the pendency

or existence of any dispute between Construction Manager and Owner/Developer, Architect or Consultants shall in no manner whatsoever affect or interfere with the discharge of Construction Manager's obligations hereunder and that should Construction Manager fail to perform its obligations under this Section 14.02 Construction Manager shall be liable to Owner/Developer for any and all damages which Owner/Developer may sustain as a result of such failure on the part of Construction Manager to perform said obligations.

14.03 Owner/Developer may, at any time and for any reason, direct Construction Manager to suspend, re-sequence, stop or interrupt the Work or any portion thereof for a period of time, including governmental suspensions under an order of any court or other public authority having jurisdiction over the Work or the Project or as a result of an act of government, such as a declaration of national emergency making materials unavailable through no act or fault of Construction Manager. Such direction shall be in writing and shall specify the period during which the Work is to be stopped. Construction Manager shall resume the Work upon the date specified in such direction or upon such other date as Owner/Developer may thereafter specify in writing. Construction Manager shall be entitled to recover, pursuant to a Change Order, the actual additional costs incurred, plus an equitable time extension.

14.04 If, without good cause, Owner/Developer shall fail for a period of twenty eight (28) calendar days after the due date to make payment on any approved Application for Payment, then Construction Manager shall serve Owner/Developer with written notice thereof, and, if Owner/Developer shall fail to make such payment, then Construction Manager may terminate this Agreement by written notice to Owner/Developer setting forth the date of termination, which date shall not be sooner than twenty eight (28) calendar days after the date of the notice. If, within said twenty-eight (28) calendar day period, Owner/Developer has not cured the matter giving rise to Construction Manager's right to terminate this Agreement, this Agreement shall be deemed terminated for convenience and Owner/Developer shall compensate Construction Manager in the manner and to the extent set forth in Section 14.02 hereof.

14.05 If a court of competent jurisdiction determines that a termination under Section 14.01 was wrongful or unjustified, such termination shall be deemed a termination for the convenience of Owner/Developer under Section 14.02, and the sole right, remedy and recourse of Construction Manager against Owner/Developer shall be governed and determined by said Section 14.02.

ARTICLE XV

Bonds or SDI Program

15.01 Owner/Developer may require that Construction Manager furnish payment and performance bonds. Such bonds shall name Owner/Developer and City, as co-obligees and otherwise shall be in the form of bonds identified on **Exhibit E** attached hereto. The bonds shall be in an amount equal to the GMP, to the extent applicable.

15.02 Notwithstanding that Developer may require Construction Manager to furnish payment and performance bonds, Construction Manager shall, if requested by Owner/Developer, require that each Trade Contractor provide performance and payment bonds for one hundred percent (100%) of their respective Trade Contract Values.

15.03 Alternatively, if approved by Owner/Developer in lieu of the Trade Contractor Bonds contemplated in Section 15.02, Construction Manager may utilize a Subcontractor Default Insurance Program (“SDI Program”) acceptable to Owner/Developer and City. Construction Manager shall include each Trade Contractor or vendor in its SDI Program, unless specifically bonded out of the SDI Program. SDI Program coverage shall be (a) computed at the rate of one and one quarter percent (1.25%) of the Trade Contract Costs of those Trade Contractors enrolled in the SDI Program and (b) included as a Reimbursable Cost under the GMP, to the extent applicable. If Construction Manager’s SDI Program is used, Construction Manager shall deliver to Owner/Developer, from time to time as required, appropriate documentation confirming the Construction Manager’s SDI Program covers all Trade Contractors and vendors and the terms, conditions, and limits of coverage. Owner/Developer, City and Lender shall be named as scheduled entities under a secondary interest endorsement covering the bankruptcy or insolvency of Construction Manager and Construction Manager alone shall be responsible (without recourse to the Contingency) for all costs associated with any deductibles applicable to its SDI Program. The existence of the SDI Program or Construction Manager’s enforcement of the SDI Program requirements shall in no way limit Owner/Developer’s rights against Construction Manager as expressed in this Agreement.

15.04 Construction Manager shall not unreasonably withhold enrollment of Owner/Developer selected Trade Subcontractors into the SDI Program.

ARTICLE XVI

Management of the Work by Construction Manager and Onwer/Developer

16.01 Construction Manager shall assign _____ as “Project Manager” and _____ as “Superintendent” to supervise performance of the Work. _____, _____, and an additional experienced project manager shall be assigned to the Project Management team and _____, _____ and an additional experienced Superintendent shall be assigned to the Field team.

16.02 Construction Manager agrees that it will assign its Project Manager to the Work on a full-time basis. The Project Manager shall be stationed at Construction Manager’s office and the Project Site until Substantial Completion of the Work in order to facilitate performance and completion of the Work in the most expeditious and economical manner consistent with the interests of Owner/Developer. In addition to the above-mentioned staff persons, Construction Manager shall also staff the Project with a team of persons approved in writing by Owner/Developer. It is expressly understood and agreed that with respect to the individuals named in Section 16.01, Construction Manager (a) shall remove, at the request of Owner/Developer, any such person assigned to the Project that Owner/Developer deems unfit to perform the task assigned or otherwise finds objectionable, (b) shall propose substitutes, and obtain Owner/Developer’s approval, for any such persons assigned to the Project who either cease to be in Construction Manager’s employ or are removed from the Project by reason of Owner/Developer’s request as aforesaid, and (c) shall not make any substitutions of such persons that have been approved by Owner/Developer without first obtaining Owner/Developer’s prior approval, which approval shall not be unreasonably withheld.

16.03 Owner/Developer hereby designates and appoints _____ and anyone else who, with prior notice to Construction Manager, Owner/Developer may designate or appoint, to act on behalf of said "Owner/Developer" hereunder. Any such written approval or consent given by _____ to Construction Manager shall be binding on Owner/Developer unless and until Construction Manager has received written notice from Owner/Developer of the designation or appointment of a successor to the foregoing.

ARTICLE XVII

Consultants

17.01 Construction Manager understands that Owner/Developer intends to retain certain consultants ("Consultants") to furnish such services as may be designated by Owner/Developer in writing. Construction Manager hereby agrees that upon its receipt of written notice of the retention of such Consultants, accompanied by a designation of the nature of the services to be performed, Construction Manager shall recognize, and cooperate with such Consultants to the end that their service may be performed in the best interests of Owner/Developer.

ARTICLE XVIII

Insurance

18.01 The parties' insurance obligations under this Agreement are described in **Exhibit D** hereto. In the event Construction Manager maintains insurance limits greater than those required in **Exhibit D**, Owner/Developer, City, and the Additional Insureds identified in **Exhibit G** shall be included therein as Additional Insureds to the fullest extent of all such insurance in accordance with all terms and provisions herein.

ARTICLE XIX

Hazardous Materials

19.01 Construction Manager shall not cause or permit the Project or the Project Site to be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Materials, except in compliance with all applicable federal, state and local laws or regulations as required for completion of the Work. Construction Manager shall comply with and ensure compliance by all Trade Contractors, sub-Trade Contractors and vendor with all applicable federal, state and local laws, ordinances, rules and regulations, whenever and by whomever triggered, and shall obtain and comply with, and ensure that all Trade Contractors, sub-Trade Contractors and vendors obtain and comply with, any and all approvals, registrations or permits required thereunder. Construction Manager shall defend, indemnify, and hold harmless, Owner/Developer and all Indemnitees from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs, or expenses of whatever kind or nature, known or unknown, contingent or otherwise, arising out of, or in any way related to Construction Manager's failure to perform its obligations under this Article XIX, including, without limitation, attorney and consultant fees, investigation and laboratory fees, court costs and litigation expenses. For purposes of

this Article XIX, "Hazardous Materials" include, without limitation, any flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sections 9601, et seq.), the Superfund Amendments and Reauthorization Action of 1986 (Pub.L. No. 99-499, 100 stat. 1613 (1986)), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Sections 1801, et seq), and in the regulations adopted and publications promulgated pursuant thereto, or any other federal, state or local environmental law, ordinance, rule, or regulation. The provisions of this Section shall be in addition to any and all other obligations and liabilities Construction Manager may have to Owner/Developer at common law, and shall survive Final Completion of the Work.

19.02 Except as previously disclosed and agreed upon between Owner/Developer and Construction Manager, Construction Manager shall not be required to perform any Work in connection with, or in an area affected by, suspected or confirmed Hazardous Materials. Such Work shall be resumed as Owner/Developer and Construction Manager agree in writing, and only if (a) Owner/Developer causes remedial Work to be performed which results in the absence of Hazardous Materials or provides a proper certification to Construction Manager that materials suspected to be Hazardous Materials are, in fact, not Hazardous Materials; and (b) the Work may safely and lawfully proceed, as certified either by an appropriate governmental authority (receipt of an ACP-5, or equivalent) or by an environmental engineer reasonably satisfactory to both Owner/Developer and Construction Manager who shall submit a written report to both Owner/Developer and Construction Manager evidencing such certification (such engineer shall be retained and paid by Developer).

