

GENERAL CONDITIONS
OF THE CONSTRUCTION MANAGEMENT AGREEMENT
FOR CONSTRUCTION OF
ATLANTA BRAVES SPRING TRAINING FACILITY PROJECT
AT WEST VILLAGES, FL

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ARTICLE 1
CONTRACT DOCUMENTS

Section 1.1 Definitions.

1.1.1 **“Ballpark Facility Construction Management Agreement”**. The term Ballpark Facility Construction Management Agreement means the Agreement between Owner and Construction Manager to which these General Conditions are attached as an Exhibit.

1.1.2 **“Provide”**. When the word “provide”, including derivatives thereof, is used, it shall mean to properly coordinate, fabricate, complete, transport, deliver, install, erect, construct, test and furnish all labor, materials, equipment, apparatus, appurtenances, and all items and expenses necessary to properly complete in place, and render operational or usable in accordance with the terms of the Contract Documents.

1.1.3 **“Knowledge”**. The terms “knowledge”, “recognize” and “discover”, their respective derivatives and similar terms in the Contract Documents, as used in reference to the Construction Manager, shall be interpreted to mean that which the Construction Manager knows, recognizes, and discovers in exercising the care, skill and diligence required by the Contract Documents. Analogously, the expression “reasonably inferable” and similar terms in the Contract Documents shall be interpreted to mean reasonably inferable by a contractor familiar with the Ballpark Facility Project and exercising the care, skill and diligence reasonably required by the Contract Documents.

1.1.4 **Other Defined Terms**. Unless otherwise defined herein, all capitalized terms used herein have the meanings ascribed to them in the Ballpark Facility Construction Management Agreement. Unless otherwise stated in the Contract Documents, words which have well known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

Section 1.2 Execution, Integration and Intent.

1.2.1 **Site Conditions**. By executing the Ballpark Facility Construction Management Agreement, the Construction Manager represents that it has visited the Ballpark Facility Site, familiarized itself with the local conditions under which the Work is to be performed, and correlated its observations with the requirements of the Contract Documents. The Construction Manager and each Subcontractor shall evaluate and satisfy themselves as to the conditions and limitations under which the Work is to be performed, including, without limitation, (1) the location, layout and nature of the Ballpark Facility Site and surrounding areas, (2) generally prevailing climatic conditions, (3) anticipated labor supply and costs, (4) availability and cost of materials, tools and equipment, and (5) other similar issues.

1.2.2 **Comprehensive Nature of Contract Documents**. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work. The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all. Work not covered in the Contract Documents will not be required unless it is consistent therewith and is reasonably inferable therefrom. In the event of a conflict between the Drawings, Specifications or other Contract Documents, the Construction Manager

shall be deemed to have included the more expensive option in the Guaranteed Maximum Price, as applicable.

1.2.3 **Integration Clause.** The Contract Documents collectively set forth the rights and obligations of the parties and represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral. The Contract Documents may be amended or modified only by a Modification, and any amendments or modifications which would result in an increase to the Guaranteed Maximum Price or Contract Time shall be by Change Order only pursuant to the provisions of Section 7.1 of the Ballpark Facility Construction Management Agreement. The Contract Documents shall not be construed to create any contractual relationship of any kind between the Owner and any Subcontractor, supplier, or other third party, or create any obligations of the Owner to such parties directly.

1.2.4 **Organization of Specifications Not Controlling.** The organization of the Specifications into divisions, sections and articles, and the arrangement of Drawings shall not control the Construction Manager in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade, and no adjustments shall be made in the Guaranteed Maximum Price as a result of the Construction Manager's failure to insure that all Work described anywhere in the Contract Documents is provided for, irrespective of the organization of the Specifications or other Contract Documents.

1.2.5 **Supplemental Design Information.** It is the intent of the Contract Documents to provide for complete installation of all portions of the Work. Except where Work, or a portion thereof, is specifically noted as being N.I.C. (Not In Contract), it is understood that all items, materials and equipment are to be furnished and installed, complete, and ready for operation or use. Where additional or supplemental details or instructions are required to complete an item or items, the Construction Manager shall request such information. No Work shall be installed or fabricated which depends upon the furnishing of such information until such information is furnished. The Construction Manager will be deemed to have based its bid on a complete installation: where additional details or instructions are required to complete the Work, the Construction Manager is deemed to have made an allowance in his bid for the completion of such Work, consistent with adjoining or similar details and/or the best accepted practices of the trade, unless such additional information was not reasonably inferable from the Contract Documents, in which case the Guaranteed Maximum Price shall be equitably adjusted.

Section 1.3 Ownership and Use of Documents. All Drawings, Specifications and copies thereof furnished by the Architect are and shall remain the property of the Owner. They are to be used only with respect to this Ballpark Facility Project and are not to be used on any other project and they are not to be used by the Construction Manager or any Subcontractor, Sub-Subcontractor or material or equipment supplier on other projects or for additions to this Ballpark Facility Project outside the scope of the Work without the express written consent of the Owner. The Construction Manager, Subcontractors, Sub-subcontractors and material or equipment suppliers are granted a limited license to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect appropriate to and for use in the execution of their Work under the Contract Documents. Submittal or distribution to

meet official regulatory requirements or for other purposes in connection with this Ballpark Facility Project is not to be construed as publication in derogation of the Owner's reserved rights.

Section 1.4 Captions and Headings. The headings and captions contained in these General Conditions are inserted for convenience of reference only, and are not to be deemed part of or to be used in construing these General Conditions.

ARTICLE 2 **ARCHITECT**

Section 2.1 Construction Administration.

2.1.1 **Architect to Provide Limited Administration.** The Architect will provide limited construction administration as hereinafter described. The Owner has the unfettered right to perform, or assign to the Architect, construction administration responsibilities as it may deem appropriate, in its sole direction.

2.1.2 **Authority of Architect.** The Architect, with the concurrence of the Owner, shall have the general responsibility for overseeing the Work. The Architect, with the approval of the Owner in each case, shall oversee and instruct the Construction Manager with regard to matters set forth in the Drawings and Specifications, but the Owner shall decide any and all questions which may arise as to the progress, quality or Cost of the Work. The Architect shall have authority to act on behalf of the Owner only to the extent expressly provided in the Contract Documents.

2.1.3 **Architect's Visits to Ballpark Facility Site.** The Architect will visit the Ballpark Facility Site at intervals appropriate to the stage of construction to familiarize itself with the progress and quality of the Work. However, the Architect will not make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the Architect's on-site observations, the Architect will keep the Owner reasonably informed of the progress of the Work, and will assist the Owner in identifying potential defects and deficiencies in the Work of the Construction Manager.

2.1.4 **Matters for Which Architect Is Not Responsible.** The Architect will not be responsible for, and will not have control or charge of, construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, and the Architect will not be responsible for the Construction Manager's failure to carry out the Work in accordance with the Contract Documents. The Architect will not be responsible for or have control or charge over the acts or omissions of the Construction Manager, Subcontractors, or any of their agents or employees, or any other persons performing any of the Work. The Architect will review the Construction Manager's payment applications and issue certificates.

2.1.5 **Architect to Have Access to Work.** The Owner and Architect shall at all times have access to the Work wherever it is in preparation and progress.

2.1.6 **Interpretations by Architect.** The Architect, with the Owner's prior written consent, will prepare graphic illustrations and other documents that clarify or interpret various aspects of the Drawings and Specifications. The Architect will render interpretations, with

reasonable promptness so as to not delay the order and progress of the Work. The Owner or the Construction Manager may make written request to the Architect for such interpretations. All interpretations and decisions of the Architect shall be consistent with the intent of, and reasonably inferable from, the Contract Documents and shall be in writing or in the form of drawings.

2.1.7 **Architect's Authority to Reject Work or Make Special Requirements.** The Architect, with the Owner's concurrence, shall have the authority to reject Work which does not conform to the Contract Documents. Whenever, in its opinion, the Architect considers it necessary or advisable for the implementation of the intent of the Contract Documents, the Architect shall have authority, with the Owner's concurrence, to require special inspection or testing of the Work in accordance with Section 14.4.2, whether or not such Work be then fabricated, installed or completed. However, neither the Architect's authority to act under this Section 2.1.7, nor any decision made by the Architect in good faith either to exercise or not to exercise such authority, shall give rise to any duty or responsibility of the Architect to the Construction Manager, Subcontractors, material and equipment suppliers, any of their agents or employees, or any other person performing any of the Work.

2.1.8 **Architect's Review of Submittals.** The Architect will review and approve or take other appropriate action upon Construction Manager's submittals such as Shop Drawings, Product Data and Samples for conformance with the design concept of the Work and with the information given in the Contract Documents. Such action shall be taken with reasonable promptness, while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Construction Manager as required by the Contract Documents. The Architect's review of the Construction Manager's submittals shall not relieve the Construction Manager of the obligations under Sections 4.1, 4.4 or 4.11. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

2.1.9 **Architect to Prepare Change Orders.** If Owner so requests, the Architect may prepare Change Orders in accordance with Article 11, or the Owner may request that the Construction Manager prepare draft Change Orders for the Owner's approval. All Change Orders shall be prepared and executed on the form attached to the Ballpark Facility Construction Management Agreement as an Exhibit thereto.

2.1.10 **Architect to Conduct Inspection.** The Architect shall conduct inspections to determine the dates of Substantial Completion and Final Completion, and shall receive and forward to the Owner for the Owner's review, approval and records written warranties, guarantees, as-builts and related closeout documents required by the Contract Documents and assembled by the Construction Manager. When requested by the Owner, the Architect will issue a certification of Substantial Completion, upon compliance with the requirements of the Contract Documents. The Architect will assist the Owner to review the final Certificate for Payment for

Owner's approval upon Construction Manager's compliance with the requirements of the Contract Documents. Neither the Certificate of Substantial Completion or the final Certificate for Payment will be issued without a complete walk-through and approval by the Owner. The Architect and Owner will review the Construction Manager's punch-list to be attached to the Certificate of Substantial Completion.

2.1.11 **Architect's Project Representatives.** If the Owner and Architect agree, the Architect shall provide one or more Ballpark Facility Project representatives to assist the Architect in carrying out the Architect's responsibilities at the Ballpark Facility Site. The duties, responsibilities and limitations of authority of any such Ballpark Facility Project representative shall be as set forth in an exhibit to be incorporated in the Contract Documents.

2.1.12 **Modifications of Architect's Authority.** The duties, responsibilities and limitations of authority of the Architect during construction as set forth in the Contract Documents will not be modified or extended without written consent of the Owner and the Architect. The Construction Manager acknowledges and agrees that all decisions of the Architect are subject to the approval of the Owner, consistent with the terms of the Contract Documents.

2.1.13 **Concurrence by Inspecting Architect or Other Representative.** If Owner's Lender shall designate an inspecting architect or other representative, the Owner may require the concurrence of such architect or representative in each instance in which the approval of the Architect or the Owner is required by any provision of these General Conditions or other Contract Documents. The Construction Manager shall cooperate with such inspecting architect or representative to the fullest extent possible.

ARTICLE 3 **OWNER**

Section 3.1 Information and Services Required of the Owner.

3.1.1 **Information as to Site Conditions.** The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Ballpark Facility Project and a legal description of the site. Construction Manager shall confirm the location of each utility, shall excavate and dispose of each on-site utility and shall cap each off-site utility as required by the Work and as may be included in the Specifications. At the Owner's request, the Construction Manager shall make available the results of any site investigation, test borings, analyses, studies or other tests conducted by or in possession of the Construction Manager or any of its agents. The Construction Manager represents that it is generally familiar with the Ballpark Facility Site. The Construction Manager represents that it has inspected the location of the Work and has satisfied itself as to the visible condition thereof. The Construction Manager shall use best efforts to recommend to the Owner such further investigations and studies as may be useful to determine surface and subsurface conditions, and the Construction Manager shall advise the Owner prior to commencing the Work if it deems further investigations or studies are necessary. The Construction Manager shall exercise special care in executing subsurface work in proximity of known subsurface utilities, improvements and easements. Construction Manager shall

specifically indicate the information, data or reports regarding the conditions at the Ballpark Facility Site upon which it has relied in preparing the GMP Amendment.

3.1.2 **Owner to Obtain and Pay for Approvals.** Except as otherwise expressly provided in Section 4.6.1 or any other provision of the Contract Documents, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for the construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

3.1.3 **Information or Services Under Owner's Control.** Except as otherwise provided in Section 3.1.1, and subject to the provisions of that Section, upon receipt of a written request therefore from the Construction Manager, information or services under the Owner's control and reasonably required for the performance of the Work shall be furnished by the Owner with reasonable promptness so as to avoid delay in the orderly progress of the Work.

3.1.4 **Construction Manager to Receive Copies of Drawings and Specifications.** Unless otherwise provided in the Contract Documents, the Construction Manager will be furnished, free of charge, five (5) reproducible copies of the Drawings and Specifications prepared by the Architect, and other drawings and documents, reasonably necessary for the execution and completion of the Work.

