



AGREEMENT BETWEEN OWNER AND CONSTRUCTION MANAGER

CONTRACT #: **XXXXX**

PROJECT NO: **XXXXXXXXX**

PROJECT NAME AND LOCATION: **Project Description**

CONSTRUCTION MANAGER: **CM Manager Name**
Address
City, State, ZIP
Phone Number
FED ID: XXXXXXX

Office handling work:
Address
City State, State, Zip
Phone Number
Fax Number

PROJECT ADMINISTRATOR: **Florida Department of Transportation – District X**
Local Construction Office

Jeb Bush
Governor

Jose Abreu
Secretary, FDOT

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**AGREEMENT
BETWEEN OWNER AND CONSTRUCTION MANAGER**

THIS AGREEMENT made this _____ day of _____ in the year Two Thousand Four by and between the Florida Department of Transportation as Owner, and

Contractors Name
Address
City, State, zip
Phone Number

FED ID: XXXXXXX

Contractors Name
Address
City, State, Zip
Phone Number
FaxNumber

hereinafter called the Construction Manager.

**ARTICLE 1
THE PROJECT TEAM AND EXTENT OF AGREEMENT**

The Construction Manager accepts the relationship of trust and confidence established between itself and the Owner by this Agreement. The Construction Manager covenants with the Owner to furnish the skill and judgment reflected in its Technical Proposal and to cooperate with the Project Architect-Engineer in furthering the interests of the Owner. The Construction Manager agrees to furnish efficient business administration and superintendence and use its best efforts to complete the Project in compliance with the Contract Documents and in the most expeditious and economical manner consistent with the interest of the Owner and in full accordance with applicable federal, state and local laws and regulations. The funds with which the compensation of the architects, engineers, Construction Managers, etc. will be paid are under the control of the Owner.

- 1.1. The Project Team. The Project Team shall work jointly during design and through final construction completion and shall be available thereafter should additional services be required. The applicable Project Architect-Engineer will provide leadership on all matters relating to design of that Project, with support from the Construction Manager, and the Construction Manager shall provide leadership to the Project Team on all matters relating to construction. The specific representatives of the Project Team are shown in Exhibit A attached.
- 1.2. This Project consists of the Project identified on Exhibit B. It is the intent of the parties that this Agreement shall cover this project. Prior to the commencement of preconstruction services relating directly to this Project, the Owner and the Construction Manager shall negotiate a preconstruction fee and any additional specific conditions relating to the affected Project. The Owner may then issue a notice to proceed for the Project to be covered under the scope of this Agreement. The Project GMP shall set forth the construction phase fee as well as any other terms and conditions specific to the Project. The Construction Manager shall not commence any Work with respect to a Project until authorized in writing by the Owner. The Construction Manager shall be responsible for the performance of all duties called for by this Agreement with regard to this project authorized by the Owner to be covered by this Agreement. The services under this Agreement shall be completed when the Construction Manager fully and completely satisfies the requirements of this Agreement.
- 1.3. Extent of Agreement. This Agreement between the Owner and the Construction Manager supersedes any prior negotiations, representations or agreements. When plans, specifications and other descriptive documents defining the Work for a Project to be included under a construction authorization are complete, they shall be identified in a Letter of Authorization for the Project issued by the Owner, which will also include assumptions and clarifications that will govern all other Contract Documents, with the exception of this Agreement.
 - 1.3.1. This Agreement shall not be superseded by any provisions of the documents for construction and may be amended only by written instrument signed by both Owner and Construction Manager indicating a clear intent to change the terms of this Agreement.
 - 1.3.1.1. Order of Precedence of Contract Documents. In cases of conflict between Contract Documents, the order of precedence of the Contract Documents shall be as follows:
 - a. This Agreement

- b. Letter of Authorization
- c. Refer to the Standard Specifications for Road and Bridge Construction, Section 5-2 for the order of precedence of documents which are subordinate to item. These were sent at time of oral.

Contract Documents shall be construed in a harmonious manner, whenever possible.

1.3.1.2. The documents included in a Project Agreement shall be considered together, so that any part of the Work shown or described on the plans, though not specifically referred to in the specifications or elsewhere in the documents, and any work described or referenced in the specifications or other document included in the Project Agreement but not shown or described on the plans, shall be executed by Construction Manager as a part of the Project Agreement, as well as any work which, in the opinion of Owner, may be fairly inferred from the specifications, plans, other Contract Documents or by normal industry practice.

1.3.1.3. Detail plans shall take precedence over general plans for the same part of the Work. Specifications and detail plans which may be prepared or approved by Owner after the execution of the Contract and which may be fairly inferred from the original specifications and plans are to be deemed a part of such specifications and plans, and that portion of the Work shown thereby shall be performed without any change in the Contract Price or Construction Schedule.

1.3.1.4. As used in the Contract Documents, (i) the singular shall include the plural, and the masculine shall include the feminine and neuter, as the context requires; (ii) "includes" or "including" shall mean "including, but not limited to"; and (iii) all definitions of agreements shall include all amendments thereto in effect from time to time.