ARTICLE XX

Materials and Equipment

20.01 As the Work progresses, title to each item of material or equipment shall vest in Owner/Developer upon the earlier to occur of (a) incorporation of such item into the Work, or (b) payment for such item by Owner/Developer. Each such item shall then become the sole property of Developer or City, as applicable, subject to the right of Owner/Developer or the City to reject the same at any time prior to Final Completion for failure to conform to the Contract Documents. Construction Manager shall be responsible for arranging and for insuring materials and equipment until the same are incorporated to the Work, as set forth in **Exhibit D** hereof, unless otherwise covered by Owner/Developer's builders risk insurance.

20.02 Construction Manager shall require, each Trade Contractor to warrant that (a) title to all materials and equipment incorporated in the Work or paid for by Owner/Developer shall pass to Owner/Developer or the City, as applicable, free and clear of all liens, claims, security interests and encumbrances of every kind, and (b) that no materials or equipment covered by any Application for Payment will have been acquired by any other person performing work at the Project Site or furnishing materials and equipment in connection with the Work subject to an agreement under which an interest therein or an encumbrance thereon shall have been retained by the seller or otherwise imposed by seller or any other person.

20.03 Except as otherwise agreed to as Owner/Developer-approved individual Trade Contract awards, the parties do not anticipate that Owner/Developer will pay Construction Manager for stored offsite materials (with the exception of long lead equipment). However, Owner/Developer, in its sole discretion, can elect to pay Construction Manager in accordance with this Section 20.03. In such event Construction Manager shall be entitled to arrange for the pre-purchase of certain materials and equipment to be incorporated in the Work provided that Owner/Developer shall have given its prior written consent thereto in each instance. If Owner/Developer shall have approved any such pre-purchasing of materials or equipment as aforesaid, Construction Manager shall pre-purchase the same in Owner/Developer's name, and on Owner/Developer's behalf. In such event, Owner/Developer shall advance seventy-five percent (75%) of the amount necessary to enable Construction Manager or its Trade Contractor to pre-purchase such materials or equipment upon presentation to Owner/Developer of a bill or statement therefor, together with any other documents as reasonably may be requested by Developer. Construction Manager, simultaneously with its receipt of any such advance from Owner/Developer, shall deliver to Owner/Developer a bill of sale with respect to the materials or equipment pre-purchased evidencing unencumbered title to the same in Owner/Developer's name, together with any warranties, certificates of insurance and other documents requested by Owner/Developer evidencing that such materials and equipment are covered by such insurance as shall have been specified by Owner/Developer.

(a) All materials and equipment pre-purchased as aforesaid shall be stored at the Project Site or at such off-Project Site storage locations as shall have been approved in writing in each instance by Owner/Developer. Any materials or equipment stored at such off-Project Site storage locations shall be segregated from materials and equipment of others, shall be clearly labeled to evidence Owner/Developer's ownership interest and shall otherwise be stored in such manner as directed by Owner/Developer. The risk of loss or damage to such materials and equipment shall remain with Trade Contractor as set forth in Section 20.01 hereof;

(b) All Trade Contracts, agreements, guarantees, or warranties executed or delivered in connection with materials and equipment which are pre-purchased by Construction Manager as provided herein shall provide that if, upon inspection of the same by Owner/Developer, Construction Manager or Architect, or if, upon incorporation of the same in the Project, Owner/Developer, Construction Manager or Architect determines that such materials or equipment, or any portion thereof, are faulty or defective in any respect, such materials or equipment, or portion thereof, shall be replaced, at such Trade Contractor's sole cost and expense, promptly after receipt of written notice to such effect from Owner/Developer, Architect or Construction Manager.

ARTICLE XXI

Substitutions

21.01 The products, materials and equipment of manufacturers referred to in the Construction Documents are intended to establish the standard of quality and design required by Architect. Anything contained in the Construction Documents to the contrary notwithstanding, materials of manufacturers other than those specified may be used only if accepted by Owner/Developer and City as provided in this Article XXI.

(a) Architect, in consultation with Owner/Developer and the City, shall be the judge of equivalency of proposed substitute materials. Architect shall make written recommendations of acceptance or rejection of substitute products, materials or equipment to Owner/Developer. Owner/Developer shall then authorize Architect to issue to Construction Manager written approval or rejection of the substitution. Construction Manager shall inform the appropriate Trade Contractor of said approval or rejection. Owner/Developer, in its reasonable discretion after consultation with the City, may authorize rejection of a proposed substitution notwithstanding the fact that Architect may have judged it equivalent and recommended acceptance of the same.

21.02 When two or more products are specified in the Construction Documents for an item of Work, any one thereof shall be deemed acceptable and Construction Manager shall have the choice as to which product to use.

(a) When only one product is specified in the Construction Documents for an item of Work and the term “or equal” is used in connection with such product, Construction Manager may offer a substitution by submitting a written application to Architect, in sufficient time (taking into account the progress of the Work, the period of delivery of the goods concerned and adequate time for Architect’s review), setting forth and fully identifying (i) the proposed substitute, together with substantiating data, samples, brochures and other supporting documentation of the substitute proposed, including, without limitation, evidence that the proposed substitution (w) is equal in quality and serviceability to the specified item, (x) will not entail changes in detail, schedule and construction of related Work, (y) conforms with the design of the Project and its artistic intent, and (z) will not result in an increase in the cost of the Work or alternatively, will result in a cost change as indicated in the application; and (ii) the changes in other parts of the Work required by reason of the proposed substitute, and the cost consequences associated therewith. A copy of any such application shall be delivered to Owner/Developer simultaneously with its delivery to Architect.

(b) When only one product is specified in the Construction Documents for an item of Work and the term “or equal” is not used in connection with such product, Owner/Developer, in its sole and absolute discretion after consultation with the City may authorize the rejection of any substitution proposed by Construction Manager. Notwithstanding the foregoing, if the specified product shall become unavailable for a material period of time and Owner/Developer receives reasonably satisfactory proof from Construction Manager that the same shall be unavailable for reasons other than the failure of Construction Manager or a Trade Contractor to order such product in a timely manner, consistent with the Contract Documents and the scheduling requirements for the Work, then, in such event, Owner/Developer shall consent to such substitution, in which event any change in costs incurred in connection with the use of such substitution shall be confirmed by a Change Order.

21.03 Construction Manager shall support any request for a substitution with sufficient evidence to permit Architect to make a fair and equitable recommendation to Owner/Developer on the merits of the proposal. Any item by a manufacturer other than those cited in the Construction Documents, or of brand name, or model number or size or generic species other than those cited in the Construction Documents, shall be considered a substitution.

21.04 Acceptance of substitutions shall not relieve the appropriate Trade Contractor from responsibility for compliance with all of the requirements of the underlying Contract Documents. If changes in other parts of the Work are required by reason of approved substitutions, the costs of any such changes shall be included in the cost of the Work.

21.05 In no event shall the Progress Schedule be adjusted by any circumstance resulting from a proposed substitution, nor shall Construction Manager be entitled to any compensation related thereto, without the issuance of a Change Order approved by Owner/Developer in accordance with Article XXII hereof.

ARTICLE XXII

Changes in the Work

22.01 A Change Order shall be the instrument required to authorize any change in the Project which would result in (a) a change in the Construction Documents or any other Contract Documents, (b) a deviation from design standards established for the Project or any part thereof, or (c) an extension of the Substantial Completion Date or the Final Completion Date from and after the date of the commencement of the Construction Phase, or (d) a change in the Contract Sum.

(a) Owner/Developer, without invalidating or abandoning this Agreement, may at any time require changes in the Work consisting of additions, deletions or other revisions. All such required changes in the Work shall be requested in writing by Owner/Developer (a "Request for Proposal"), shall be submitted to Construction Manager, and, in order to be deemed part of, or deleted from, the Work and authorized by Owner/Developer, shall be executed in the manner set forth below:

(i) Forthwith upon Construction Manager's receipt of a Request for Proposal, Construction Manager shall prepare and furnish to Owner/Developer a signed statement ("Proposal"), in a form satisfactory to Owner/Developer, setting forth in detail, with suitable breakdowns by trades and work classifications, and using the "unit price", lump sum, and/or other costing method specified by Owner/Developer, Construction Manager's estimate of (x) the cost, or savings, of the change reflected in the Request for Proposal, which cost shall reflect the most economical manner of affecting, such change, (y) the resulting increase or decrease in the cost of the Work, and (z) the changes in the Work or the Progress Schedule (including the Substantial Completion Date and the Final Completion Date) which would result from implementation of the Request for Proposal. If the changed Work is to be performed by a Trade Contractor, the Proposal shall include a mark-up of no more than ten percent (15%) for overhead and profit for such Trade Contractor.