3.1.5 **Owner's Responsibilities Cumulative.** The foregoing responsibilities are in addition to other duties and responsibilities of the Owner enumerated herein, and especially those in respect to Article 6 (Work by the Owner or by Separate Construction Managers), Article 8 (Payments and Completion) and Article 10 (Insurance).

Section 3.2 Owner's Right to Stop the Work.

3.2.1 **Stop Work Orders.** If the Construction Manager fails to correct defective Work as required by Section 12.2 or fails to carry out the Work in accordance with the Contract Documents, the Owner, by written order, may order the Construction Manager to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of the Owner to stop the Work shall not give rise to any duty on the part of the Owner to exercise this right for the benefit of the Construction Manager or any other person or entity. This right shall be in addition to, and not in restriction of, the Owner's rights under Section 12.2.

3.2.2 **Suspension of the Work.** Subject to the provisions of Article 7 concerning delay, if the Owner, acting in good faith, believes that suspension of the Work is warranted by reason of unforeseen conditions which may adversely affect the quality of the Work if such Work were continued, the Owner may suspend the Work by written notice to the Construction Manager. If the Construction Manager, in its reasonable judgment, believes that a suspension is warranted by reason of unforeseen circumstances which may adversely affect the quality of the Work if the Work were continued, the Construction Manager shall immediately notify the Owner of such belief and describe with particularity the reasons therefor.

Section 3.3 The Owner's Right to Carry Out the Work. If the Construction Manager defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within seven (7) days after receipt of written notice from the Owner to commence and

continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to any other remedy the Owner may have, make good such deficiencies. In such case an appropriate Change Order shall be issued deducting from the payments then or thereafter due the Construction Manager the cost of correcting such deficiencies, including architectural, and consulting and legal fees required by the circumstances. If the payments then or thereafter due the Construction Manager are not sufficient to cover such amount, the Construction Manager shall pay the difference to the Owner upon demand. The rights of the Owner under this Section shall not give rise to any duty on the part of the Owner to exercise such rights for the benefit of the Construction Manager or any other person or entity.

ARTICLE 4 **CONSTRUCTION MANAGER**

Section 4.1 Review of Contract Documents.

4.1.1 **Construction Manager to Review Contract Documents.** The Construction Manager shall carefully study and compare the Contract Documents with each other and with any information furnished by the Owner pursuant to Section 3.1 or information otherwise available to the Construction Manager, and shall at once report to the Owner and the Architect all errors, inconsistencies or omissions discovered. In addition, the Construction Manager shall notify the Architect of materials, systems, procedures or methods of construction, either shown on the drawings or specified, that it believes are incorrect, inadequate, obsolete, or which could have an adverse effect upon installation or completion by others under separate contracts. The Construction Manager is performing the obligation in the foregoing sentence in its capacity as a construction manager, and not as a design professional, and Owner acknowledges that such obligations do not obligation the Construction Manager to become responsible for the quality of the Architect's design. In addition, if the Construction Manager performs any construction activity and if it knows, or should have known (in its capacity as a construction manager, and not as a design professional), that any of the Contract Documents contain a recognized error, inconsistency or omission, the Construction Manager shall be responsible for such performance and shall bear the cost of correction thereof. The Construction Manager shall perform no portion of the Work at any time without Contract Documents or, where required, approved Shop Drawings, Product Data or Samples for such portion of the Work.

4.1.2 **Verification of Field Measurements and Conditions.** The Construction Manager shall take field measurements and verify field conditions, and shall carefully compare such field measurements and conditions and other information known to the Construction Manager with the Contract Documents before commencing construction. Errors, inconsistencies or omissions discovered shall be reported to the Owner and the Architect at once; and the Construction Manager's failure to verify field measurements and conditions shall not serve as basis for an adjustment in the Guaranteed Maximum Price. In satisfying its obligations under this Section, Construction Manager shall confirm the location of each utility, shall excavate and dispose of each on-site utility and shall cap each off-site utility as required for the Work, or by the Contract Documents. To the extent, if any, that Owner has heretofore caused soil tests or test borings to have been made on the Ballpark Facility Site, Owner has made such tests available to Construction Manager, and the Construction Manager has studied the result of such tests, test borings and information as to subsurface conditions and Ballpark Facility Site geology.

Construction Manager acknowledges that there is no warranty or guaranty, express or implied, that the conditions indicated by such investigations, tests, borings, logs or information are representative of those existing throughout the Project Site, or any part thereof, or that unforeseen conditions may not exist. Construction Manager shall indicate which tests or borings, the logs of such tests or borings, or of other investigations upon which the Construction Manager relied in preparing the GMP Amendment. At Owner's request, the Construction Manager shall make available to the Owner the results of any site investigation, test borings, analyses, studies or other tests conducted by or in possession of the Construction Manager or any of its agents. The Construction Manager represents that it is familiar with the Ballpark Facility Site and has received all information it needs concerning the conditions of the Ballpark Facility Site. The Construction Manager shall undertake such further investigations and studies as may be necessary or useful to determine surface and subsurface conditions. Based upon the foregoing inspections, understandings, agreements and acknowledgments, the Construction Manager agrees and acknowledges that the Guaranteed Maximum Price is just and reasonable compensation for all the Work, including all foreseen and foreseeable risks, hazards and difficulties in connection therewith and that the Contract Time is adequate for the performance of the Work, and the Construction Manager shall have no claims for surface or subsurface conditions encountered that could have reasonably been foreseen by the Construction Manager. The Construction Manager shall exercise special care in executing subsurface work in proximity of known subsurface utilities, improvements and easements.

4.1.3 Work to Be in Accordance With Contract Documents and Approved Submittals. The Construction Manager shall perform the Work in accordance with the Contract Documents and submittals approved pursuant to Section 4.11.

Section 4.2 Supervision and Construction Procedures.

4.2.1 Supervision and Direction of Work. The Construction Manager shall supervise and direct the Work, using its best skill and attention. The Construction Manager shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, including coordination of the duties of all trades, unless the Contract Documents give other specific instructions concerning these matters. The Construction Manager shall be responsible for properly laying out the Work, and for all lines, elevations and measurements for all of the Work executed under the Contract Documents. The Construction Manager shall verify the figures shown on the drawings before laying out the Work and will be held responsible for any error, omission or inaccuracies resulting from his failure to do so.

4.2.2 Construction Manager Responsible for Acts of Others. The Construction Manager shall be responsible to the Owner for the acts and omissions of the Construction Manager's employees, Subcontractors and their agents and employees, and other persons performing or supplying any of the labor, materials or services constituting the Work under this Contract.

4.2.3 Construction Manager Not Relieved of Obligations. The Construction Manager shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by the activities or duties (or the failure to perform such duties or

activities) of the Owner or the Architect in their administration of the Contract, or by inspections, tests or approvals required or performed by persons other than the Construction Manager.

4.2.4 **Construction Manager Responsible for Inspection of Work.** The Construction Manager shall be responsible for inspection of portions of Work already performed under the Contract Documents to determine that such portions are in proper condition to receive subsequent Work.

4.2.5 **Establishment of Reference Data.** At the earliest possible time after the commencement of the Work on the Ballpark Facility Site, the Construction Manager shall have all property corners and benchmarks verified by a surveyor subcontracted by the Architect or the Construction Manager, shall establish necessary reference marks from which the Work accurately can progress, shall furnish the Owner evidence of such verification and shall report at once any errors discovered during the process of such verification. The Construction Manager shall preserve all reference points, benchmarks, and other survey points established and, in case of the destruction of these points, shall replace them.

4.2.6 **Inspections by Public Authority.** If any of the Work is required to be inspected or approved by any public authority, the Construction Manager shall cause such inspection or approval to be performed. No inspection performed (or not performed) by the Owner hereunder shall be considered a waiver of any of the Construction Manager's obligations hereunder or be construed as an approval or acceptance of the Work or any part thereof.

4.2.7 **Separate Contracts at Ballpark Facility Site.** Construction Manager agrees that it will not prohibit or otherwise hinder or prevent any subcontractor or materialman engaged in any aspect of the performance of the Work from entering into separate subcontracts with another general contractor engaged by the Owner or any tenant of the Owner except by reason of genuine, good faith concerns (including conflicting man-hour and capacity requirements).

Section 4.3 Labor and Materials.

4.3.1 **Construction Manager to Pay for Labor, Materials and Services.** Unless otherwise provided in the Contract Documents, the Construction Manager shall provide and pay for all labor, materials, supervision, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. The Construction Manager shall check all materials and labor entering into the Work and shall keep full detailed accounts thereof.

4.3.2 **Enforcement of Discipline.** The Construction Manager shall at all times enforce strict discipline and good order among its employees and its Subcontractors and their employees, and shall not employ or permit its Subcontractors to employ on the Work any unfit person or anyone not skilled in the performance of their respective assigned tasks. The Construction Manager acknowledges that it is the Construction Manager's responsibility to hire all personnel for the proper and diligent prosecution of the Work and the Construction Manager shall use its best efforts to maintain labor peace for the duration of the Ballpark Facility Project. In the event

of a labor dispute, the Construction Manager shall not be entitled to any increase in the Guaranteed Maximum Price as a result thereof.

4.3.3 **Pre-Hire Drug Screening.** The Construction Manager shall maintain appropriate policies and procedures to ensure a drug-free work environment for all of Construction Manager's employees working at the Ballpark Facility Project.

Section 4.4 Warranty. Construction Manager warrants to Owner that: (i) all Work will be performed in a good and workmanlike manner in accordance with good construction and engineering practice, manufacturer's requirements, and the Contract Documents, and shall otherwise comply with the standard of performance in Sections 3.1, 3.2, and 3.4 of the Ballpark Facility Construction Management Agreement, as applicable; and (ii) all materials, equipment, and systems furnished shall be new unless otherwise specified, and that all construction Work, materials, and equipment furnished under this Contract shall be of good quality, free from faults and defects and in conformance with the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Construction Manager's warranty excludes any remedy for damage or defects caused by abuse, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage; provided, however, that modifications, extensions, attachments to, completion of or repair to systems in the Work by others (including the Owner or tenants performing tenant improvement work), including, without limiting the generality of the foregoing, the electrical, HVAC, plumbing, security and sprinkler systems, shall not void the Construction Manager's warranty so long as the same are done in accordance with the original design and installation standards. If required by the Owner or the Architect, the Construction Manager shall furnish satisfactory evidence as to the kind and quality of materials and equipment. All warranties shall be delivered to the Owner with copies to the Architect upon completion of the Work. At the time of Final Completion of the Work, the Construction Manager agrees to assign to the Owner any and all manufacturers' warranties relating to materials and labor used in the Work and further agrees to perform the Work in such manner so as to preserve any and all such manufacturers' warranties. If any warranties from a Subcontractor, Sub-subcontractor or manufacturer require consent prior to assignment, the Construction Manager shall obtain such consent from the Subcontractor, Sub-subcontractor or manufacturer. In addition to the foregoing stipulations, the Construction Manager shall comply with all other warranties referred to in any portions of the Contract Documents or otherwise provided by law or in equity, and where warranties overlap, the more stringent requirement shall govern. The Owner reserves the right, in its sole discretion, to assign all and any of its rights to any warranties given under the Contract Documents.

Section 4.5 Taxes. The Construction Manager shall pay all sales, consumer, use and other similar taxes for the Work or portions thereof provided by the Construction Manager which are legally enacted as of the later of the date of the Ballpark Facility Construction Management Agreement, or the date upon which the Owner and the Construction Manager agree upon the Guaranteed Maximum Price (if such Guaranteed Maximum Price was not determined as of the date of such Ballpark Facility Construction Management Agreement), regardless of whether any such tax is not yet effective or merely scheduled to go into effect, subject to any provisions of the Contract Documents which provide for exemption of taxes under applicable law. When pursuant to any government program, any grant, rebate, accelerated capital cost allowance or other form

of cost reduction is made available with respect to a product which is to be incorporated into the Work, the Construction Manager, for himself, his subcontractors and suppliers, acknowledges and agrees that any such cost reduction by way of grant, rebate, accelerated capital cost allowance or the like is the sole and exclusive property of the Owner. Such grant, rebate or accelerated capital cost allowance or the like may include, but is not limited to, products or apparatus for the conservation or regulation of energy, the generating of electricity, solar heating systems and equipment used in the fabrication and control of same. The Construction Manager and subcontractors shall advise the Owner of every product obtained for incorporation into the Work for which they believe a rebate, refund, exemption, grant or other price reduction may be available and shall cooperate with the Owner in obtaining the same.

Section 4.6 Permits, Fees and Notices.