1.4. General Warranties. By their execution hereof, Owner and Construction Manager each represent and warrant to the other that they are authorized to enter into this Agreement and that this Agreement represents such Party's legal, valid and binding obligation, enforceable according to the terms thereof.

1.4.1. Construction Manager covenants, represents and warrants to Owner that:

1.4.1.1. It is a business organization duly organized, validly existing and in good standing under the laws of the State of Florida, having full power and authority to engage in the business it presently conducts and contemplates conducting, and is and throughout the Work will be duly licensed or qualified and in good standing under the laws of said jurisdiction;

1.4.1.2. It has the required authority, ability, skills and capacity to perform, and shall perform, the Work in a manner consistent with sound engineering and construction principles, project management and supervisory procedures, and reporting and accounting procedures;

1.4.1.3. The execution, delivery and performance of this Agreement will not conflict with any Applicable Laws or with any covenant, agreement or understanding to which it is a party or by which it or any of its properties or assets is bound or affected;

1.4.1.4. It has knowledge of all the Applicable Laws in effect on the Effective Date of the Agreement and of all business practices in the jurisdiction within which the Jobsite is located that must be followed in performing the Work.

1.5. Independent Contractor. Construction Manager is an Independent Contractor and is not an agent or employee of Owner or Agent in performing the Work. Except as otherwise provided herein, Construction Manager shall maintain complete control over its own employees, agents and operations and those of its subcontractors, Vendors and their respective employees and agents. Construction Manager hereby accepts complete responsibility as a principal for its agents, subcontractors, Vendors, their respective employees, agents and Persons acting for or on their behalf, and all others it hires to perform or assist in performing the Work.

1.6. Definitions: The following terms shall have the meanings specified herein. The definitions included in this Agreement are not exhaustive of all definitions used in this Agreement. Additional terms may be defined in other Contract Documents.

1.6.1. There is no Agent assigned for this agreement.

1.6.2. "Base GMP" means that portion of the GMP reflecting the Cost of the Project and the Construction Manager's Fee under Subsections 7.1.2 and 7.1.3.

1.6.3. "Contract Modification" means a written order changing the Scope of Work, the Contract Price, the Contract Schedule or any other rights, duties or obligations of the Parties issued to Construction Manager by Owner after the Effective Date of a Project Agreement.

- 1.6.4. "Construction Contingency" means an agreed upon sum included in a Project GMP for the purpose of defraying the expenses due to unforeseen circumstances relating to construction of that Project. The Construction Contingency for a Project shall include the Construction Manager's Contingency and the Owner's Contingency.
- 1.6.5. "Construction Documents," as to a Project, means the plans and specifications setting forth in detail the requirements of the construction of that Project, and as further defined by the Architect/Engineers' agreements.
- 1.6.6. "Construction Manager" means [CM Managers Name](#).
- 1.6.7. "Construction Manager's Contingency" means that portion of the GMP available for use by the Construction Manager to defray the increased Cost of a Project due to unforeseen circumstances relating to construction of that Project other than that deemed the responsibility of the Owner pursuant to Section 6.2.2.4.
- 1.6.8. "Construction Schedule" means the detailed working schedule of significant Work activities and intermediate milestones.
- 1.6.9. "Contract Documents" means this Agreement, all Project Agreements, Supplemental Agreements, plans, specifications and other documents reflecting the terms and conditions for completion of a Project.
- 1.6.10. "Cost of the Project" means the costs necessarily incurred during the construction phase of a Project and paid by the Construction Manager, as prescribed by Article 8.
- 1.6.11. "Design Development Documents," as to a Project, means the plans, specifications, and other documents, which fix and describe the size and character of the Project as to architectural, structural, mechanical, plumbing and electrical systems, materials, and such other elements as may be appropriate.
- 1.6.12. "Effective Date of this Agreement" means ["Signing Date"](#).
- 1.6.13. "Estimate" means the Construction Manager's latest estimate of probable project construction cost with respect to a Project.
- 1.6.14. "Final Acceptance" means satisfaction of all the conditions set forth in Section 5.5.
- 1.6.15. "Final Acceptance Date" means the date on which Final Acceptance of the Work is declared by Owner to have occurred.
- 1.6.16. "Final Completion" means satisfaction of all conditions set forth in Section 5.4.
- 1.6.17. "Final Completion Date" means the date on which Final Completion is declared by Owner to have occurred.
- 1.6.18. "Final Inspection" means inspection of the Work by Owner and Construction Manager pursuant to Section 5.
- 1.6.19. "GMP" means the Guaranteed Maximum Price, a sum certain set forth in a Project Agreement as the total Cost of the Project that the Construction Manager agrees will not be exceeded, as well as the Construction Manager's fees, the Construction Manager's Contingency, and the Owner's Contingency.
- 1.6.20. "Hazardous Materials" means any hazardous materials or hazardous substances as defined in the Comprehensive Environmental, Response, Compensation and Liability Act ("CERCLA") or the Resource Conservation and Recovery Act (RCRA) as the same may be amended from time to time, or any "hazardous material" or "hazardous substance" as defined in any applicable federal or state statute or regulation or local law.
- 1.6.21. "Jobsite" means those areas of the site or sites upon which the Project will be constructed designated in writing by Construction Manager for performance of the Work and such additional areas as may, from time to time, be designated in writing by Construction Manager for Subcontractor's use hereunder.
- 1.6.22. "Letter of Authorization" means a written acceptance of the Construction Manager's proposal to perform a defined scope of Work for a Project, which may include directions to the Construction Manager regarding the prosecution of the work.
- 1.6.23. "Mechanical Completion" means satisfaction of all the conditions set forth in Section 5.2.
- 1.6.24. "Notice to Proceed" means a Notice issued by Owner to Construction Manager, or by Construction Manager to a subcontractor directing to commence or proceed with the Work not otherwise already commenced under direction of the Letter of Authorization, and stating any further limitations on the extent to which contractor may commence and proceed with the Work.