(ii) If Owner/Developer approves Construction Manager's Proposal, Owner/Developer shall issue to Construction Manager a written change order (the "Change Order") signed by Owner/Developer, and the Substantial Completion Date and the Final Completion Date, and the Contract Documents, as the case may be, shall be adjusted if required, in accordance with Section 3.04 above.

(b) Any work performed by Construction Manager or any Trade Contractor which is contrary to the Work as required by the Contract Documents, shall be performed at Construction Manager's or such Trade Contractor's sole risk, cost and expense, unless the same shall have been authorized by a Change Order, or an Emergency Change Order therefor shall have been confirmed by Owner/Developer by a duly issued Change Order, in accordance with Section 22.05 hereof.

22.02 If Owner/Developer shall dispute any of the items set forth in the Proposal, then Owner/Developer shall give Construction Manager notice of such dispute, which notice shall set forth (a) those items in the Proposal which Owner/Developer disputes, (b) those items in the Proposal which Owner/Developer does not dispute, and (c) whether Owner/Developer desires that Construction Manager perform any portion of the change (i) corresponding to a non-disputed item, or (ii) corresponding to a disputed item.

(a) If Owner/Developer's dispute notice shall direct Construction Manager to perform any change corresponding to a non-disputed item, that portion of the Proposal which relates to the non-disputed item, together with Owner/Developer's direction to Construction Manager to perform the change corresponding to the non-disputed item, as set forth in Owner/ Developer's dispute notice, shall constitute a validly issued Change Order, and Construction Manager shall promptly undertake to perform the same, subject to 22.01.

(b) If Owner/Developer's dispute notice shall direct Construction Manager to perform any change corresponding to a disputed item, Owner/Developer's dispute notice shall be deemed a notice of demand for prompt resolution of the subject matter of the dispute by the mutual agreement of the parties pursuant to Section Article XXVIII herein, failing which it shall be resolved as provided in Section 29.16 hereof. Notwithstanding the foregoing, Construction Manager shall promptly undertake to perform and pursue prosecution of the change corresponding to the disputed item during the pendency of any such bona fide dispute, and the determination reached pursuant to Article XXVIII herein or rendered as provided in Section 29.16 relative to the disputed item, together with Owner/Developer's direction to Construction Manager to perform the change corresponding to the disputed item, as set forth in Owner/Developer's dispute notice, shall constitute a validly issued Change Order.

22.03 When Owner/Developer pays Construction Manager in accordance with a validly issued Change Order, the compensation specified in a Change Order shall constitute full payment for the additional Work covered thereby and for any delay, disruption, cost, or expense occasioned by reason of such change and shall release Owner/Developer from any further liability in respect of the same, unless Construction Manager expressly reserves such rights in writing in the written Change Order.

22.04 Any Change Order issued by Owner/Developer shall not be deemed to grant a time extension unless it expressly grants a time extension therein.

22.05 Anything contained herein to the contrary notwithstanding, Construction Manager and Architect shall have the authority to order "emergency changes" in the Work, without the prior written approval of Owner/Developer, by the issuance of a written order (an "Emergency Change Order"). For purposes of this Agreement, "emergency changes" in the Work shall mean only changes which are required

in the case of an emergency to ensure the safety of persons or the Work and which, in the interest of expediency, Construction Manager determines should be made without obtaining the prior written approval of Owner/Developer. Construction Manager shall (a) notify Owner/Developer that it has issued an Emergency Change Order within forty-eight (48) hours after the same has been issued, which notification shall set forth the reason giving rise to the issuance of the same, and (b) promptly furnish Owner/Developer with copies of all such Emergency Change Orders. Valid Emergency Change Orders shall be confirmed by Owner/Developer by a duly issued Change Order.

ARTICLE XXIII

Inspection and Testing

23.01 If the underlying Contract Documents or any laws, rules, ordinances or regulations of any federal, state or local governmental authorities having jurisdiction over the Work require that any Work be inspected or tested, Construction Manager shall give Owner/Developer and Architect timely notice of readiness of the Work for inspection or testing and the date fixed for such inspection or testing. Owner/Developer or Consultants shall perform all controlled inspections.

23.02 Whenever, in the opinion of Owner/Developer, it is desirable to require special inspection or testing of the Work or its individual components, Owner/Developer shall have authority to do so whether or not such Work is then fabricated, installed, covered or completed. All costs incurred in connection with such special inspection or testing shall be a Reimbursable Cost by the issuance of a Change Order unless it reveals a test failure as a result of the acts or omissions of Construction Manager in which event, Construction Manager shall bear, all costs of such special inspection or testing. All Trade Contracts shall provide that if a test failure is a result of the acts or omissions of a Trade Contractor then that Trade Contractor shall bear, at its sole cost and expense, all such costs of special inspection or testing. No inspection performed or failed to be performed by Owner/Developer hereunder shall be deemed a waiver of any of Construction Manager's obligations hereunder or be construed as an approval or acceptance of the Work or any part thereof.

(a) In the event of a test failure of any item of the Work, Owner/Developer may require inspection or testing of any or all of the other similar items of the Work. The costs and expenses incurred by Construction Manager in connection with such inspection or testing set forth in this Section 23.02(a) shall be a cost of the Work unless (i) the test failure prompting such additional testing or inspection was a result of the acts or omissions of Construction Manager or the failure of Construction Manager to comply with the provisions of this Agreement, or (ii) such additional testing or inspection results in a test failure which results from the acts or omissions of Construction Manager, in which event, Construction Manager shall bear, at its sole cost and expense, all costs of such additional inspection or testing. All Trade Contracts shall provide that in the event of a test failure of any term of the Work the costs and expenses incurred in connection with such testing or inspection shall be borne by the responsible Trade Contractor.

23.03 If any Work shall be covered or concealed by Construction Manager or permitted to be covered or concealed by Construction Manager, contrary to the written request of Owner/Developer or Architect or the Contract Documents, such Work, if required by Developer or Architect, shall be uncovered

for examination, inspection or testing at Construction Manager's sole cost and expense. If any such test results are below specified minimums, Owner/Developer may order additional examination, testing or inspection. Such additional examination, inspection or testing shall be at Construction Manager's sole cost and expense if Construction Manager knew of such request and failed to advise the appropriate Trade Contractor. Should Architect or Owner/Developer have reason to believe that defects exist in any Work which has already been covered or concealed, although no request not to cover or conceal such Work had been previously made by Owner/Developer or Architect, such Work, if required by Owner/Developer, shall be promptly uncovered by Construction Manager and subjected to such tests, inspection or examination as may be deemed appropriate by Owner/Developer or Architect. In such case, the provisions of Section 23.02(a) shall control with respect to the costs associated with such uncovering.

23.04 Any Work not approved by Owner/Developer or Architect in accordance with the terms of this Agreement shall immediately be reconstructed, made good, replaced or corrected by Construction Manager, the responsible Trade Contractor, or another Trade Contractor to be retained by Construction Manager, including portions of the Work destroyed or damaged by such removal or replacement, at Construction Manager's or the responsible Trade Contractor's sole cost and expense, to the extent the same is caused by, or results respectively from, Construction Manager's or its Trade Contractors' acts or omissions or the failure of either of the foregoing to comply with the provisions of this Agreement or the Trade Contract, respectively. All rejected materials shall be removed from the Project Site, within a reasonable period of time. Acceptance of materials and workmanship by Owner/Developer shall not relieve Construction Manager or any Trade Contractor from their liability for or obligation to replace all Work which is not in full compliance with the underlying Contract Documents.

23.05 At Owner/Developer's option, Owner/Developer may accept defective or nonconforming Work or materials, instead of requiring its removal, correction or replacement, as the case may be, and a Change Order shall be issued to reflect a reduction in the Trade Contract price, in an amount equal to the aggregate cost of labor and materials which would have been incurred by the responsible Trade Contractor if Owner/Developer had required said Trade Contractor to repair or replace such defective nonconforming Work in accordance with the terms of the Trade Contract. Such adjustment shall be affected whether or not final payment has been made.

ARTICLE XXIV

Ownership and Use of Documents; Confidentiality

24.01 Construction Manager agrees that the Contract Documents, technical data and other information received by it from Owner/Developer, Architect, City and Consultants under or in connection with this Agreement and any and all other information concerning Owner/Developer or Owner/Developer's operations that Construction Manager may obtain or become aware of shall be accepted and treated as proprietary information which has a substantial commercial value to Owner/Developer, and that Construction Manager will not use or disclose any such Contract Documents, technical data and other information in any manner except to the extent that such use or disclosure may be necessary for the performance of the Work hereunder. Without limitation of the foregoing, all said

documents furnished to Construction Manager are to be used only with respect to this Fire Station Project and are not to be used on or in connection with any other project.