4.6.1 **Construction Manager to Obtain Permits.** Unless otherwise provided in the Contract Documents, the Construction Manager shall secure and pay for the building permit and other permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Work which are customarily secured after execution of the Contract and which are legally required when bids are received or negotiations concluded. The Construction Manager shall procure all certificates of inspection, use, permits and licenses, pay all charges and fees and give all notices necessary and incidental to the due and lawful prosecution of the Work, except that the Owner shall obtain the Certificate of Occupancy, all utility availability and service permits and pay all costs, charges and fees in connection with such permits. Original copies of the certificates of inspection and use and the building permit shall be delivered to the Owner upon completion of the Work. Prior to incurring costs for permits, licenses, approvals or other similar requirements required by the City, the Construction Manager shall confirm with the Owner in writing whether the associated fee, expense, assessment, charge or payment typically imposed by the City for such requirement has been waived. If the Construction Manager pays any such amount that has been waived by the City, and failed to obtain prior written confirmation of the waiver from the Owner, then payment of such amount shall not be considered a Cost of the Work and shall be considered paid by the Construction Manager at its sole cost. The Construction Manager represents, warrants and covenants to the Owner that it is fully licensed, certified and authorized to enter into the Contract Documents and that it and the Subcontractors are and shall continue to be fully licensed, certified and authorized to perform the Work contemplated by the Contract Document and any other work performed at the Ballpark Facility Project, and will provide evidence of the same to the Owner upon request.

4.6.2 **Construction Manager to Give Notices.** The Construction Manager shall give all notices and comply with all laws, ordinances, codes, rules, regulations and lawful orders of any public authority bearing on the performance of the Work. The Construction Manager shall not notify governmental authorities regarding environmental matters without the prior written consent of the Owner.

4.6.3 **Construction Manager to Review Contract Documents.** It shall be the obligation of the Construction Manager to make itself familiar with all local building codes and regulations applicable to the Work. The Construction Manager shall not violate any zoning, setback or other locational requirements of Applicable Laws, any special site plan conditions applicable to the Work, or any recorded covenants of which the Construction Manager has

knowledge. Construction Manager shall review the Contract Documents, and if the Construction Manager observes that portions of the Contract Documents are at variance with Applicable Laws, the Construction Manager promptly shall notify the Owner and Architect in writing, and necessary changes shall be accomplished by appropriate Modification. The Construction Manager is performing its obligations under this Section 4.6.3 in its capacity as a construction manager, and not as a design professional. The Owner further acknowledges that the Construction Manager is not responsible for the quality of the design documents (except as to design-build components which are within the scope of Construction Manager's Work).

4.6.4 **Compliance with Laws, Etc.** The Construction Manager shall comply with and give notices required by Applicable Law in connection with Construction Manager's performance of the Work. This specifically includes complying with any determination, order, ruling or other Applicable Law from a Governmental Authority that exempts certain tangible items of personal property from sales and use taxes. If the Construction Manager, any of its Subcontractors or anyone working under the Construction Manager, performs Work contrary to laws, statutes, ordinances, building codes, and rules and regulations without providing the required written notice to the Architect and Owner, the Construction Manager shall assume full responsibility for such Work and shall bear the attributable costs. The Owner shall acquire the base building permit and provide proper jurisdictional bonds required for site plan approvals. All other building permits, approvals and certificates, including but not limited to, trade permits, and any permits or certificates required to occupy the Ballpark Facility Project or any portion thereof will be provided and paid for by Construction Manager as part of the Work. If the Construction Manager becomes aware of any required approval, he shall promptly notify the Owner or the Architect of it in writing, and shall expeditiously procure such approval. The Construction Manager shall request all information required from the Owner for permits, approvals or certificates sufficiently in advance to allow the Owner sufficient time, in the Owner's opinion, to provide such information to the Construction Manager, so the Construction Manager has sufficient time to procure permits, approvals or certificates so as not to delay the Ballpark Facility Project. The Construction Manager will assist the Owner in the expeditious release of all jurisdiction bonds at the completion of the Work. The Construction Manager assumes all responsibility for complying with all federal (including OSHA), state and local statutes, ordinances or codes that may apply to the Work or the Ballpark Facility Project. The Owner will be retaining the Construction Manager on the basis of the Construction Manager's knowledge of the locale of the Ballpark Facility Project, and claims arising out of allegedly onerous inspection requirements of the state or local governmental agencies shall not serve as a basis of a claim for additional compensation. The Construction Manager is performing its obligations under this Section 4.6.4 in its capacity as a construction manager, and not as a design professional. The Owner further acknowledges that the Construction Manager is not responsible for the quality of the design documents (except as to design-build components which are within the scope of Construction Manager's Work).

4.6.5 **Tenant Certificates.** Construction Manager acknowledges that the Owner may be required to provide evidence to tenants of the Ballpark Facility Project that the Ballpark Facility Project was completed in accordance with the Contract Documents and to the best of the Construction Manager's knowledge in compliance with all Applicable Laws. Upon request by the Owner, Construction Manager shall provide the Owner and any tenants of the Ballpark Facility Project designated by the Owner with a certification of compliance to such effect.

Section 4.7 Project Manager and Supervisory Personnel.

4.7.1 **Project Manager.** The Construction Manager shall employ a competent project manager and necessary assistants who shall be in attendance at the Ballpark Facility Site during the progress of the Work. The project manager shall represent the Construction Manager and all communications given to the project manager shall be as binding as if given to the Construction Manager. Important communications shall be confirmed in writing. Other communications shall be so confirmed on written request in each case. The project manager shall be satisfactory to the Owner in all respects, and the Owner shall have the right to require the Construction Manager to dismiss from the Ballpark Facility Project any project manager whose performance is not satisfactory to the Owner, and to replace such project manager or superintendent with a project manager or superintendent satisfactory to the Owner. The Construction Manager shall not replace the project manager or superintendent without the consent of the Owner except with another project manager or superintendent satisfactory to the Owner in all respects.

4.7.2 **Supervisory Personnel.** Attached as **Exhibit P** to the Ballpark Facility Construction Management Agreement is a chart of the Construction Manager's project supervisory personnel, including (without limitation) the project managers and superintendents, whom the Construction Manager will employ on the Ballpark Facility Project, as well as a chain-of-command organizational chart covering all aspects of the Construction Manager's organization, including project executives, who are dedicated to the Ballpark Facility Project and the Work. The individuals identified on said **Exhibit P** are hereinafter referred to as "Key Personnel." The Owner is entering into this Ballpark Facility Construction Management Agreement in reliance on the representations made by Construction Manager respecting the skill, judgment, experience and abilities of Construction Manager and its Key Personnel and other principals and employees in the construction of MLB ballparks, and in reliance upon assurances by Construction Manager that the Key Personnel on **Exhibit P** will be assigned to this Project, for the duration of the Work, or portions thereof, as specifically indicated on said **Exhibit P**. The Key Personnel indicated in **Exhibit P** shall be committed to the Work and shall not be assigned any other responsibilities that in any way preempt their responsibilities for the Work, and shall not be replaced without the prior express written consent of the Owner, except for reason of death, or discharge or resignation from the employ of Construction Manager:

Section 4.8 Construction Schedule; Records and Reports.

4.8.1 **Construction Schedule.** The Construction Manager shall prepare and submit to the Owner for its approval, at the times required during Preconstruction Services and in connection with the proposed GMP, a detailed critical path schedule showing the relative times for performance of all significant tasks included in the Work by Construction Manager and the Subcontractors, and generally providing for expeditious and practicable execution of the Work. Such schedule, as approved by Owner, and as amended and updated by Construction Manager (with Owner's approval), is referred to herein as the "Construction Schedule." Construction Manager also shall establish a program, in accordance with procedures approved by the Owner, for measuring progress against the Construction Schedule and shall maintain copies of such program at the Ballpark Facility Site to reflect current conditions. Construction Manager shall provide the Owner and Architect with timely reports as to the current status of, and deviations from, the Construction Schedule, the causes of any such deviations, and the corrective action that

has been taken or will be taken to correct such deviations. The Construction Manager shall perform the Work in accordance with the approved Construction Schedule. However, notwithstanding anything to the contrary in the Contract Documents, the Construction Schedule and any revisions thereto, are not Contract Documents, and any milestone, substantial or final completion dates required by the Contract Documents may not be modified except by written Change Order signed by the Owner Change Order Representative.

4.8.2 **Records.** The Construction Manager shall keep accurate and detailed written records of the progress of the Ballpark Facility Project during all stages of construction and shall submit monthly written progress reports to the Owner which shall contain such information as Owner shall reasonably request. Construction Manager shall submit such other interim reports as are requested by the Owner.

4.8.3 **Schedule Summary Report.** The Construction Manager shall prepare a weekly report (the "Schedule Summary Report"), in a form and of sufficient detail and character as approved by the Owner, identifying the significant schedule milestones achieved during the week, identifying those milestones that were not achieved and the reasons for such non-achievement, and shall include a detailed schedule of the following week's activities.

4.8.4 **Daily Force and Activity Report.** The Construction Manager shall on each business day prepare a report (the "Daily Force and Activity Report") on a form approved by the Owner describing the forces present on the Ballpark Facility Site during such day and their respective activities. Each Daily Force and Activity Report shall be delivered to the Owner on a weekly basis.

4.8.5 **Materials Status Report.** Within thirty days after the date of the Ballpark Facility Construction Management Agreement, the Construction Manager shall prepare a report (the "Materials Status Report") which includes a complete list of suppliers, items to be purchased from the suppliers or fabricators, time required for fabrication and the scheduled delivery dates for each item. As soon as available, copies of purchase orders shall be furnished to the Owner.

4.8.6 **Monthly Status Report.** The Construction Manager shall prepare a monthly report in a form and of sufficient detail and character as approved by the Owner, which report shall include the following:

- .1 The current Construction Schedule, a statement by the Construction Manager's project manager as to the progress of the Work in accordance with such Construction Schedule (including information concerning the work of each of the Subcontractors) and the Construction Manager's expectation of completion in accordance with such Construction Schedule;
- .2 an updated Materials Status Report;
- .3 a listing of outstanding design issues and/or Requests for Information (RFIs), and a change proposal status log;
- .4 a certification by the Construction Manager that the Architect has inspected and approved the as-built drawings for the month;

- .5 a concise written summary, prepared by the Construction Manager's project manager, outlining significant outstanding issues that affect the progress, quality or cost of the Ballpark Facility Project;
- .6 progress photographs;
- .7 an updated submittal log; and
- .8 such other information as the Owner shall request from time to time.

Nothing contained in the Monthly Report shall be deemed proper notice under other provisions of the Contract Documents for changes in the Guaranteed Maximum Price or Contract Time.

4.8.7 **Schedule of Submittals.** Within thirty (30) days after the Owner issues the Notice to Proceed, the Construction Manager shall prepare and keep current, for the Architect's and the Owner's approval, a schedule of submittals, which shall be coordinated with the Construction Schedule, and which allows the Architect and the Owner reasonable time to review submittals.

4.8.8 **Weekly Progress Meetings.** The Construction Manager shall hold weekly progress meetings at the Ballpark Facility Site, or at such other time and frequency as is acceptable to the Owner. At each such meeting, progress of the Work shall be reported in detail with reference to the Construction Schedule. Each Subcontractor whose work is to be reported on or may be affected by the work of others shall be required to send to such meetings a competent representative to report the condition of such Subcontractor's work and to receive information and instructions.

Section 4.9 Documents and Samples at the Ballpark Facility Site.

4.9.1 **Record Copy of Certain Contract Documents.** The Construction Manager shall maintain at the site for the Owner one record copy of all Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to record all changes and selections made during construction, and, in addition, approved Shop Drawings, Product Data, Samples and similar submittals. These shall be available to the Owner and the Architect and shall be delivered to the Owner in duplicate upon completion of the Work, accompanied by a certificate of the Construction Manager that they show accurate and complete "as-built" conditions, stating sizes, kind of materials, vital piping and conduit locations, and similar matters. The final set of record documents shall be furnished to the Owner in form satisfactory to the Owner.

4.9.2 **Approved Permit Drawings.** The Construction Manager shall maintain all approved permit drawings in a manner so as to make them accessible to the Owner, governmental inspectors and other authorized agencies. All approved or permit drawings shall be labeled packages and delivered to the Owner within sixty days of Final Completion of the Work.

Section 4.10 Shop Drawings, Product Data and Samples.

4.10.1 **“Shop Drawings” Defined.** “Shop Drawings” are drawings, diagrams, schedules and other data specially prepared for the Work by the Construction Manager or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

4.10.2 **“Product Data” Defined.** “Product Data” are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Construction Manager to illustrate a material, product or system for some portion of the Work.

4.10.3 **“Samples” Defined.** Samples are physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

4.10.4 **Shop Drawings, Product Data and Samples Not Contract Documents.** Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. The purpose of these submittals is to demonstrate for those portions of the Work for which submittals are required the way the Construction Manager proposes to conform to the information given and the design concept expressed in the Contract Documents.