24.02 Except as otherwise provided herein, Construction Manager is specifically prohibited from photographing any portion of the Work for publicity and advertising or for any other purpose without the prior written permission of Owner/Developer, which shall not be unreasonably withheld.

24.03 The requirements of this Article shall survive the expiration or termination of this Agreement and shall be binding upon Construction Manager. Construction Manager shall include the requirements of this Article in all Trade Contracts.

ARTICLE XXV

Nondisclosure

25.01 Without limitation of the provisions of Article XXIV hereof, it is agreed that neither Construction Manager nor any Trade Contractor shall divulge information concerning the Fire Station Project or concerning Owner/Developer or Owner/Developer's operations to anyone without Owner/Developer's prior written consent, except as otherwise specifically permitted by the Contract Documents and except such public disclosures as may be required by law. If such disclosure is required by law, Construction Manager or any Trade Contractor in question shall provide Owner/Developer with a copy of any such proposed public disclosure in advance and will endeavor to incorporate any comments Owner/Developer may suggest in such regard. Construction Manager shall however, be entitled to describe the Project in its brochures and proposals without Owner/Developer's prior consent provided no confidential information is disclosed.

25.02 Except as required by law no signs advertising the Work to be performed by Construction Manager or any Trade Contractor or identifying any person, firm or entity concerned with the Work to be performed by Construction Manager or any Trade Contractor shall be allowed at the Project Site or elsewhere unless approved in writing by Owner/Developer in advance, which approval for Project signage shall not be unreasonably withheld.

ARTICLE XXVI

Separate Contractors

26.01 Owner/Developer has the right to self-perform Work, and/or award contracts to separate contractors to perform all or any portion of the Project, so long as doing so does not excessively impede Construction Manager's performance of the Work. Construction Manager shall provide coordination and shall cooperate with separate contractors hired by Owner/Developer.

26.02 If Construction Manager causes damage to the property of Owner/Developer or to other work or property on the Project Site, Construction Manager shall promptly remedy such damage as provided in this Agreement.

26.03 If Construction Manager delays or causes damage to the work or property of any separate contractor, Construction Manager shall, upon due notice, promptly attempt to settle with such other contractor by agreement, or otherwise to resolve the dispute.

26.04 The requirements of this Article shall be included in all Trade Contracts.

ARTICLE XXVII

Equal Opportunity

27.01 Construction Manager shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, sexual preference, age or gender. Construction Manager shall (a) assure that the evaluation and treatment of its employees and applicants for employment are free of such discrimination, (b) take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to, race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, sexual preference, age or gender, and (c) comply with all applicable federal, state and local laws regarding non-discrimination. Construction Manager shall include this obligation in all Trade Contracts.

ARTICLE XXVIII

Claims for Damages

28.01 At the discretion of the Owner/Developer, the Owner/Developer and Construction Manager (together "Parties") may agree to the selection of one or more project neutral(s) during the Project (the "Project Neutral"). The Project Neutral(s) shall be experienced in both design and construction of major real estate developments as well as mediation of design and construction disputes. The Parties shall select the Project Neutral(s) from among the members of the Construction panel of JAMS.

28.02 If a Project Neutral is requested and selected, the Project Neutral(s), in close consultation with the Parties shall assist in resolving any disputes, claims or other controversies as may be referred by the Parties that might arise from the commencement of design through the issuance of the final certificate of occupancy and acceptance of the Project by the Owner. In such instances the Project Neutral shall act as a mediator with no adjudicatory power. However, where the involved claims of Owner/Developer exceed \$1,000,000.00 (One Million and Zero cents), or the involved claims of Construction Manager, excluding any claim of, or to compensate, a sub-contractor or material supplier, (sub-contractor and material supplier claims shall not be addressed through the process in which the Project Neutral may enter a temporarily binding award) exceeds \$1,000,000.00 (One Million and Zero Cents), either Party may submit such claim to the Project Neutral for an interim decision. The Party making the claim shall give written notice to both the Project Neutral and the opposing Party in writing. Such writing shall provide a detailed description of the basis of the claim. Thereafter the opposing Party shall have fourteen calendar days to provide a detailed response. The Project Neutral shall, within twenty (20) days of receipt of the opposing Party's response or the expiration of the time to respond where no response is provided, conduct

a hearing and receive evidence. The hearing shall be conducted in compliance with all California substantive and procedural law. The Project Neutral shall thereafter, within ten (10) days, render a reasoned decision. Such decision shall be binding upon the parties until Final Completion of the Project. The Parties shall thereafter have six (6) months to demand a de novo review of the matter pursuant to the dispute resolution procedures set forth in section 29.16 of this Agreement.

28.03 If requested in writing by the Parties, the Project Neutral(s) shall attend the regular job site meetings at the Project. Also, if requested by the Parties, the Project Neutral(s) shall (a) attend any specific job site meetings as requested, and (b) meet and confer with the Parties as requested. If the services of the Project Neutral(s) are retained, they shall be provided on an hourly basis and the cost shall be borne in equal parts by the Parties. The confidentiality of any discussions with the Project Neutral(s) shall be protected by all applicable statutes and case law with respect to mediation or an interim binding decision. The term of service of the Project Neutral(s) shall end with the Final Completion of the Project unless otherwise agreed to by the Parties in writing.

ARTICLE XXIX

Additional Provisions

29.01 Practice of Architecture and/or Engineering. Nothing contained in this Agreement shall be deemed to require or authorize Construction Manager to perform or do any acts which would be deemed the practice of architecture or engineering within the meaning of the laws of the State where the Project is located. Such limitation shall not apply to design and engineering services properly delegated pursuant to the laws of the State where the Project is located.

29.02 Effectiveness of Agreement. This Agreement, when executed by the parties, shall be effective as of the date first stated above in this Agreement. Any and all Work performed by Construction Manager heretofore in anticipation of entering into this Contract are hereby merged into this Contract and shall be governed by the terms and conditions set forth herein. All understandings and agreements heretofore had among Construction Manager and Owner/Developer with respect to the Fire Station Project are merged into, or superseded by, this Agreement. This Agreement fully and completely expresses the agreement of the parties with respect to the Work and the Fire Station Project and shall not be modified or amended except by written agreement executed by each of the parties hereto. Construction Manager understands and agrees that no representations of any kind whatsoever have been made to it other than as appear in this Agreement, that it has not relied on any such representations and that no claim that it has so relied on may be made at any time and for any purpose.

29.03 Enforcement of Trade Contracts. Construction Manager covenants and agrees that it shall diligently enforce all of the terms, conditions and provisions of each of the Trade Contracts. In addition, Construction Manager agrees to assume toward Owner/Developer, and shall be responsible to Owner/Developer for, the performance by the Trade Contractors of all of the Trade Contractors' Work under the Trade Contracts, with the same force and effect as if Construction Manager itself shall have contracted to perform such Work, but subject to Construction Manager's obligations and duties set forth herein.

29.04 Cooperation with Lender and City. Construction Manager shall cooperate with Lender and City, and their representatives at all times in the course of the performance of the Work, shall issue such certifications as Lender and/or City may reasonably require from time to time, and any changes or modifications reasonably requested by Lender or City to this Agreement which do not increase Construction Manager's cost or shift the allocation of responsibility and/or liability shall be agreed to by Construction Manager and this Agreement shall be deemed amended, at the option of Owner/Developer, by written agreement, to include such changes or modifications.

29.05 Access and Cooperation. Construction Manager agrees (a) to grant Owner/Developer, Architect, Lender and City, and their Consultants, access to the Work whenever same is in progress, and (b) to cooperate with Owner/Developer, Architect, Lender, City and their Consultants throughout the performance of the Work to the end that the Project may be completed in the most expeditious and economic manner and in furtherance of the interests of Owner/Developer. The exercise of said rights of access shall at all times be done in a lawful manner and in accordance with the safety regulations of the Construction Manager established for the Project.

29.06 Performance of Work during the Pendency of Disputes. Unless the parties hereto expressly agree otherwise in writing, in the event that a bona fide, good faith dispute arises under this Agreement in connection with payments to be made on any Application for Payment, or otherwise, Construction Manager shall continue during the pendency of such dispute to perform its duties and responsibilities under this Agreement and the Work in accordance with Owner/Developer's directives and shall, in connection therewith, maintain the Construction Budget and the Progress Schedule, the Substantial Completion Date and the Final Completion Date and shall perform all other obligations required to be performed by it under this Agreement as if no dispute shall have arisen. During the pendency of any such dispute, and except as otherwise provided in this Agreement, Construction Manager shall be entitled to receive payments from Owner/Developer only on account of non-disputed items and payments on account of disputed items shall be deferred until the final resolution of the dispute.

29.07 Notices. All notices hereunder shall be submitted (a) via the e-Builder construction program management software for the Project (or such other electronic document control system directed by Developer); and (b) in writing and personally delivered or sent by registered or certified mail, postage prepaid, or sent by a nationally recognized overnight courier service, addressed as follows:

If to Developer, addressed to:

44 MONTGOMERY STREET SUITE 1300
SAN FRANCISCO, CA, 94104
Attention: [TBD]

With a copy to:

[TBD]
[TBD]
[TBD]

Attention:

If to Construction Manager, addressed to: [TBD]

[TBD]
[TBD]
Attention: [TBD] and via email at:
[TBD]

With a copy to:
[TBD] via email at:
[TBD]

Either party may change the address or addresses to which notice shall be delivered under this Agreement by giving notice in accordance with this Article.

29.08 Construction of Language. The language in this Agreement shall be construed according to its customary meaning within the building industry. Whenever used, the singular number shall include the plural, and the plural the singular, and the use of any gender shall be applicable to all genders.

29.09 Captions and Titles. Captions and titles of the different Articles and Sections of this Agreement are solely for the purpose of aiding and assisting in the location of different material in this Agreement and are not to be considered under any circumstances as parts, provisions or interpretations of this Agreement.

29.10 No Waiver. The failure of either party to insist upon the strict performance of any provisions of this Agreement, the failure of either party to exercise any right, option or remedy hereby reserved, or the existence of any course of performance hereunder shall not be construed as a waiver of any provision hereof or of any such right, option or remedy or as a waiver for the future of any such provision, right, option or remedy or as a waiver of a subsequent breach thereof. The consent or approval by either party of any act by the other party requiring such party's consent or approval shall not be construed to waive or render unnecessary the requirement for that party's consent or approval of any subsequent similar act by the other party. The payment by Owner/Developer of any amount due hereunder with knowledge of a breach of any provision of this Agreement shall not be deemed a waiver of such breach. No provision of this Agreement shall be deemed to have been waived unless such waiver shall be in writing signed by the party to be charged.

29.11 Indemnification.

(a) To the fullest extent permitted by law, Construction Manager shall defend, indemnify and hold harmless Owner/Developer, Lender, City and all entities listed on **Exhibit G** and their respective officers, partners, principals, members, managers, shareholders, directors, employees, successors, and assigns (collectively, "Indemnitees", individually, "Indemnitee") from and against all losses, claims, costs, damages, and expenses (including, without limitation, the deductible amounts of any

insurance and attorneys' fees and disbursements), and liability (legal, contractual, or otherwise, arising or alleged to arise out of or result from the Work, including personal injury, sickness, disease or death, or damage or injury to, loss of or destruction of property (including tools, equipment, plant and the buildings at the Project Site, but excluding the Work itself) including the loss of use resulting therefrom sustained or purported to have been sustained as a result of performance of the Work, or violation of local, state, or federal common law, statute or regulation, including but not limited to privacy or personally identifiable information, health information, disability and labor laws or regulations, or strict liability imposed by any law or regulation, attributable to any act or omission of Construction Manager, its employees, Trade Contractors, representatives or other persons for whom Construction Manager is responsible who are at the Project Site at any time during the period of the Work is being performed. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any Indemnitee. The foregoing indemnity shall include, without limitation, all defense costs including but not limited to reasonable fees of attorneys, consultants and experts and related costs and Owner/Developer and City's costs of investigating any claims against the Owner/Developer and/or City. In addition to Developer's obligation to indemnify Owner/Developer and the City, Developer specifically acknowledges and agrees that it has an immediate and independent obligation to defend Owner/Developer and the City from any claim that actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Construction Manager by Owner/Developer or the City and continues at all times thereafter. Construction Manager shall not be obligated under this Agreement to indemnify for Claims arising from the active negligence or willful misconduct of the Indemnified Parties. The indemnification provisions shall not be construed to require indemnification by Construction Manager to a greater extent than permitted under California Civil Code Section 2782 or under any other applicable statute or pursuant to relevant public policy of the State of California.

(b) In any and all claims against any Indemnitee by any employee of Construction Manager, or of its Trade Contractors or anyone directly or indirectly employed by either Construction Manager or its Trade Contractors or anyone for whose acts either Construction Manager or its Trade Contractors may be liable, the indemnification obligation under this Section 29.11 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Construction Manager under workers' or workmen's compensation acts, disability acts or other employee benefit acts.

(c) Construction Manager's obligations pursuant to this Article are in addition to any available insurance for the Fire Station Project but shall not be triggered until the occurrence of the following: (i) all applicable insurance relating to a particular claim is exhausted; (ii) the insurer issues a denial of coverage; or (iii) the insurer refuses to defend Owner/Developer or City against a claim.

29.12 Severability. If any provision of the underlying Contract Documents is invalid or unenforceable as against any person, party or under certain circumstances, the remainder of the underlying Contract Documents and the applicability of such provision to other persons, parties or circumstances shall not be affected thereby. Each provision of the underlying Contract Documents shall, except as otherwise herein provided, be valid and enforced to the fullest extent permitted by law.

29.13 Duty Same as Covenant. Whenever in this Agreement any words of obligation or duty regarding any party are used, they shall have the same force and effect as those in the form of express covenants.

29.14 Architect and Consultants. All references in this Agreement to Architect or Consultants shall be deemed to mean any person or entity designated from time to time by Owner/Developer to serve in such capacity.

29.15 Rights and Remedies. The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to, and not a limitation upon, any of the duties, obligations, rights and remedies otherwise imposed or available at law or in equity.

29.16 Governing Law and Dispute Resolution.

(a) This Agreement shall be construed in accordance with, and governed by the laws of the State of California, without regard to its conflicts of laws rules.

(b) Any dispute, claim, controversy or action (collectively, "Dispute") arising directly or indirectly out of, or in any way relating to the Agreement shall be submitted to JAMS for mediation by the parties before a mutually agreeable mediator prior to commencing any legal action with respect to the Dispute, but no earlier than thirty (30) days of Construction Manager or Owner/Developer first giving the other written notice of a dispute. However, where the parties do not have reasonably adequate time to complete mediation prior to the expiration of any applicable statute of limitations, the parties may commence litigation to protect the statute but will otherwise be bound to mediate in good faith as required by this paragraph as soon as practical. Further, it shall be considered a breach of this Agreement for a party to fail to cooperate in conducting mediation. In the event of such breach, the non-breaching party shall be excused from this mediation provision.

(c) Any Dispute arising directly or indirectly out of or in any way relating to the Agreement and not resolved at mediation in accordance with Section 29.16(b) shall be resolved by a general judicial reference pursuant to California Code of Civil Procedure Section 638 and all successor and applicable court rules and provisions of law. The judicial referee shall be a JAMS neutral, shall determine all issues of fact and law, whether legal or equitable, and shall conduct the proceedings in compliance with all rules of the court and all statutory and decisional law of the State of California as if the matter were formally litigated in the Superior Court. The cost of the judicial referee shall be borne pro rata by the parties, subject to adjustment pursuant to any Final Award. This judicial reference agreement is mandatory and shall be specifically enforceable by complaint, petition or motion pursuant to applicable court rules and provisions of law. The parties consent to the exclusive jurisdiction and venue of the state court located in the State of California and the County of San Francisco, and waive any right to remove to the federal court on the basis of diversity jurisdiction or otherwise. The parties may apply to the state court located in the State of California and the County of San Francisco for injunctive or other prejudgment relief only prior to the appointment of the judicial referee, with all such proceedings to be handled by the judicial referee after appointment. Construction Manager shall include a similar dispute resolution provision in each Trade Contract. The parties agree to permit joinder of any judicial reference commenced between

them with that of any judicial reference involving the Architect, a Trade Contractor(s), or other consultant(s) or design professional(s) where the claims involve the same nexus of facts.

(d) To the extent permitted by law, Construction Manager waives knowingly and voluntarily for itself and all persons claiming by or through it, all right to trial by jury in any legal proceedings.

29.17 Binding Effect. It is expressly understood by the parties hereto that delivery by Owner/Developer of the within Agreement for review and execution by Construction Manager shall confer no rights nor impose any obligations on either party, unless and until both Construction Manager and Owner/Developer shall have executed this Agreement.

29.18 Interpretations in Writing.

(a) Any and all interpretations of Contract Documents or of any of the Work to be performed or payments to be made relative to the Project must be in writing to be valid.