4.10.5 **Review by Construction Manager.** The Construction Manager shall review and submit, with reasonable promptness and in such sequence as to cause no delay in the Work or in the work of the Owner or any separate contractor, all Shop Drawings, Product Data and Samples required by the Contract Documents. By such review and submission the Construction Manager represents that it has determined and verified all materials, field measurements and field construction criteria related thereto, and that it has checked and coordinated information contained within such submittals with the requirements of the Work and of the Contract Documents.

4.10.6 **Approval by Architect.** The Construction Manager shall perform no portion of the Work requiring submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittals has been approved by the Architect. Such Work shall be in accordance with approved submittals.

4.10.7 **Deviations from Contract Documents.** The Construction Manager shall not be relieved of responsibility for any deviation from the requirements of the Contract Documents by the Owner or Architect’s approval of Shop Drawings, Product Data or Samples or similar submittals unless the Construction Manager has specifically informed the Architect in writing of such deviation at the time of submission and the Architect has given written approval of the specific deviation. The Construction Manager shall not be relieved from responsibility for errors or omissions in the Shop Drawings, Product Data or Samples by the Owner or Architect’s approval thereof.

4.10.8 **Construction Manager’s Attention to Revisions.** The Construction Manager shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data or Samples or similar submittals, to revisions other than those requested by the Architect on previous submittals.

4.10.9 **Requirements for Submittal.** Shop Drawings for architectural, structural, mechanical and electrical work shall be submitted for approval to the Architect. If requested, Construction Manager shall send one copy to the Owner. Submittals shall be transmitted in a format and pursuant to procedures to be approved by the Owner or the Architect. Each submittal of Shop Drawings shall be accompanied by a letter of transmittal listing the Shop Drawings submitted.

4.10.10 **Operating and Maintenance Data.** The Construction Manager shall assemble for the approval by the Architect and/or Owner all operating and maintenance data from all manufacturers whose equipment is installed in the Work, and shall submit such information to the Owner in electronic form satisfactory to the Owner as a precondition to final payment. Such lists or schedules shall be typewritten or printed and bound in folios with each page or chart protected by a transparent plastic envelope or cover. Three such folios shall be submitted to the Architect for approval and transmittal to the Owner.

Section 4.11 Use of Site.

4.11.1 **Confinement of Construction Manager's Operations.** The Construction Manager shall confine operations at the Ballpark Facility Site to areas permitted by law, ordinances, permits and the Contract Documents, and shall not unreasonably encumber the Ballpark Facility Site with any materials or equipment.

4.11.2 **Access to Neighboring Properties.** The Construction Manager shall assure free, convenient, unencumbered and direct access to properties neighboring the Ballpark Facility Site for the owners of such properties and their respective tenants, agents, invitees and guests.

4.11.3 **Construction Manager Signs.** The Construction Manager and Subcontractor shall not erect any sign on the Ballpark Facility Site without the prior written consent of the Owner. Any such sign must comply with the Construction Documents and with all Applicable Laws, at the sole cost of the Construction Manager.

4.11.4 **Utility Service.** The Construction Manager shall not interrupt utility service to the site or to adjacent buildings. If the Construction Manager is required to interrupt utility services to perform its Work, Construction Manager shall coordinate such interruption with the Owner and any affected adjacent owners or tenants so as to avoid any damage to the Owner. Notwithstanding anything to the contrary contained in the Contract Documents, Construction Manager shall not interrupt utility service during business hours for any reason and Construction Manager shall pay any outage fee and/or premium or overtime charges.

4.11.5 **Site Agreement.** Within fifteen (15) days after the execution of the Ballpark Facility Construction Management Agreement, the Construction Manager will prepare for the Owner's review and the Construction Manager's use a plan for efficient and effective use of the Ballpark Facility Site (taking into account access, parking, staging and storage including lay down space, ongoing operations of the Owner, usage of cranes, etc.). Once approved by the Owner this plan must be approved by the authority having jurisdiction (if required). In addition, it will be the Construction Manager's responsibility to assist the Owner in obtaining agreements

from adjacent landowners where necessary for the construction of the Project (including but not limited to approvals necessary for operation of a tower crane if required).

Section 4.12 Cutting and Patching of Work.

4.12.1 **Cutting and Patching by Construction Manager.** The Construction Manager shall be responsible for all cutting, fitting or patching that may be required to complete the Work or to make its several parts fit together properly.

4.12.2 **Effect on Other Work.** The Construction Manager shall not damage or endanger any portion of the Work or other work of the Owner, tenants, or any separate contractors by cutting, patching or otherwise altering any work, or by excavation. The Construction Manager shall not cut or otherwise alter the work of the Owner, tenants, or any separate contractor except with the written consent of such parties. The Construction Manager shall not unreasonably withhold from the Owner or a separate contractor the Construction Manager's consent to cutting or otherwise altering the Work.

Section 4.13 Cleaning Up.

4.13.1 **Premises to Be Kept Clean.** The Construction Manager at all times shall keep the premises free from accumulation of waste materials or rubbish caused by its operations. At the completion of the Work, the Construction Manager shall remove all its waste materials and rubbish from and about the Ballpark Facility Project as well as all its tools, construction equipment, machinery and surplus materials. The Construction Manager shall maintain streets, sidewalks and temporary means of access or passage around the Ballpark Facility Site in a clean and safe condition. The Construction Manager shall remove all spillage and tracking arising from the performance of the Work from such areas, and shall establish a regular maintenance program of sweeping and hosing to minimize accumulation of dirt and dust upon such areas.

4.13.2 **Failure to Clean Up.** If the Construction Manager fails to clean up at any time during or at the completion of the Work, the Owner may do so and the cost thereof shall be charged to the Construction Manager.

4.13.3 **Broken Glass.** The Construction Manager shall be responsible for broken glass, and at completion of the Work it shall replace any damaged or broken glass. After broken glass has been replaced, the Construction Manager shall remove all labels, wash and polish both sides of all glass.

4.13.4 **Final Cleaning.** In addition to general broom cleaning, the Construction Manager shall perform the final cleaning for all trades at completion of the Work in accordance with the following, unless otherwise provided in the Specifications:

- .1 remove temporary protections;
- .2 remove marks, stains, fingerprints and other soil or dirt from glass and from painted, decorated, and natural finished woodwork and other work;

- .3 remove spots, mortar, plaster, soil and paint from all finish floor and wall materials and wash or wipe clean;
- .4 clean fixtures, cabinetwork and equipment, removing stains, paint, grime and dust and leave same in an undamaged and new condition;
- .5 clean aluminum in accordance with recommendations of the manufacturer; and
- .6 clean resilient floors thoroughly with a well rinsed mop containing only enough moisture to clean off any surface dirt or dust and buff dry by a machine to bring the surfaces to sheen.

Section 4.14 Royalties and Patents. The Construction Manager shall pay all royalties and license fees. The Construction Manager shall defend suits or claims for infringement of patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is specifically required by the Contract Documents. However, if the Construction Manager has reason to believe that the required design, process or product is an infringement of a patent, the Construction Manager shall be responsible for such loss unless such information is promptly furnished in writing to the Architect and the Owner.

Section 4.15 Indemnification.

4.15.1 **Indemnity by Construction Manager.** To the fullest extent permitted by law, the Construction Manager shall indemnify, reimburse, hold harmless, and defend the Indemnitees from and against all claims, liabilities, damages, losses, costs and expenses, including, but not limited to, reasonable attorneys' fees and legal expenses ("Loss"), but only to the extent caused in whole or in part by (i) the Construction Manager's failure to perform its obligations under the Ballpark Facility Construction Management Agreement, (ii) the intentional wrongful misconduct of the Construction Manager or any of its Subcontractors or Sub-subcontractors, and (iii) the negligence or recklessness of the Construction Manager or any of its Subcontractors or Sub-subcontractors and which Loss results in in bodily injury, sickness, disease or death, or damage to property (including loss of use thereof). To the extent required by Florida law to make the provisions of any indemnification, defense or hold harmless provision of the Contract Documents enforceable (and otherwise this sentence does not apply), the liability under such indemnification, hold harmless and defense obligation shall not exceed \$100,000,000.00, the amount of which bears a reasonable commercial relationship to the Contract and was part of the project specifications or bid documents. In the event that any indemnification, defense or hold harmless provision of the Contract Documents is determined to be unenforceable, the provision shall be reformed in accordance with the mutual intent of the Construction Manager and the Owner to provide indemnification, defense, and hold harmless provisions to the maximum extent allowed by Florida law and for the benefit of the Indemnitees. The Contractor shall ensure that any and all Subcontractors include this express paragraph for the benefit of the Indemnitees.

4.15.2 **Architect's Negligence Not Covered by Indemnity.** The obligations of the Construction Manager under this Section 4.15 shall not extend to the liability of the Architect, the Architect's consultants, and the agents and employees of any of them arising out of their negligence.

4.15.3 **Lien Claims.** The Construction Manager acknowledges that the Owner is a governmental entity, and, accordingly, no lien can be imposed on the Owner's property. The Construction Manager shall indemnify, hold harmless (including reasonable attorneys' fees and legal expenses) and defend the Owner, the property owner, and the Owner's Lenders, if any, from and against any assertion of lien claims by the Construction Manager's Subcontractors and suppliers (of any tier) and against any assertion of security interests by suppliers of goods or materials. The Construction Manager shall discharge any lien filed against the Ballpark Facility Project or asserted against the Owner, Property Owner, or the Owner's Lender by such Subcontractors or suppliers within ten (10) days of written demand by the Owner, whether or not the Construction Manager believes the claim is valid. If allowed or required by the state where the Ballpark Facility Project is located, the Construction Manager shall file (and post, as applicable) a Notice of Commencement, or similar notice, in accordance with applicable statutes, to protect the Ballpark Facility Project and Owner against liens. Such Notice of Commencement shall announce the fact that no lien rights are available, and that a public payment bond is in place to ensure payment of any amounts owed. The Construction Manager shall comply with all notice requirements in connection therewith, promptly notify the Owner of any notices received from subcontractors or suppliers with respect thereto, and provide copies of such notices to the Owner.

ARTICLE 5 **SUBCONTRACTORS**

Section 5.1 Definitions. See Article 1 of the "Ballpark Facility Construction Management Agreement".

Section 5.2 Award of Subcontracts and Other Contracts.

5.2.1 Award Procedure.

5.2.1.1 All subcontracts shall be procured on the basis of best value offered to the Ballpark Facility Project and shall be lump sum subcontracts. There will be two processes utilized for the best value selection of subcontractors: one-step RFP and two-step RFQ/RFP. The complexity of the work package, completeness of the Contract Documents at the time of procurement, and the size of the package will determine if one-step or two-step procurement will be utilized, as approved by the Owner.

5.2.1.2 One-step process: Construction Manager shall, for each scope package: (1) draft a request for proposal specific to the scope of work (RFP); (2) publish an RFP as an open invitation to offer a proposal, using any applicable timeframes established by the Owner; (3) advertise the RFP and conduct public outreach to prospective subcontractors; (4) conduct an advertised pre-proposal meeting with prospective subcontractors; (5) publish RFP addenda as necessary; (6) receive proposals; (7) conduct an opening of proposals; (8) review and reconcile

proposals to the extent possible based on the proposals themselves; (9) further reconcile and evaluate the proposals based on the criteria established under Section 5.2.1.4 below; (10) provide a recommendation of award by Construction Manager for the best value subcontractor; and (11) if there are no objections from the Owner to the recommendation, award a lump sum subcontract to the proposer that offers the best value to the Project, which may or may not be the proposer offering the lowest price.

5.2.1.3 [Reserved.]

5.2.1.4 Construction Manager will, for each scope package, prepare weighted criteria to be used to determine the proposer offering the best value to the Project. These criteria may include price, project approach, qualifications on similar scale and project type, technical competence, key personnel, relevant experience, resource capacity, financial strength and bonding capacity, community participation, whether the firm is a certified minority business enterprise, responses of references, safety approach and safety record, quality approach and quality record, commitment to schedule, and other criteria to be determined by Construction Manager. Proposals will be required to include a proposed lump sum price and information that will permit the Construction Manager to evaluate the proposal based on the criteria established.

5.2.1.5 The Construction Manager shall coordinate with the Owner before conducting any procurement process hereunder, and the Owner reserves the right to change the procurement process and criteria described herein for any particular procurement, where reasonably necessary to comply with applicable law and/or to ensure competitive selection of subcontractors and suppliers.

5.2.2 **Objections.** The Construction Manager shall not contract with any such proposed person or entity to whom the Owner or the Architect has made reasonable objection under the provisions of Section 5.2.1. The Construction Manager shall prepare a list of potential proposers for each package and transmit such list to the Owner and Architect as soon as reasonably possible. Owner or Architect may make reasonable objection to any potential proposer, and if Owner or Architect does so, shall make such objection known to the Construction Manager in writing as soon as reasonably possible.