(b) This provision is not intended to prohibit or deny normal discussion, recommendations, explanations, suggestions, approvals, rejections, and similar activity in pursuit of the Work at the Project on an oral basis, such as at job conferences at the Project Site. In such instances, the written minutes, correspondence, shop drawing records, and other written data shall govern over personal claims regarding oral statements made contrary to the written data.

29.19 Prohibited Interests. No principal, officer, shareholder, family member, employee, agent or consultant of Construction Manager who, on behalf of Construction Manager, negotiates, makes, accepts, or approves, or takes part in negotiating, making, accepting, or approving any Trade Contractor or any Trade Contract or other agreement entered into by Construction Manager in connection with the Work, shall become directly or indirectly interested personally or financially in the Trade Contractor or any Trade Contract or such other agreement.

29.20 Integrity and Ethical Conduct. Construction Manager acknowledges and understands that Developer is committed to have the Work performed in accordance with the highest ethical standards applicable to, or governing, the conduct of construction practices. In furtherance thereof, Construction Manager hereby agrees to comply with and observe all applicable federal, state and local laws, rules, regulations, requirements, trade standards and ethical guidelines governing said conduct.

29.21 Independent Contractor. It is expressly understood and agreed by the parties hereto that Construction Manager, in performing its obligations under this Agreement, shall be deemed an independent contractor and not an agent of Owner/Developer. Nothing contained in this Agreement shall be construed to mean that Construction Manager and Owner/Developer are joint ventures or partners.

29.22 Liability of Owner/Developer. Construction Manager agrees to look solely to Owner/Developer's interest in the Project and the proceeds of any sale, lease or transfer of the Project for the satisfaction of any right, remedy, or lien of Construction Manager, or for the collection of a judgment (or other judicial process) requiring the payment of money by Owner/Developer, in the event of any

liability by Owner/Developer, and no other property or assets of Owner/Developer (or any officer, member, manager, director, shareholder or principal of Owner/Developer) shall be subject to suit, levy, execution, attachment, or other enforcement procedure for the satisfaction of Construction Manager's rights or remedies under or with respect to (a) this Agreement, (b) the relationship of the Construction Manager and Owner/Developer hereunder, or (c) any other liability of Owner/Developer to Construction Manager or any Trade Contractor. Construction Manager agrees that it has no right to sue, file claims against, or otherwise seek recovery against the City for any claims or losses arising out of this Agreement.

29.23 Drafting. The parties specially acknowledge that this Agreement has been mutually negotiated and that each party has contributed to its content. To the extent that any inconsistency or ambiguity arises in the Contract Documents, both parties acknowledge that there shall be no construction against either party as drafter.

29.24 Patriot Act Compliance. Construction Manager hereby represents and warrants that: (a) it is not, nor is it owned or controlled directly or indirectly by, any person, group, entity or nation named on any list issued by the Office of Foreign Assets Control of the United States Department of the Treasury ("OFAC") pursuant to Executive Order 13224 or any similar list or any law, order, rule or regulation or any Executive Order of the President of the United States as a terrorist, "Specially Designated National and Blocked Person" or other banned or blocked person (any such person, group, entity or nation being hereinafter referred to as a "Prohibited Person"); (b) it is not (nor is it owned or controlled, directly or indirectly, by any person, group, entity or nation which is) acting directly or indirectly for or on behalf of any Prohibited Person; and (c) from and after the effective date of the above-referenced Executive Order, it (and any person, group, or entity which it controls, directly or indirectly) has not conducted nor will conduct business nor has engaged nor will engage in any transaction or dealing with any Prohibited Person in violation of the U.S. Patriot Act or any OFAC rule or regulation, including without limitation any assignment of this Agreement or the making or receiving of any contribution of funds, good or services to or for the benefit of a Prohibited Person in violation of the U.S. Patriot Act or any OFAC rule or regulation. In connection with the foregoing, it is expressly understood and agreed that (i) any breach by Construction Manager of the foregoing representations and warranties shall be deemed a default and breach by Construction Manager hereunder and shall be covered by the indemnity provisions of this Agreement, and (ii) the representations and warranties contained in this subsection shall be continuing in nature and shall survive the expiration or earlier termination of this Agreement. In addition, Construction Manager agrees that it shall in all respects and to the extent applicable comply with all other rules, regulations, laws and legally binding directives of any governmental instrumentality having jurisdiction over Construction Manager and related to the discovery, control or limitation of any terrorist or subversive activity.

29.25 Accessibility.

(a) Construction Manager shall comply with all federal state, and local accessibility requirements that apply to the Project, as set forth in the Contract Documents, including but not limited to the Americans with Disabilities Act, 42 U.S.C. 12181 et seq. ("ADA"), the Fair Housing Act, 42 U.S.C. 3601 et seq. ("FHA"), their implementing regulations, and the Standard. For purposes of this Contract, the "Standard" shall mean one of the following standards, as directed by Owner/Developer in writing prior to commencement of Work hereunder: (i) the Fair Housing Accessibility Guidelines, Design Guidelines for

Accessible/Adaptable Dwellings, 56 Fed. Reg. 9472 (Mar. 6, 1991) (“Guidelines”); (ii) a standard designed as an FHA safe harbor by the United States Department of Housing and Urban Development; or (iii) a recognized, comparable objective standard of accessibility that has been found by the United States District Court for the Southern District of New York or the United States Court of Appeals for the Second Circuit to incorporate the requirements of the FHA.

(b) Construction Manager acknowledges that Owner/Developer shall retain an FHA compliance consultant (the “Accessibility Consultant”) to help ensure that the as-constructed features at the Project comply with the following: (i) the public use and common use portions of the Project are readily accessible to and usable by persons with a disability; (ii) all the doors designed to allow passage into and within all premises within the Project are sufficiently wide to allow passage by persons with a disability using wheelchairs; (iii) all premises within the Project contain the following features of adaptive design: (w) an accessible route into and through the dwelling; (x) light switches, electrical outlets, thermostats, and other environmental controls in accessible locations; (y) reinforcements in bathroom walls to allow later installation of grab bars; and (z) usable kitchens and bathrooms such that an individual using a wheelchair can maneuver about the space (these provisions and features are referred to herein as the “Accessible Design Requirements”). Construction Manager shall fully coordinate and cooperate with the Accessibility Consultant and keep the Accessibility Consultant apprised concerning the Work. Where applicable to the Work, Construction Manager shall seek the Accessibility Consultant’s advice regarding the location of appliances (e.g., refrigerators and ranges) and fixtures (e.g., doors, thresholds, and lavatories); the effect of deviations from the Construction Documents on the accessibility of conditions at the Project; as well as other issues that arise during construction that affect accessibility. Prior to completion of the Project, Owner/Developer shall arrange for the FHA Consultant to conduct a visit of the Project to identify any construction issues that may result in inaccessible conditions and recommend appropriate solutions, and Construction Manager agrees to cooperate with Owner/Developer and the Accessibility Consultant in connection with such inspection.

(c) In addition, Construction Manager acknowledges that governmental authorities having jurisdiction over the Work shall be permitted full access to the Project to inspect for compliance with the accessibility requirements set forth herein. If Construction Manager is or becomes aware of (i) any applicable accessibility requirements that are not accurately reflected in the Work, the Contract Documents or the Project; (ii) any lack of compliance with accessibility requirements in the Work; or (iii) any discrepancy between actual field conditions and shop drawings that conform to applicable accessibility requirements, Construction Manager shall notify Owner/Developer promptly thereof.

(d) Construction Manager shall maintain, and shall require its Trade Contractors to maintain, all records related to the compliance of the Project’s design and construction with the ADA, the FHA, the Accessible Design Requirements and the Standard. Upon reasonable notice from Owner/Developer, these records shall be available at Construction Manager’s office during business hours for audit and copying by Owner/Developer and/or governmental authorities having jurisdiction over the Work. Construction Manager shall retain these records for six (6) years after its receipt of final payment.

29.26 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which, together, shall constitute one agreement. Electronic and/or facsimile signatures of this Agreement shall be deemed originals for all purposes.

29.27 Use of Drones. Construction Manager shall not use and shall prohibit all Trade Contractors from using aircraft, including drones, in performing the Work.

[Signatures to Follow on Next Page]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

OWNER/DEVELOPER:
[TBD]

CONSTRUCTION MANAGER:
[TBD]

By: _____
Name: [TBD]
Title: [TBD]

By: _____
Name: [TBD]
Title: [TBD]

EXHIBIT A

LIST OF CONSTRUCTION DOCUMENTS

[TO BEGIN ON FOLLOWING PAGE]

EXHIBIT B

FORM OF TRADE CONTRACT APPROVAL LETTER

TO:

DATE:

RE:

Sir/Madam:

We have received bids for the _____ work (“Work”) to be performed in accordance with plans and specifications issued by _____ and our request for proposal as follows:

<u>TRADE CONTRACTOR</u>	<u>FINAL PRICE</u>	<u>COMMENT</u>
-------------------------	--------------------	----------------

Our budget for this Work is:

We recommend that the Trade Contract for the Work be awarded to: _____ (“Trade Contractor”) In the amount of \$ _____ (“Trade Contract Price”).