5.2.3 **Substitutions.** As to Guaranteed Maximum Price Contracts, if the Owner or the Architect has reasonable objection to any such proposed person or entity and the Owner directs the acceptance of a Subcontractor's bid in excess of the bid recommended by the Construction Manager for the same work, such excess shall be treated as a change in the Work, the Guaranteed Maximum Price shall be increased or decreased by the difference in cost occasioned by such substitution, and an appropriate Change Order shall be issued. However, no increase in the Guaranteed Maximum Price shall be allowed for any such substitution unless the Construction Manager has acted promptly and responsively in submitting names as required by this Section 5.2.

5.2.4 **Objections to Substitutions.** The Construction Manager shall make no substitution for any Subcontractor, person or entity previously selected if the Owner makes reasonable objection to such substitution.

Section 5.3 Subcontractual Relations.

5.3.1 Nature of Subcontractor's Obligations. By an appropriate agreement, written where legally required for validity, the Construction Manager shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Construction Manager by the terms of the Contract Documents, and to assume toward the Construction Manager all the obligations and responsibilities which the Construction Manager, by these Documents, assumes toward the Owner and the Architect. Said agreement shall preserve and protect the rights of the Owner and the Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that the subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the Construction Manager-Subcontractor agreement, the benefit of all rights, remedies and redress against the Construction Manager that the Construction Manager, by these Documents, has against the Owner. Where appropriate, the Construction Manager shall require each Subcontractor to enter into similar agreements with his Sub-subcontractors. The Construction Manager shall make available to each proposed Subcontractor, prior to the execution of the Subcontract, copies of the Contract Documents to which the Subcontractor will be bound by this Section 5.3, and identify to the Subcontractor any terms and conditions of the proposed subcontract agreement which may be at variance with the Contract Documents. Each Subcontractor shall similarly make copies of such Documents available to its Sub-subcontractors. For Guaranteed Maximum Price contracts, the Owner may require Construction Manager to furnish copies of executed subcontracts and purchase orders, including prices.

5.3.2 Subcontract Requirements. Notwithstanding any provision of Section 5.3.1, any part of the Work performed for the Construction Manager by a Subcontractor or its Sub-subcontractor shall be pursuant to a written subcontract between the Construction Manager and such Subcontractor (or the Subcontractor and its Sub-subcontractor at any tier), which shall be prepared on a form of subcontract satisfactory to the Owner. Each such subcontract shall, where the context so requires, contain provisions that:

- .1 require such Work to be performed in accordance with the requirements of the Contract Documents;
- .2 [Reserved.]
- .3 require the Subcontractor to carry and maintain insurance coverage in accordance with the requirements of the Contract Documents, and to file certificates of such coverage with the Construction Manager;
- .4 require the Subcontractor to submit certificates and waivers of liens for Work completed by it and by its Sub-subcontractors as a condition to the disbursement of the progress payment next due and owing, and on the forms referenced in the Contract Documents;
- .5 require submission to the Construction Manager or the Subcontractor, as the case may be, of applications for payment in a form approved by the Owner, and which provide for ten percent (10%) retainage, together with

clearly defined invoices and billings supporting all such applications under each subcontract to which the Construction Manager is a party;

- .6 require the Subcontractor to furnish, so far as practicable, unit prices and any other formulae for use in the determination of costs of changes in the Work;
- .7 require the Subcontractor to furnish to the Construction Manager in a timely fashion all information necessary for the preparation and submission of the reports required herein;
- .8 require that each Subcontractor continue to perform under its subcontract in the event the Contract is terminated and the Owner shall request such Subcontractor to continue such performance;
- .9 require each Subcontractor to maintain its records in accordance with the provisions of the Ballpark Facility Construction Management Agreement, and to permit the Owner to exercise as to each such Subcontractor the audit rights granted under the Ballpark Facility Construction Management Agreement, and to otherwise audit "time and material" and overtime costs to be charged to the Ballpark Facility Project as permitted herein;
- .10 require the Subcontractor to agree to any relevant unit prices set forth in the Contract Documents;
- .11 require each Subcontractor to remove all debris created by its activities;
- .12 require each Subcontractor to indemnify, reimburse, hold harmless, and defend the Indemnitees from and against all claims, liabilities, damages, losses, costs and expenses, including, but not limited to, reasonable attorneys' fees and legal expenses ("**Subcontract Loss**"), but only to the extent caused in whole or in part by (i) the Subcontractor's failure to perform its obligations under the applicable subcontract, (ii) the intentional wrongful misconduct of the Subcontractor or any of its subcontractors, and (iii) the negligence or recklessness of the Subcontractor or any of its subcontractors and which Subcontract Loss results in in bodily injury, sickness, disease or death, or damage to property (including loss of use thereof); and
- .13 if required by law, require each Subcontractor to abide by any applicable federal, state law, ordinance, or regulation with respect to equal employment opportunity and similar matters.

5.3.3 **Contract with Affiliates.** The Construction Manager shall not enter into any subcontract, contract, agreement, purchase order, lease or other arrangement ("Arrangement") for the furnishing of any portion of the materials, services, equipment or Work with any party or entity if such party or entity is an Affiliated Construction Manager Entity (as defined below), unless such Arrangement has been approved by the Owner, after full disclosure in writing by the

Construction Manager to the Owner of such affiliation or relationship and all details relating to the proposed Arrangement. The term “Affiliated Construction Manager Entity” means any entity related to or affiliated with the Construction Manager or with respect to which the Construction Manager has direct or indirect ownership or control, including, without limitation, any entity owned in whole or part by the Construction Manager; any holder of more than 10% of the issued and outstanding shares of, or the holder of any interest in, the Construction Manager; any entity in which any officer, director, employee, partner or shareholder (or member of the family of any of the foregoing persons) of the Construction Manager or any entity owned by the Construction Manager has a direct or indirect interest, which interest includes, but is not limited to, that of a partner, employee, agent or shareholder.

5.3.4 **Self-Performed Work.**

- .1 Neither Construction Manager nor any Affiliated Construction Manager Entity shall propose on any scope package except to the extent approved in writing and in advance by Owner. With the prior written consent of Owner, Construction Manager (or an Affiliated Construction Manager Entity) shall be permitted to submit a sealed proposal for such self-performed Work pursuant to the competitive bidding procedures applicable to all bidders. In such instance, the opening, review and advice with respect to award and/or rejection of such proposals shall be managed by Owner.
- .2 In such instances, the following requirements shall also apply:
 - (a) Construction Manager shall review the self-performed Work (including the bid packaging plan) with Owner prior to finalizing the proposal package.
 - (b) if less than two other proposals from responsible proposers are submitted for self-performed Work, then Owner may, at its option, provide for a third party review of such proposals to determine if the Construction Manager’s (or its Affiliated Construction Manager Entity’s) proposal provides the best value to the Project;
 - (c) Construction Manager shall forward copies of all inquiries to Owner and Owner’s Representative;
 - (d) Construction Manager or an Affiliated Construction Manager Entity shall not, in the proposal, use any of the General Conditions Costs to support the self-performed Work or use the General Conditions Costs for self-performed Work on any terms or conditions different from the terms or conditions known to all other proposers; and
 - (e) the solicitation for bids on self-performed Work shall specifically state that Construction Manager or an Affiliated Construction Manager Entity shall have the right to submit a sealed proposal on self-performed Work.
- .3 If the foregoing procedures are not followed, then Owner shall have the right to reject the proposal of Construction Manager or an Affiliated Construction Manager Entity for the self-performed Work. In the event that the Construction Manager anticipates limited participation of responsible proposers in any portion of the Work, the Construction Manager shall notify the Owner thirty (30) days prior to the receipt of

proposal packages. If the Construction Manager fails to notify the Owner as stated above, the Owner may elect to reject the Construction Manager or its Affiliated Construction Manager Entity's proposal. If Construction Manager is the sole proposer on a scope of Work, and Owner elects a third party review as outlined in Section 5.3.4.2(b) and such review indicates that Construction Manager's proposal was unreasonably high, then the Owner and Construction Manager shall engage in a reconciliation to verify the Construction Manager's proposal is the best value for the Project.

Section 5.4 Contingent Assignment of Subcontracts. Each subcontract agreement for a portion of the Work is hereby assigned by the Construction Manager to the Owner provided that:

- .1 such assignment is effective only after termination of the Ballpark Facility Construction Management Agreement by the Owner pursuant to Article 13, and only for those subcontract agreements which the Owner accepts by notifying the Subcontractor in writing; and
- .2 such assignment is subject to the prior rights of the surety, if any, obligated under any bond relating to the Ballpark Facility Construction Management Agreement; and
- .3 the Owner may further assign such subcontract agreements to another general contractor.

Section 5.5 Union Issues. The Construction Manager shall be responsible for managing and endeavoring to resolve all labor disputes resulting from the performance of the Work, unless caused by the Owner's use of non-union labor. If any labor union disputes occur due to the use of any non-union trade on the Ballpark Facility Project retained by the Construction Manager or any Subcontractor, the Construction Manager shall be responsible for responding to all union demands and actions in accordance with Applicable Law and for managing the resolution of any such dispute. The Guaranteed Maximum Price and Contract Time shall not be subject to adjustment due to cost incurred by the Construction Manager or delays in the Work arising from the Construction Manager's or any Subcontractor's use of any non-union trade in the performance of the Work, and the Construction Manager shall bear all costs associated with responding to any resulting union action and shall endeavor in good faith and with reasonable diligence to resolve any disputes or otherwise respond to any resulting union action so as to minimize any disruption in the Work.

ARTICLE 6

WORK BY OWNER OR BY SEPARATE CONSTRUCTION MANAGERS

Section 6.1 Owner's Right to Perform Work and to Award Separate Contracts.

6.1.1 **Reservation by Owner.** The Owner reserves the right to perform construction or operations related to the Ballpark Facility Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Ballpark Facility Project or other construction or operations on the site. Specifically, the Construction Manager acknowledges that

additional work will be ongoing adjacent to the Ballpark Facility Site on the Site and Construction Manager agrees to coordinate its work with that of any such contractors to avoid interference or conflicts with the other's work, and shall participate in the preparation of coordinated drawings in areas of congestion, if requested by the Owner. Construction Manager's obligations with respect to separate contractors in this Article 6 shall also apply with respect to any such contractors who are performing work on the adjacent Site.

6.1.2 **Meaning of "Construction Manager" in Separate Contracts.** When separate contracts are awarded for different portions of the Ballpark Facility Project or other construction or operations on the site, the term "Construction Manager" in the Contract Documents in each case shall mean the Construction Manager who executes each separate Owner-Construction Manager Agreement.

6.1.3 **Coordination of Activities.** The Owner, at its option, either (i) shall provide for coordination of the activities of the Owner's own forces and of each separate contractor (or tenant contractor) with the Work of the Construction Manager, who shall cooperate with them or (ii) shall require that the Construction Manager provide for such coordination, which the Construction Manager shall perform when directed by Owner to do so. The Construction Manager shall participate with other separate contractors and the Owner in reviewing their construction schedules when directed to do so. The Construction Manager shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement with Owner. The construction schedules shall then constitute the schedules to be used by the Construction Manager, separate contractors and the Owner until subsequently revised. This Section shall not Completion Dates required by the Contract Documents, which can only be modified by written Change Order signed by both parties.

Section 6.2 Mutual Responsibility.

6.2.1 **Coordination with Owner and Separate Contractors.** The Construction Manager shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities and shall connect and coordinate the Construction Manager's construction and operations with theirs as required by the Contract Documents.

6.2.2 **Reporting of Discrepancies.** If part of the Construction Manager's Work depends upon proper execution of construction or operations by the Owner or a separate contractor, the Construction Manager shall, prior to proceeding with that portion of the Work, promptly report to the Owner apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Construction Manager so to report shall constitute an acknowledgment that the Owner's or separate contractors' completed or partially completed construction is fit and proper to receive the Construction Manager's Work, except as to latent defects not then reasonably discoverable.

6.2.3 **Delay Cost.** Costs caused by unforeseen delays in the critical path activities of the Work, or by improperly timed activities or defective construction, shall be borne by the party responsible therefor.

6.2.4 **Damage to Construction or Property of Owner or Separate Contractors.** The Construction Manager shall promptly remedy damage caused by the Construction Manager to completed or partially completed construction, or to property of the Owner or separate contractors as provided in Section 9.2.5.

6.2.5 **Disputes Regarding Damage to Work or Property of Separate Contractors.** If any separate contractor claims or alleges that the Construction Manager has caused damage to the work or property of such separate contractor, the Construction Manager shall promptly attempt to resolve the dispute. If any separate contractor initiates legal or any other proceedings against the Owner on account of any damage alleged to have been caused by the Construction Manager, the Owner shall notify the Construction Manager, who shall defend such proceedings at its own expense, and if any judgment or award against the Owner arises therefrom, the Construction Manager shall pay or satisfy it and shall reimburse the Owner for all attorneys' fees and court or other costs which the Owner has incurred over and above those paid for directly by the Construction Manager.