Set forth below are the material differences between the Trade Contract we intend to execute and the Trade Contract Form. [List differences]

Please sign the enclosed duplicate of this letter or send us another letter in order to authorize finalizing a Trade Contract (“Trade Contract”) with the recommended Trade Contractor for the above stated Trade Contract Price and return said duplicate to us for our records. After our execution of the Trade Contract, we will submit copies to you for your records.

If you have any questions, please contact the undersigned immediately.

Very truly yours,

[_____]

By:

Name:

Title:

Award Approved:

[_____]

By:

Its:

EXHIBIT C

GENERAL CONDITIONS WORK ITEMS

[TO BEGIN ON FOLLOWING PAGE]

EXHIBIT D

INSURANCE REQUIREMENTS

1. Owner/Developer and/or its affiliates will arrange to insure the Project under an Owner Controlled Insurance Program (“OCIP”) with commercial general liability limits of not less than \$50,000,000 per occurrence and in the aggregate. In the event, Owner/Developer decides to provide coverage through a “rolling OCIP,” the limits will be agreed upon between the City and Owner/Developer for the duration of the Project. The OCIP shall include Products Completed Operations “tail” coverage through the applicable statute of repose, and contain no “X”, “C”, “U” exclusion if excavation and/or demolition is provided, with a per occurrence deductible not to exceed \$50,000, written on the most current Insurance Services Office (“ISO”) form or its equivalent. Owner/Developer shall be responsible for any deductible above \$50,000; Construction Manager shall be responsible for any deductible of \$50,000 or less; City shall not be responsible for paying any deductibles. Construction Manager shall not owe Developer any credits for any insurance purchased by Owner/Developer pursuant to the Contract Documents. The OCIP will provide commercial general liability coverage only. The OCIP is limited to coverage for onsite work. With respect to all off-site work, and for all Trade Contractors not enrolled in the OCIP, Construction Manager shall purchase and maintain, at a minimum, the insurance listed below in Sections 1.1 through 1.6, as qualified in Sections 2 through 10, as will protect Construction Manager, Owner/Developer, the City and County of San Francisco, and Owner/Developer's and the City's respective officers, directors, shareholders, affiliates, partners, agents and employees from the claims set forth below which may arise out of or as a result of Construction Manager's obligations under this Agreement (whether such obligations be performed by it or by anyone directly or indirectly employed by it, or by anyone for whose acts it may be liable). Approval of Construction Manager's insurance by the Developer or City will not relieve or decrease the liability of Construction Manager under this Agreement. The Developer and/or City reserve the right to require an increase in insurance coverage in the event the Developer and/or City determines that conditions show cause for an increase and obtaining such coverage is commercially reasonable.

1.1 Workers' Compensation/Employer's Liability/Disability

- (i) Workers' Compensation insurance in statutory amounts with Employers Liability of, not less than \$1,000,000 for each accident, injury, or illness. Workers' Compensation policies shall be endorsed with a waiver of subrogation in favor of the City and Developer for all work performed by the Construction Manager, its employees, agents and subcontractors.

1.2 Business Automobile Liability

Claims for damages because of bodily injury or death of any person or property damage arising out of Owner/Developer's operation or use of any motor vehicle in an amount not less than \$5,000,000 combined single limit for bodily injury and property damage, including owned, hired, or non-owned vehicles, as applicable.

The Business Auto Liability Policy should be endorsed to include an auto pollution Additional Insured Endorsement if hazardous materials are being transported.

Per the Federal Motor Carrier Safety Administration - Form MCS-90 for Motor Carrier Policies of Insurance for Public Liability under Sections 29 and 30 of the Motor Carrier Act of 1980 must be provided if hazardous materials are being transported.

1.3 Commercial General Liability (Applicable to Non-Enrolled and Off-Site Coverages) for:

- (i) Claims for damages due to bodily injury or death of any person other than its employees.
- (ii) Claims for damages other than to the Work itself, due to injury to, or destruction of, property, including loss of use therefrom.
- (iii) Written on an occurrence form with limits of \$15,000,000 each occurrence for bodily injury and property damage, including coverage for Contractual Liability, Explosion, Collapse, and Underground (XCU), Broad form Property Damage, and products completed operations, with a \$15,000,000 General Aggregate and \$15,000,000 Products/Completed Operations Aggregate. The policy shall identify Owner/Developer, lender (if applicable), City and its officers, affiliates, agents and employees, and all entities listed on Exhibit G as additional insureds. The policy should be endorsed with a "Per Project" aggregate. This coverage may be demonstrated by any combination of primary and excess/umbrella liability policies provided the requirements herein are met.

Specific extension of coverage for Railroad Operations (Revise CGL Policy Form). Coverage shall be written on the most current edition of the ISO form or its equivalent. Coverage for additional insureds will apply to ongoing and completed operations.

1.4 Contractor's Pollution Liability

As applicable to the Work to be performed, covering claims from third-party injury and property damage as a result of pollution conditions emanating on-site, under site or off site, including transportation, arising out of Construction Manager's operations and completed operations. Completed operations coverage shall remain in effect for no less than the applicable statute of repose after after Final Completion. Minimum liability limits, including excess liability coverage shall be \$10,000,000 each occurrence and \$10,000,000 in the aggregate. The policy shall identify Owner/Developer, City, lender (if applicable) Construction Manager and all Trade Contractors as additional Insureds.

1.5 Professional Liability ("Errors and Omissions")

For all Work relating to the design of the Project such as design-build and design-assist work of Trade Contractors, Construction Manager shall be required to provide or require the Trade Contractor provide Errors and Omissions/professional liability

insurance with limits no less than \$2,000,000 per occurrence and \$4,000,000 in the aggregate.

2. The insurances enumerated in Sections 1.2 through 1.5 and excluding 1.1 and 1.6, shall, without liability on the part of Owner/Developer, or Lender (if applicable), or the City for premiums therefor, include an endorsement identifying the following as Additional Insureds: Owner/Developer, Lender (if applicable), the City and all entities listed on **Exhibit G**, and their respective partners, directors, officers, employees, agents and representatives.

2.1. Owner/Developer shall deliver evidence of insurance to the City and Owner/Developer shall provide written notice of any cancellation, lapse, or nonrenewal of the insurance pursuant to the policies terms and conditions. Copies of all such notices shall be made to:

Owner/Developer
[Address]

CCSF Real Estate Division
c/o Andrico Penick
25 Van Ness Ave. Suite 400
San Francisco, CA 94102

3. Construction Manager shall before the commencement of the Work provide evidence of the required insurance with Owner/Developer, which insurance shall be subject to Owner/Developer's and the City's approval as to the adequacy of protection and compliance with this Agreement. Such insurance shall be placed with reputable insurance companies licensed to do business in the State where the Project is located with a minimum Best's rating of "A-VIII". OCIP General and Excess Liability certificates of insurance shall be submitted prior to commencement of the Work. Construction Manager shall provide copies of all policies of insurance to the City within 90 days after the issuance of the NTP.
4. Any type of insurance or any increase of its limits of liability not described above which Construction Manager requires for its own protection or required by statute shall be its own responsibility and at its own expense.
5. The carrying of the insurance described shall in no way be interpreted as relieving Construction Manager of any responsibility or liability under this Agreement. In the event Construction Manager fails to maintain the coverages or limits as required herein, Owner/Developer may affect such insurance as an agent of Construction Manager. Any premiums paid therefore, by Owner/Developer to affect such coverage shall be payable by Construction Manager or offset by or against the fees herein provided or payable to Construction Manager.
6. Builder's Risk Insurance

Owner/Developer will provide "Special Form" (All Risk) Builder's Risk Insurance on a replacement cost basis. The amount of coverage shall be equal to the completed value of the Fire Station Project, including change orders. The policy shall provide for no deduction for depreciation. The policy shall provide coverage for "soft costs," including, but not limited to, design and engineering fees, code updates, permits, bonds, insurances, and inspection costs caused by an insured peril. The Builder's Risk Insurance shall include, but shall not be limited to, the following coverages:

- a. All physical damage to the Work and to appurtenances, to materials and equipment to be incorporated into the Project while the same are in transit, stored on or off the Project site.
- b. The perils of fire, lightning, windstorm, hail, explosion, riot, riot attending a strike, civil commotion, smoke damage, damage by aircraft or vehicles, vandalism and malicious mischief, theft, collapse, and water damage.
 - (i) Coverage for earthquake, terrorism and flood shall be provided to the extent commercially reasonable and at Owner's reasonable discretion and as agreed by the City
- c. The costs of debris removal, including demolition as may be made reasonably necessary by such covered perils, resulting damage, and any applicable law, ordinance, or regulation with a commercially reasonable sub-limit. .
- d. Equipment breakdown coverage including commissioning.
- e. Delay in Start Up resulting from an insured peril (lost revenues and costs of funding or financing when a covered risk causes delay in completing the Work). In the event the Owner/Developer or City receives coverage specifically for a consequential loss associated with delay to the completion of the Project, such specific amount shall be credited for delay for which the Contractor would otherwise be responsible. Owner/Developer shall be responsible for the deductible of thirty (30) days.