6.2.6 **Same Responsibilities for Owner and Separate Contractors.** The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Construction Manager in Section 4.12.

Section 6.3 Owner's Right to Clean Up. If a dispute arises among the Construction Manager, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish as described in Section 4.14, the Owner may clean up and allocate the cost among those responsible as the Owner determines to be just and equitable.

ARTICLE 7 **TIME**

Section 7.1 Definitions.

7.1.1 **"Contract Time"**. Unless otherwise provided, "Contract Time" is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work, and/or any other Milestones established by the Contract Documents.

7.1.2 **Date of Commencement of Work.** The date of commencement of the Work is the date established in the Notice to Proceed. If there is no Notice to Proceed, it shall be the date of the Ballpark Facility Construction Management Agreement or such other date as may be established therein.

7.1.3 **Date of Substantial Completion.** The date of Substantial Completion of the Work or designated portion thereof is the date established pursuant the provisions of Section 8.4.

7.1.4 **"Day"**. The term "day" as used in the Contract Documents means calendar day, unless otherwise expressly defined on the Contract Documents.

Section 7.2 Progress and Completion.

7.2.1 **Time of Essence.** Time limits stated in the Contract Documents are of the essence of the Ballpark Facility Construction Management Agreement. By executing the Agreement, the Construction Manager confirms that the Contract Time is a reasonable period for performing the Work.

7.2.2 **Premature Commencement.** The Construction Manager shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required of the Construction Manager by the Ballpark Facility Construction Management Agreement. The date of commencement of the Work shall not be changed by the effective date of such insurance. Unless the date of commencement is established by a Notice to Proceed given by the Owner, the Construction Manager shall notify the Owner in writing not less than five days (or longer if Owner so requires) before commencing the Work, so as to permit the timely filing of mortgages and other security interests.

7.2.3 **Commencement and Completion.** The Construction Manager shall begin the Work on the date of commencement, shall thereafter proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time, and shall achieve any milestone dates or other completion dates referenced in the Contract Documents.

Section 7.3 Delays and Extensions of Time.

7.3.1 **Extensions of Time.** If the critical path activities of the Work are delayed at any time by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner, or by changes ordered in the Work (pursuant to the provisions of the Contract Documents), or by economic industry-wide strikes, unavoidable casualties, armed conflict (with or without declaration of war) involving the United States of America or other causes beyond the Construction Manager's control, and which could not have been anticipated by it, then the Contract Time shall be equitably adjusted by Change Order. In the event of delay to the critical path activities of the Work caused by the Owner, the Architect, or the employees or agents of either, Construction Manager shall also be entitled to an adjustment in the Guaranteed Maximum Price only for those additional field overhead costs actually incurred as a result of delay to the critical path activities of the Work, and no other damages or costs of any kind.

7.3.2 **Claims for Increase in Contract Time.** If the Construction Manager wishes to make a claim for an increase in the Contract Time, written notice as provided herein shall be given within ten (10) days after occurrence of the event giving rise to the delay. Construction Manager shall submit its claim (including evidence supporting a delay in the critical path activities of the Work) within thirty (30) days of the notice set forth above, and if such notice or claim is not provided in writing within the time required in this Section, any claim shall be deemed waived by the Construction Manager. The Construction Manager's claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay only one claim is necessary. Construction Manager shall not rely on any purported verbal waiver of this provision. For purposes of this Paragraph, notice of claims shall

be provided to the Owner as required by the Ballpark Facility Construction Management Agreement, and notice of claims provided by other means, such as by e-mail or meeting minutes, shall not constitute sufficient notice.

7.3.3 **Adverse Weather Conditions.** If adverse weather conditions are the basis for a claim for additional time as set forth in Section 4.3, the Construction Manager shall provide the following, in addition to any other notice and claim requirements set forth in the Contract Documents:

- .1 Document such claim with substantiating data as reasonably requested by Owner;
- .2 Submit a “Make-Up Work Plan and Schedule” for the Owner’s review and approval, which provides for non-overtime and non-accelerated make-up Work by its critical path and other necessary trades such that make-up Work is performed at no additional cost; and
- .3 Provide documentation proving an adverse effect on the critical path activities of the Work;

If a time extension is granted, Construction Manager agrees to produce a recovery plan that provides for the most economical and beneficial path to regain otherwise lost time.

ARTICLE 8 **PAYMENTS AND COMPLETION**

Section 8.1 Schedule of Values. Before the first Application for Payment, the Construction Manager shall submit to the Owner a proposed Schedule of Values meeting the requirements of the Ballpark Facility Construction Management Agreement. Such schedule, if approved by the Owner, shall be used solely as a basis for evaluating the Construction Manager’s Applications for Payment.

Section 8.2 Applications for Payment.

8.2.1 **Time for Submission, Disputes with Subcontractors.** Applications for Payment shall be submitted by Construction Manager to Owner from time to time, as provided in the Ballpark Facility Construction Management Agreement. Such applications may not include requests for payment of amounts the Construction Manager does not intend to pay to a Subcontractor or material supplier because of a dispute or other reason.

8.2.2 **Payment for Materials and Equipment.** Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, with the approval of the Owner. If approved in advance by the Owner, in its sole discretion, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon Owner’s Lender agreeing to advance funds for such stored materials, compliance by the Construction Manager with procedures satisfactory to the Owner and its Lender to establish the

Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include applicable insurance, storage and transportation to the site for such materials and equipment stored off the site. The Construction Manager shall submit, within thirty (30) days after the date of commencement of the Work and thereafter as the Owner requires, schedules of materials and equipment for each category or subcontract for which application for payment will be made, which schedules shall include items, quantities, value or unit prices with extensions, and the month in which Application for Payment with respect thereto is expected to occur. Schedules shall be updated on a monthly basis and submitted as an attachment to the Construction Manager's Application for Payment.

8.2.3 **Warranties Deemed Included in Application for Payment.** By submitting any Application for Payment, the Construction Manager shall be deemed to warrant that title to all Work covered by such Application for Payment passes to the Owner at the time of the Application for Payment, and that all Work for which payments theretofore shall have been received from the Owner is free and clear of liens, claims, security interests or encumbrances in favor of the Construction Manager, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

Section 8.3 Progress Payments.

8.3.1 **Amounts and Times Governed by Ballpark Facility Construction Management Agreement.** Progress payments shall be made by the Owner to the Construction Manager in the amounts and at the times provided in the Ballpark Facility Construction Management Agreement.

8.3.2 **Owner's Right to Refuse to Make Payment.** Without limiting any other right or remedy which it may have, the Owner may refuse to make any payment to such an extent as may be necessary, in the Owner's good faith opinion, to protect the Owner from loss because of:

- .1 defective Work not remedied;
- .2 third-party claims filed or reasonable evidence indicating probable filing of such claims;
- .3 failure of the Construction Manager to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed without exceeding the Guaranteed Maximum Price;
- .5 damage to the Owner or another contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the difference between the Guaranteed Maximum Price and the amount paid to the Construction Manager would not be adequate to cover damages (including liquidated damages) for the anticipated delay;

- .7 persistent failure to carry out the Work in accordance with the Contract Documents; or
- .8 accrued liquidated damages (if applicable to this agreement).

When the above reasons for withholding payment are removed, payment will be made for such amounts withheld.

8.3.3 **Payments to Subcontractors.** The Construction Manager shall promptly pay each Subcontractor, upon receipt of payment from the Owner, out of the amount paid to the Construction Manager on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to the Construction Manager on account of such Subcontractor's portion of the Work. The Construction Manager shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in similar manner. If required by the Owner or its Lender, if any, the Construction Manager shall send to the Owner, within five days of receipt of payment from the Owner, copies of checks paid for all items of the Construction Manager's costs listed in the Application for Payment that were not paid prior to the date on which the Application for Payment was submitted. All such payments shall be made consistent with the provisions of Florida's Local Government Prompt Payment Act, Sections 218.70, et seq., Florida Statutes.

8.3.4 **No Obligation to See to Payment.** Neither the Owner nor the Architect shall have any obligation to pay or to see to the payment of any moneys to any Subcontractor except as may otherwise be required by law. However, Owner reserves the right to issue joint checks to Construction Manager and various Subcontractors and suppliers as may be necessary to protect Owner's interests.

8.3.5 **Payment Does Not Constitute Acceptance of Work.** No Application for Payment, nor any payment on account thereof by the Owner, nor any partial or entire use or occupancy of the Ballpark Facility Project by the Owner, shall constitute an acceptance of any Work not in accordance with the Contract Documents.

Section 8.4 Substantial Completion.

8.4.1 **Definition of Substantial Completion.** Substantial Completion is the stage of Ballpark Facility Project when the Construction Manager has achieved the following: (i) the Construction Manager has completed all Work in accordance with the Contract Documents, except for minor Punch List items; (ii) all required governmental inspections and certifications have been made and posted; and (iii) a certificate of occupancy (or its equivalent, as required by Governmental Authorities) is obtained. As a further condition of Substantial Completion acceptance, and pursuant to Section 218.735(7), Florida Statutes, the Construction Manager shall certify that all remaining Work, including all Punch List Work, will be completed within sixty (60) consecutive calendar days following the date of Substantial Completion unless mutually agreed otherwise by Owner and Construction Manager.

8.4.2 **Procedure; Punch List.** When the Construction Manager considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Construction Manager shall prepare and submit to the Owner a comprehensive list of items to be completed or corrected. The Construction Manager shall proceed promptly to complete and correct items on the list. Failure to include an item on such list does not alter the responsibility of the Construction Manager to complete all Work in accordance with the Contract Documents. Upon receipt of the Construction Manager's list, the Owner will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Owner's inspection discloses any item, whether or not included on the Construction Manager's list, which is not in accordance with the requirements of the Contract Documents, the Construction Manager shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Owner. The Construction Manager shall then submit a request for another inspection by the Owner to determine Substantial Completion. The parties agree that the procedures herein satisfy the requirements of Section 218.735(7), Florida Statutes.

8.4.3 **Certificate of Substantial Completion.** When the Work or designated portion thereof is substantially complete, the Architect or Owner will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Construction Manager for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Construction Manager shall finish all remaining items on the punchlist accompanying the Certificate. The Certificate of Substantial Completion shall be submitted to the Owner and Construction Manager for their written acceptance of responsibilities assigned to them in such Certificate.

Section 8.5 Partial Occupancy or Use.

8.5.1 **Partial Occupancy.** The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Construction Manager, provided such occupancy or use is consented to by the property insurance carrier and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Construction Manager have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. Consent of the Construction Manager to partial occupancy or use shall not be unreasonably withheld.

8.5.2 **Joint Inspection.** Immediately prior to such partial occupancy or use, the Owner, Construction Manager and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

8.5.3 **Partial Occupancy Does Not Constitute Acceptance of Work.** Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

8.5.4 **Retainage.** When the Construction Manager has achieved Substantial Completion as required by the Contract Documents, the Owner shall release retainage within thirty (30) days after receipt of a proper Application for Payment as required by the Contract Documents, except that Owner may retain an amount equal to one hundred fifty percent (150%) of the value of all Punch List Work and other incomplete or defective Work, as such value is determined by the Owner.

Section 8.6 Final Completion and Final Payment.

8.6.1 **Definition of Final Completion.** Final Completion shall occur when (i) all Work, including any items not required for Substantial Completion are complete in accordance with the Contract Documents and a Certificate of Final Completion has been issued, as provided in Paragraph 8.6.2. and (ii) the Construction Manager has delivered to the Owner the following:

- .1 an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied;
- .2 a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be cancelled, substantially modified or allowed to expire until at least thirty (30) days' prior written notice has been given to the Owner;
- .3 a written statement that the Construction Manager knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents;
- .4 consent of the surety to final payment;
- .5 if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as required by the Contract Documents. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Construction Manager may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Construction Manager shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees; and
- .6 all closeout documents, warranties and similar documents required by the Contract Documents.

8.6.2 **Certificate of Final Completion.** Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner and the Architect will promptly make such inspection. When the Owner and the

Architect find the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly jointly issue a Certificate of Final Completion and Acceptance stating that (i) to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's observations and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents, and (ii) the completed Work has been accepted by the Owner.

8.6.3 **Delay of Final Completion.** If, after Substantial Completion of the Work, Final Completion thereof is materially delayed through no fault of the Construction Manager or by issuance of Change Orders affecting Final Completion, and the Owner and Architect so confirm, the Owner shall, upon application by the Construction Manager and approval by the Owner, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than the retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Construction Manager to the Owner as a further condition precedent to its entitlement to receive such payment.

8.6.4 **Acceptance of Final Payment Constitutes Waiver of Claims by Construction Manager.** Acceptance of final payment by the Construction Manager, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing in accordance with the terms of the Contract Documents, and identified by that payee as unsettled at the time of final Application for Payment.

8.6.5 **Final Completion as Condition Precedent to Final Payment.** Final Completion shall be a condition precedent to final payment.

ARTICLE 9 **PROTECTION OF PERSONS AND PROPERTY**

Section 9.1 Safety Precautions and Programs.

9.1.1 **Construction Manager's Responsibility.** The Construction Manager shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract. Before commencing Work, the Construction Manager shall submit the Construction Manager's safety program to the Owner for review, and shall comply with its program at all times during the Ballpark Facility Project.

9.1.2 **Discovery of Hazardous Materials.** In the event the Construction Manager encounters on the site material reasonably believed to be asbestos or polychlorinated biphenyl ("PCB"), or any other substance defined as a hazardous material by any federal, state or local authority ("Hazardous Materials"), which has not been rendered harmless, the Construction Manager shall immediately stop Work in the area affected and report the condition to the Owner in writing. The Construction Manager shall not report environmental conditions to governmental agencies without prior consultation with Owner; provided, however, that nothing herein shall preclude the Construction Manager from providing required notices or otherwise complying with Applicable Law. Except as otherwise provided in Paragraph 9.1.3, the Owner, at its expense,

shall be responsible for obtaining the services of a licensed laboratory to verify the presence or absence of the Hazardous Materials reported by the Construction Manager and, in the event such material or substance is found to be present, to verify that it has been rendered harmless. The Work in the affected area shall not thereafter be resumed except by written agreement of the Owner and Construction Manager if in fact the material is hazardous and has not been rendered harmless. The Work in the affected area shall be resumed immediately following the occurrence of any one of the following events:

- .1 the Owner causes remedial work to be performed which results in the absence of the Hazardous Materials; or
- .2 the Owner and the Construction Manager, by written agreement, decide to resume performance of the Work; or
- .3 the Work may safely and lawfully proceed, as determined by an appropriate governmental authority or as evidenced by a written report to both the Owner and the Construction Manager, which is prepared by an environmental engineer reasonably satisfactory to both the Owner and the Construction Manager.

9.1.3 **Hazardous Materials for Which Construction Manager is Responsible.** Notwithstanding Section 9.1.2, Construction Manager shall be solely responsible for the remediation, disposal, and transport of all Hazardous Materials (1) brought to or created at the Site by the Construction Manager or anyone working under Construction Manager, or (2) which were pre-existing at the Site but require remediation, disposal or transport due to the negligence of Construction Manager or Construction Manager's breach of this Agreement.

Section 9.2 Safety of Persons and Property.

9.2.1 **Reasonable Precautions to Prevent Loss to Persons and Property.** The Construction Manager shall be responsible for security for the Ballpark Facility Site and shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

- .1 employees on the Work and other persons;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Construction Manager or the Construction Manager's Subcontractors or Sub-subcontractors; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

9.2.2 **Compliance with Law.** The Construction Manager shall give notices and comply with Applicable Law bearing on safety of persons or property or their protection from damage, injury or loss. The Construction Manager shall reimburse and indemnify the Owner for

any fines, penalties or assessments levied against the Owner as a result of violations of safety regulations at the Ballpark Facility Site.

9.2.3 **Signs and Warnings.** The Construction Manager shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notifying owners and users of adjacent sites and utilities.

9.2.4 **Explosives and Other Hazardous Materials.** When use or storage of explosives or other Hazardous Materials or equipment or unusual methods are necessary for execution of the Work, the Construction Manager shall exercise utmost care and carry on such activities under supervision of properly qualified personnel, and with prior written approval of the Owner. Construction Manager is the owner of all Hazardous Materials brought to the Ballpark Facility Site by the Construction Manager, and shall be strictly liable for such Hazardous Materials while they are being stored, handled or installed at the Ballpark Facility Site. The Construction Manager shall submit Material Safety Data Sheets and other documentation required by the Owner, the Contract Documents or Applicable Law. The Construction Manager shall strictly comply with all Applicable Laws relating to environmental matters.

9.2.5 **Construction Manager to Remedy Damage or Loss.** The Construction Manager shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents), to property referred to in Sections 9.2.1.2 and 9.2.1.3 caused in whole or in part by the Construction Manager, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Construction Manager is responsible under Sections 9.2.1.2 and 9.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Construction Manager. The foregoing obligations of the Construction Manager are in addition to the Construction Manager's obligations under Section 4.15.

9.2.6 **Designation of Safety Officer.** The Construction Manager shall designate a responsible member of its organization at the site whose duty shall be to monitor and supervise the safety program, and otherwise prevent accidents. This person shall be the Construction Manager's superintendent unless otherwise designated by the Construction Manager in writing to the Owner and the Architect.

9.2.7 **Overloading of Work.** The Construction Manager shall not load or permit any part of the Work to be loaded beyond its designated capacity, and will obtain the approval of the Architect prior to storing any equipment or materials on any part of the Work.

9.2.8 **Protection of Adjoining Property and Persons.** Construction Manager shall protect adjoining private or municipal property and shall provide barricades, temporary fences, and covered walkways required to protect the safety of persons (including invitees and passersby), as required by prudent construction practices, local building codes, ordinances and other laws, and the Contract Documents. Construction Manager shall prepare and submit to the Owner, for its approval, a site utilization plan showing the location of its on-site office, if any, all

perimeter fencing, protected walkways, staging areas and haul roads. Such plan, as same may be amended and updated from time to time by Construction Manager with Owner's approval, shall be maintained at the Ballpark Facility Site to reflect current conditions. Owner's right of approval hereunder shall not be deemed to lessen Construction Manager's responsibility under this Section 9.2.8.

9.2.9 **Protection Against Elements.** Construction Manager shall maintain Work, materials and apparatus free from injury or damage from rain, wind, storms, frost or heat. If adverse weather makes it impossible to continue operations safely in spite of weather precautions, the Construction Manager shall cease Work and notify the Owner and the Architect of such cessation. The Construction Manager shall not permit open fires on the Ballpark Facility Site.

9.2.10 **Repair of Damage Resulting from Work.** In addition to its other obligations pursuant to this Article 9, the Construction Manager shall, at its sole cost and expense, promptly repair any damage or disturbance to walls, utilities, sidewalks, curbs and the property of third parties (including municipalities) resulting from the performance of the Work, whether by it or by its Subcontractors or Sub-subcontractors. The Construction Manager shall maintain streets in good repair and traversable condition.

Section 9.3 Emergencies. In any emergency affecting the safety of persons or property, the Construction Manager shall act, at its discretion, to prevent threatened damage, injury or loss. Any additional compensation or extension of time claimed by the Construction Manager on account of emergency work shall be determined in accordance with Article 11.

ARTICLE 10 **INSURANCE AND BONDS**

Section 10.1 Insurance. The terms and conditions of all insurance to be provided by Construction Manager are set forth in **Exhibit M** to the Ballpark Facility Construction Management Agreement. Construction Manager shall pay all deductibles, self-insured retentions and co-payments upon such insurance without reimbursement as a Cost of the Work.

Section 10.2 Bonds.

10.2.1 **Construction Manager's Surety Bonds.** The Construction Manager shall provide to the Owner a letter from the Construction Manager's surety indicating the surety's willingness to issue payment and performance bonds in connection with the Ballpark Facility Construction Management Agreement. Construction Manager shall furnish to Owner and maintain performance and payment bonds in the precise forms attached to the Ballpark Facility Construction Management Agreement as **Exhibit N**. The bonds shall conform to the requirements of Section 255.05, Florida Statutes and other applicable law. Such bonds shall be issued by a surety reasonably acceptable to Owner, shall name the Owner and its Lender as obligees, shall be assignable to any Owner Permitted Assignee under Section 14.2, and shall be in an amount at least equal to the Guaranteed Maximum Price. All dual obligee rider language is subject to the approval of the Owner and the Lender. The Construction Manager shall add ANLBC, the City, Lender, and the County as obligees.

10.2.2 **Subcontractor Default Protection / Subcontractor Bonds.** The Construction Manager shall comply with any Lender requirements for bonding or subcontractor default insurance for Subcontractors and Sub-subcontractors. Subject to such requirements, the Construction Manager may, if approved by the Owner, enroll Subcontractors and Sub-subcontractors in a subcontract default insurance program or procure surety bonds from Subcontractors and Sub-subcontractors. The costs of such bonds or subcontractor default insurance shall be included in the Guaranteed Maximum Price.

10.2.3 **Construction Manager to Furnish Copies of Bonds.** Upon the request of any person or entity appearing to be a potential beneficiary of any of the bonds required under this Section 10.2, the Construction Manager promptly shall furnish a copy of the bonds or shall permit a copy thereof to be made and delivered to such person or entity.

ARTICLE 11 **CHANGES IN THE WORK**

Section 11.1 Change Orders.

11.1.1 **Definition of “Change Order”.** A Change Order is a written order to the Construction Manager signed by the Owner Change Order Representative on behalf of the Owner, and accepted by the Construction Manager, issued after execution of the Construction Management Agreement, authorizing a change in the Work or an adjustment in the Guaranteed Maximum Price, and/or the completion dates specified in the Contract Documents.

11.1.2 **Owner May Order Changes in Work.** Owner, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, and the Guaranteed Maximum Price and the Contract Time shall be adjusted accordingly. All such changes in the Work shall be authorized by written Change Order or Construction Change Directive (on the forms attached the Construction Management Agreement), and shall be performed under the applicable conditions of the Contract Documents. Construction Manager shall perform all changed Work required by Owner, whether or not disputes exist between the Owner and the Construction Manager. Construction Manager shall provide all Change Order pricing within thirty (30) days of any change ordered by Owner, or shall be deemed in material breach of the contract. Notwithstanding anything to the contrary in the Contract Documents, the only person with authority to sign a Change Order on behalf of the Owner that results in an increase to the GMP, any Milestone Date or Substantial Completion Date is the Owner Change Order Representative.

11.1.3 **Method of Determining Cost or Credit.** An increase in the Guaranteed Maximum Price resulting from a change in the Work performed by Construction Manager shall be determined by actual, incurred cost to be determined in a manner agreed upon by the parties (the fee being adjusted as set forth in the Ballpark Facility Construction Management Agreement). The increase or decrease in the Guaranteed Maximum Price resulting from a change in the Work shall be determined for work performed by Subcontractors in one or more of the following ways (the fee being adjusted as set forth in the Ballpark Facility Construction Management Agreement, as applicable):

- .1 by mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 by unit prices stated in the Contract Documents or subsequently agreed upon; or
- .3 by actual, incurred cost to be determined in a manner agreed upon by the parties.

11.1.4 **Use of Approved Rates.** Any labor rates, overtime rates, equipment rental rates and unit prices shall be approved by the Owner in writing in advance of any Work to be charged on the basis of such rates or prices. All costs incurred pursuant to a Change Order shall be subject to audit by the Owner.

Section 11.2 Concealed Conditions. Notwithstanding anything to the contrary in this Ballpark Facility Construction Management Agreement, should concealed conditions be encountered in the performance of the Work below the surface of the ground which Construction Manager would be unable to ascertain upon a reasonable investigation of subsurface conditions, or should concealed or unknown conditions in an existing structure be at variance with the conditions indicated by the Contract Documents, or should unknown physical conditions below the surface of the ground or concealed or unknown conditions in an existing structure of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Contract, be encountered, the Guaranteed Maximum Price shall be equitably adjusted by Change Order, subject to the notice of claim and claim procedures contained in the Contract.

Section 11.3 Notice of Claim.

11.3.1 Notice of claims for adjustments in the Guaranteed Maximum Price or Substantial Completion Date by the Construction Manager must be made within ten (10) days after occurrence of the event giving rise to such claims. Claims with backup documentation shall be submitted within thirty (30) days of the notice required above. Claims must be submitted in writing, even if the claim is allegedly based on a previous oral or written statement by the Owner. Any claim not made in accordance with the terms of this Paragraph shall be deemed waived by the Construction Manager. The Construction Manager acknowledges and agrees that the Owner can only waive the requirements of this Paragraph in writing and that it cannot rely on any oral statement of the Owner to the contrary. For purposes of this Paragraph, notice of claims shall be provided to the Owner as required by the Ballpark Facility Construction Management Agreement, and notice of claims provided by other means, such as by e-mail or meeting minutes, shall not constitute sufficient notice.

ARTICLE 12 **UNCOVERING AND CORRECTION OF WORK**

Section 12.1 Uncovering of Work.

12.1.1 **Where Work Covered Contrary to Request.** If a portion of the Work is covered contrary to the request of the Architect or the Owner or to requirements specifically

expressed in the Contract Documents, it must, if required in writing by the Architect, the Owner or any governmental authority, be uncovered for their observation and be replaced at the Construction Manager's expense without an extension in the Contract Time, or adjustment in the Guaranteed Maximum Price.