7. Owner/Developer, City and Construction Manager shall waive all subrogation rights against each other for damages covered by any Project specific insurance on the Project. Construction Manger shall require similar waivers in favor of Owner/Developer and Construction Manager by Trade Contractors and sub-trade contractors.

7. FORMS OF POLICIES AND OTHER INSURANCE REQUIREMENTS

- a. Before commencement of the Work, certificates of insurance and policy endorsements in form and with insurers acceptable to the Developer and the City, evidencing all required insurance and with proper endorsements from Construction Manager's insurance carrier including as additional insureds the parties indicated under Article "Insurance for Others" above, shall be furnished to the Developer and the City, with evidence of insurance furnished to the Developer or City promptly upon request. Construction Manager will be allowed a maximum of five (5) working days, after the

date on which the Contract is awarded, to deliver certificates and endorsements subject to underwriting availability to issue endorsements.

- b. Coverage under the applicable liability policies shall be provided on a non-contributory basis subject to policy conditions. .
- c. Should any of the required insurance be provided under a claims-made form, Construction Manager shall maintain such coverage continuously throughout the term of this Contract, and without lapse, for a period five (5) years beyond the Contract Final Completion date, to the effect that, should occurrences during the Contract term give rise to claims made after expiration of the Contract, such claims shall be covered by such claims-made policies.
- d. Construction Manager, upon receipt of any such notice of cancellation, shall file with the Developer and the City a certificate of insurance of the required new or renewed policy, including applicable policy endorsements, at least 10 calendar days before the effective date of such cancellation or expiration, or as soon as practicable before such effective date in the case of non-payment issues. Upon request, Construction Manager promptly shall furnish the Developer and/or the City with a complete copy of the new or renewed policy.

If, at any time during the life of this Contract, Construction Manager fails to maintain any item of the required insurance in full force and effect, all Work of this Contract may, at Developer and/or City's sole option, be discontinued immediately, and all Contract payments due or that become due will be withheld, until notice is received by the Developer and the City as provided in the immediately preceding Subparagraph "H" that such insurance has been restored to full force and effect and that the premiums therefor have been paid for a period satisfactory to the City. Any failure to maintain any item of the required insurance may, at Developer's and/or City's sole option, be sufficient cause for termination for default of this Agreement.

EXHIBIT E

FORM OF PERFORMANCE AND PAYMENT BOND

EXHIBIT F

PRELIMINARY SCHEDULE

[TO BEGIN ON FOLLOWING PAGE]

EXHIBIT G

INDEMNITEES AND ADDITIONAL INSUREDS

[TBD], The Related Companies, L.P., Related California Residential, LLC, and their respective subsidiaries, affiliates, officers, directors, managers, members, partners, employees, agents, lenders, successors and assigns

The City and County of San Francisco, its board members and commissions, and all authorized agents and representatives, and members, directors, officers, trustees, agents and employees of any of them

EXHIBIT H

PARTIAL LIEN WAIVER AND RELEASE FORM

Affidavit made this ___ day of _____, 20__ to _____ (the "Developer") by _____ ("Contractor") for furnishing of work, labor, services, materials and/or equipment in connection with the development and construction of _____ (the "Project") located at _____ (the "Property") pursuant to an agreement between Contractor and Developer dated _____, as amended (the "Agreement"), for and in consideration of the sum of _____ (the "Partial Payment"), representing the amount presently approved as payable under Invoice # _____ dated _____, for work, labor, services, materials and/or equipment furnished to Developer under the Agreement, the receipt of which, by Contractor from Developer, is hereby acknowledged; Contractor does hereby waive, release, remise and relinquish the right to claim or file a mechanic's or other lien against the Property or any part thereof for all work, labor, services, materials and/or equipment supplied by Contractor, including any claims for extra or additional work or any other damage or expense alleged to have been incurred by Contractor, up to and including the ___ day of _____, ____, excepting only claims currently unresolved for the total amount of _____ (\$ _____) as described on Attachment 1 hereto for which written notice has been provided to Developer.

Partial Payment to Contractor \$ _____.
Cumulative Payment to Contractor (inclusive of Partial Payment) \$ _____.

Contractor hereby agrees to indemnify and hold Developer and all entities listed as indemnified parties in the Agreement harmless from any and all damages, costs, expenses, demands, suits, liens and legal fees, directly or indirectly relating to any claim for compensation by any other party for work, labor, services materials and/or equipment which directly or indirectly relates to that performed or furnished by Contractor and/or its agents, vendors or subcontractors and from and against any claims relating to any extra or additional work, labor, services, materials and/or equipment allegedly performed or furnished by Contractor and/or its agents, vendors or subcontractors. Contractor hereby certifies and warrants that it has fully paid to date all vendors and subcontractors in connection with the aforesaid Project, except for those listed below (List all payables or state "None"):

Contractor further affirms that it has received all payments to date as a trust fund for the purpose of paying all claims for work, labor, services, materials and/or equipment and will apply all payments received for said purpose before using any part thereof for any other purpose.

IN WITNESS WHEREOF, this Waiver and Release has been executed this ___ day of _____, 20__.

Contractor: _____

Sworn to before me this
___ day of _____, 20__.

By: _____
Name: _____
Title: _____

Notary Public

(Note: include Attachment 1 hereto)

EXHIBIT I

FINAL LIEN WAIVER AND RELEASE FORM

Affidavit made this ____ day of _____, 20__ to _____ (“Developer”), by _____ (“Contractor”) for furnishing of work, labor, services, materials and/or equipment in connection with the development and construction of _____ (the “Project”) located at _____ (the “Property”) pursuant to an agreement between Contractor and Developer dated _____, as amended (the “Agreement”), for and in consideration of the sum of _____, (the “Final Payment”) representing the amount presently approved as the final and total amount payable under Requisition # _____ dated _____, for work, labor, services, materials and/or equipment furnished to Developer under the Agreement, the receipt of which, by Contractor from Developer, is hereby acknowledged; Contractor does hereby waive, release, remise and relinquish the right to claim or file a mechanic’s or other lien against the Property or any part thereof for all work, labor, services, materials and/or equipment supplied by Contractor and does so covenant in recognition of the fact that final payment has been received for all work, labor, services, materials and/or equipment supplied by Contractor, including any claims for extra or additional work or any other damage or expense alleged to have been incurred by Contractor, up to and including the ____ day of _____, 20__.

Final Payment to Contractor \$_____
Cumulative Payment to Contractor (inclusive of Final Payment) \$_____.

Contractor hereby agrees to indemnify and hold Developer and all entities listed as indemnified parties in the Agreement harmless from any and all damages, costs, expenses, demands, suits, liens and legal fees, directly or indirectly relating to any claim for compensation by any other party for work, labor, services materials and/or equipment which directly or indirectly relates to that performed or furnished by Contractor and/or its agents, vendors or subcontractors and from and against any claims relating to any extra or additional work, labor, services, materials and/or equipment allegedly performed or furnished by Contractor and/or its agents, vendors or subcontractors. Contractor hereby certifies and warrants that it has fully paid to date all vendors and subcontractors in connection with the aforesaid Project, except for those listed below (List all payables or state “None”):

Contractor releases and discharges Developer from all actions, causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims, and demands whatsoever, in law or equity, arising from or in connection with the Project or the Property which against Developer Contractor ever had, now have or hereafter can, shall or may have, for upon, or by reason of any matter, claims or causes of action whatsoever from the beginning of the world to the date of this Final Waiver and Release.

Contractor further affirms that it has received all payments to date as a trust fund for the purpose of paying all claims for work, labor, services, materials and/or equipment and will apply all payments received for said purpose before using any part thereof for any other purpose.

IN WITNESS WHEREOF, this Final Waiver and Release has been executed this ____ day of _____, 20__.

Contractor: _____

Sworn to before me this ____ day of _____, 20__.

By: _____
Name: _____
Title: _____

Notary Public

EXHIBIT J

ALLOWANCE LOG

EXHIBIT K

ALTERNATE LOG

EXHIBIT L

SUMMARY OF BUDGET

EXHIBIT M

QUALIFICATIONS