12.1.2 **Where Work Covered Not Contrary to Request.** If a portion of the Work has been covered which the Architect, the Owner or any governmental authority has not specifically requested to observe prior to its being covered, the Architect or the Owner may request to see such Work and it shall be uncovered by the Construction Manager. If such Work is in accordance with the Contract Documents, the cost of uncovering and replacement shall, by appropriate Change Order, be charged to the Owner. If such Work is not in accordance with the Contract Documents, the Construction Manager shall pay such cost.

Section 12.2 Correction of Work.

12.2.1 **Rejected Work.** The Construction Manager shall promptly correct Work rejected by the Architect, the Owner or any governmental authority, or that does not conform to the requirements of the Contract Documents, whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Construction Manager shall bear costs of correcting such rejected Work, including additional testing and inspections and compensation for the Architect's services and expenses made necessary thereby.

12.2.2 **Correction Period.** If, within one year after the date of Substantial Completion of the Work or designated portion thereof, or within any time after the date for commencement of warranties established under Section 8.4.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Construction Manager shall correct it promptly after receipt of written notice from the Owner to do so, unless the Owner has previously given the Construction Manager a written acceptance of such condition. This period of one year shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work. This obligation shall survive acceptance of the Work under the Contract and termination of the Contract. The Owner shall give such notice promptly after discovery of the condition. This remedy is not intended to limit any warranty provisions under the Contract Documents and, instead, is cumulative, and shall not preclude the Owner from using any other remedy for defective work available to them under the Contract Documents or Applicable Law.

12.2.3 **Removal of Nonconforming Work.** At Construction Manager's expense, the Construction Manager shall remove from the Ballpark Facility Site portions of the Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by the Construction Manager nor accepted by the Owner.

12.2.4 **Owner May Correct Nonconforming Work.** If the Construction Manager fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with Section 3.3 and charge the cost thereof to the Construction Manager. If the Construction Manager does not proceed with correction of such nonconforming Work within a reasonable time fixed by written notice from the Architect or the Owner, the Owner may remove

it and store the salvageable materials or equipment at the Construction Manager's expense. If the Construction Manager does not pay costs of such removal and storage within ten days after written notice, the Owner may upon ten additional days' written notice sell such materials and equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Construction Manager, including compensation for the Architect's services and expenses made necessary thereby. If such proceeds of sale do not cover costs which the Construction Manager should have borne, the Guaranteed Maximum Price shall be reduced by the deficiency. If payments then or thereafter due the Construction Manager are not sufficient to cover such amount, the Construction Manager shall pay the difference to the Owner.

12.2.5 Damage or Destruction Caused by Construction Manager. The Construction Manager shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Construction Manager's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

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

Section 12.3 Acceptance of Defective or Non-Conforming Work. If the Owner prefers to accept Work which is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Guaranteed Maximum Price shall be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 **TERMINATION OF THE CONTRACT**

Section 13.1 Termination by the Construction Manager.

13.1.1 Grounds for Termination. The Construction Manager may terminate the Contract if the Work is stopped for a period of ninety (90) consecutive days through no act or fault of the Construction Manager or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Construction Manager, for any of the following reasons:

- .1 issuance of an order of a court or other public authority having jurisdiction;
- .2 an act of government, such as a declaration of national emergency, making any material progress or performing the Work impractical; or

- .3 failure of the Owner to make payment as provided in the Ballpark Facility Construction Management Agreement, provided that such failure is not as a result of the Construction Manager's failure to perform under the Contract.

13.1.2 **Notice of Termination, Right of Recovery.** If one of the above reasons exists, the Construction Manager may, upon seven days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed (including Construction Manager's Fee earned to date) through the date of termination, and any actual and reasonable costs incurred in terminating the Work. The Owner shall have no further liability to the Construction Manager on the Ballpark Facility Project.

Section 13.2 Termination by the Owner for Cause.

13.2.1 **Grounds for Termination.** The Owner may terminate the Contract if the Construction Manager:

- .1 persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Construction Manager and the Subcontractors;
- .3 persistently disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction;
- .4 otherwise fails to perform any of its obligations under the Contract Documents; or
- .5 becomes financially insolvent and is unable, upon request by the Owner, to give the Owner reasonable assurances of its ability to meet its obligations hereunder, or is the subject of a voluntary or involuntary bankruptcy proceeding.

13.2.2 **Notice of Termination; Owner's Rights.** When any of the above reasons exist, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Construction Manager seven (7) days written notice, terminate the Ballpark Facility Construction Management Agreement and may:

- .1 take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Construction Manager;
- .2 .accept assignment of subcontracts pursuant to Section 5.4; and
- .3 finish the Work by whatever reasonable method the Owner may deem expedient.

13.2.3 Construction Manager Not Entitled to Further Payment Until Work Finished. When the Owner terminates the Contract for one of the reasons stated in Section 13.2.1, the Construction Manager shall not be entitled to receive further payment until the Work is finished by Owner, and all damages suffered by, or costs incurred, the Owner have been deducted from the amounts otherwise due the Construction Manager. In the event of such termination, the Construction Manager shall immediately turn all Ballpark Facility Project documents over to the Owner, including permit drawings, record drawings, subcontractor and supplier files, permit files and other files as may be requested by Owner.

13.2.4 Cost of Completion. If the unpaid balance due to the Construction Manager (not to exceed the Guaranteed Maximum Price) equals or exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages due to the Owner, the difference shall be paid to the Construction Manager. If the unpaid balance due to the Construction Manager (not to exceed the Guaranteed Maximum Price) is less than the costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages due to the Owner, Construction Manager shall immediately pay Owner the difference.

Section 13.3 Suspension by the Owner for Convenience.

13.3.1 Owner's Right to Suspend Work. The Owner may, without cause, order the Construction Manager in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

13.3.2 Adjustments for Increased Cost of Performance. An adjustment shall be made for increases in the cost of performance of the Contract, including the Construction Manager's Fee on the increased cost of performance (per the Change Order provisions of Article 12), caused by suspension, delay or interruption. No adjustment shall be made to the extent:

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Construction Manager is responsible or over which the Owner had no control; or
- .2 that an equitable adjustment is made or denied under another provision of this Contract.

Section 13.4 Owner's Right to Terminate. The Owner may, at its option, terminate this Contract for its convenience by written notice thereof to the Construction Manager. Upon receipt of any such notice, Construction Manager shall, unless the notice directs otherwise, immediately discontinue the Work on that date, and, to the extent specified in the notice, place no further orders or subcontracts for materials, equipment, services, or facilities, except as may be necessary for completion of such portion of the Work as is not discontinued; promptly make every reasonable effort to procure cancellation upon terms satisfactory to Owner of all orders and subcontracts to the extent they relate to the performance of the discontinued portion of the Work and shall thereafter do only such Work as may be necessary to preserve and protect work already in progress and to protect materials and equipment on the Site or in transit thereto. Upon such termination, the obligations of the Contract shall continue as to portions of the Work already

performed and as to bona fide obligations assumed by Construction Manager prior to the date of termination. Upon termination, Construction Manager shall be entitled to be paid the full cost of all Work properly done by Construction Manager to the date of termination not previously paid for, plus a pro rata portion of the Construction Manager's Fee earned on account of such Work. The Owner shall have no further liability to the Construction Manager, including consequential damages, lost profits or other damages arising out of the termination. If, as of the date of such termination, Construction Manager has properly prepared or fabricated off the Site any goods for subsequent incorporation in the Work, and if Construction Manager delivers such goods to the Site or to such other place as the Owner shall reasonably direct, then Construction Manager shall be paid for such goods or materials. In the event of such termination, the Construction Manager shall immediately turn all Ballpark Facility Project documents over to the Owner, including permit drawings, record drawings, subcontractor and supplier files, permit files and other files as may be requested by Owner.

ARTICLE 14 **MISCELLANEOUS PROVISIONS**

Section 14.1 Governing Law.

14.1.1 **Law and Jurisdiction.** This Ballpark Facility Construction Management Agreement shall be governed by the law of the State of Florida, not including its choice of law rules. Any claim or controversy arising out of or related to this Ballpark Facility Construction Management Agreement shall be resolved by litigation in the State of Florida. The parties consent to personal jurisdiction in the State of Florida with respect to such litigation.

14.1.2 **No Precedent for Lack of Enforcement.** Historical lack of enforcement of any local law shall not constitute a waiver of Construction Manager's responsibility for compliance with such law in a manner consistent with the Contract Documents unless and until the Construction Manager has received written consent for the waiver of such compliance from the Owner and the agency responsible for the local law enforcement.

Section 14.2 Successors and Assigns. This Agreement is personal to Construction Manager. Construction Manager will not have the right to assign (whether by merger, exchange, transfer, stock or asset sale, split-off, spin-off or other similar reorganization or re-capitalization) any of its rights, benefits, licenses, or other opportunities or assign or delegate any of its duties hereunder, in whole or in part, without the prior, written approval of Owner and any attempted assignment in contravention of this provision shall be null and void and of no force or effect. Owner may sell, assign, hypothecate, pledge or otherwise transfer or dispose of all or a portion of the Ballpark Facility Project or its rights under this Ballpark Facility Construction Management Agreement in its sole discretion, without the consent of the Construction Manager. The Construction Manager shall execute all consents reasonably required to facilitate such assignment. Owner may assign its rights and obligations hereunder to a Lender, if any, and the Construction Manager agrees to enter into agreements with such Lender pursuant to which, at such Lender's request, the Construction Manager will complete the Work upon appropriate provision for payment of the balance of the payments due the Construction Manager. The foregoing permitted assignees of the Owner are collectively referred to as "Owner Permitted Assignees". Any Person which shall succeed to all or a portion of this Ballpark Facility

Construction Management Agreement or the rights of Owner hereunder shall be entitled to enforce all or such portion of this Ballpark Facility Construction Management Agreement or its rights hereunder. In the event of an assignment, Construction Manager shall look solely to the assignee, after the date of the assignment, for performance of Owner's duties so assigned including without limitation the duty to make payments to Construction Manager.

Section 14.3 Rights and Remedies.

14.3.1 **No Waiver.** No action or failure to act by the Owner, Architect or Construction Manager shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

14.3.2 **Severability.** The invalidity of any part or provision of the Contract Documents shall not impair or affect in any manner the validity, enforceability or effect of the remaining parts and provisions of the Contract Documents.

Section 14.4 Tests.

14.4.1 **Arrangements for Inspection, Testing or Approval.** If the Contract Documents, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any portion of the Work to be inspected, tested or approved, the Construction Manager shall make arrangements for such inspections, tests and approvals and shall give the Owner and the Architect timely notice of its readiness so the Owner and the Architect may observe such inspection, testing or approval. The Construction Manager shall bear all costs of such inspections, tests or approvals conducted by public authorities or required by the Contract Documents. Unless otherwise provided, the Owner shall bear all costs of other inspections, tests or approvals. In the event the Work is not ready for inspection on the date specified by the Construction Manager, the Construction Manager shall be liable to the Owner for any additional costs incurred by the Owner for the failed inspection.

14.4.2 **Securing of Required Certificates.** Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Construction Manager and promptly delivered to the Owner.

14.4.3 **Observation by Architect.** If the Architect is to observe tests, inspections or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

14.4.4 **Avoidance of Delay.** Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

Section 14.5 Consequential Damages Waiver. The Construction Manager and Owner waive claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes:

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Construction Manager for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

Notwithstanding the foregoing, the following damages are excluded from this mutual waiver: (i) liquidated damages as allowed by the Contract Documents; and (ii) damages arising from intentional torts.

Section 14.6 Equal Opportunity Employer. Owner is an equal opportunity employer. It is the policy of Owner to comply with all applicable state and federal laws prohibiting discrimination in employment based on race, age, color, sex, religion, national origin, disability or other protected classification. Construction Manager acknowledges that it is also an equal opportunity employer and that it, its employees, agents and subcontractors will comply with all applicable state and federal laws prohibiting discrimination in employment based on race, age, color, sex, religion, national origin, disability or other protected classification.

Section 14.7 Confidentiality. Except to the extent required by law, such as any obligation of the Construction Manager to comply with Florida's Public Records Laws, the Construction Manager shall not publish, permit to be published, or distribute for public consumption or otherwise, any information, oral or written concerning the Work, the Owner, the Contract Documents, contract performance, or any other matter relating to the Owner without the prior written consent of the Owner, except to its attorneys, counsel, representatives and other advisors and Subcontractors, all of which the Construction Manager shall ensure are subject to this same confidentiality restriction.

Section 14.8 Drafted by Both Parties. Both parties acknowledge they are represented by counsel, have received advice concerning the terms of the Ballpark Facility Construction Management Agreement, have negotiated its terms and provisions, and the same shall be deemed to have been prepared by both parties, without regard to which party physically prepared the document.