- 1.6.25. "Notice to Proceed Date" means the date on which the Notice to Proceed is issued to Construction Manager, or the date stated in the Notice to Proceed as being the Notice to Proceed Date, whichever is latest.
- 1.6.26. "Owner" means the Florida Department of Transportation (FDOT).
- 1.6.27. "Owner's Construction Budget" means Owner's funds budgeted and requested for construction of the Project. The Owner's Construction Budget is \$XXXX, including all Construction Manager fees, costs of the Work and the Owner's and Construction Manager's construction and interface contingencies as defined in Articles 7 and 8. This acknowledgement of the Owner's budgeted funds is not to be construed as the Construction Manager's Guaranteed Maximum Price. A Guaranteed Maximum Price will be offered for the Project by separate documentation as outlined in Article 6.
- 1.6.28. "Owner's Contingency" means that portion of the GMP, which is available for use at the Owner's discretion to defray additional expenses relative to construction of a project, as well as additional expenses deemed the responsibility of the Owner pursuant to Section 6.2.2.4.
- 1.6.29. "Pre-Commissioning" means non-operating activities performed on equipment systems after installation including, but not limited to, removal of rust preventives, charging of lubricants, chemicals and supplies, checking motor rotation and machine alignment, checking of proper valve actuation, removal of temporary bracing, pressure and leak testing, safety valve testing and adjustment, checking electrical connections, performing continuity tests, and any other activities which are evidently necessary by virtue of the nature of the Work in order that all systems are functioning properly and safely during the Commissioning phase of the Project.
- 1.6.30. "Project" means the total potential Work to be performed under this Agreement and may consist of multiple Projects.
- 1.6.31. "Project Team" means the Construction Manager, the Owner, the Project Administrator and the Architect-Engineer.
- 1.6.32. "Project Manager" means the Project Manager for the CM@Risk Contractor.
- 1.6.3.2.1 "Project Administrator" means FDOT Project Administrator.
- 1.6.33. "Project" means one of the construction projects identified in the Project management plans developed and updated pursuant to Section 2.1.6.1 and includes the total construction, including all permitting with the exception those outlined in the Standard Specifications for Road and Bridge Construction, Section 7-2, construction and code inspection necessary to build the component parts of the Project.
- 1.6.34. "Project Agreement" means the complete set of project documents, including the Letter of Authorization, that reflects the agreed terms and conditions under which Construction Manager will construct a particular project. Project Agreements will be generally titled "[Contract Number](#)."
- 1.6.35. "Project Cost Savings" means that portion of the GMP, including the Construction Manager's Contingency but excluding the unused Owner's Contingency, which exceeds the total actual Cost of a Project, as defined under Article 8.
- 1.6.36. "Punch list" means the list or lists prepared by Construction Manager identifying matters that remain to be completed between achievement of Mechanical Completion and Substantial Completion and between achievement of Substantial Completion and Final Completion in order that Substantial Completion and Final Completion can be declared by Owner to have occurred.
- 1.6.37. "Schematic Design Documents" means plans and other documents illustrating the scale and relationship of the Project components and as further defined by the Project Administrator's agreement.
- 1.6.38. "Qualifications Experience Questionnaire" means the qualifications experience questionnaire submitted by the Construction Manager during the selection process, including those items describing the Construction Manager's capabilities and proposed approach to the Project.
- 1.6.39. "Shop Plans" means plans, prints, diagrams, illustrations, brochures, schedules and other data that are prepared by Construction Manager or any of its Subcontractors or Vendors, and which illustrate how specific portions of the Work will be fabricated or installed.
- 1.6.40. "Substantial Completion" means satisfaction of all the conditions set forth in Section 5.3.
- 1.6.41. "Substantial Completion Date" means the date on which Substantial Completion of the Work is declared by Owner to have occurred.

- 1.6.42. “Unforeseen Circumstances” means circumstances that were not reasonably foreseeable by the Construction Manager at the time of acceptance of a Project GMP, not reasonably avoidable at the time of discovery and not attributable to noncompliance with contract terms by the Construction Manager or its subcontractors or suppliers.
 - 1.6.43. “Vendor or Supplier” means any person who supplies machinery, equipment, materials, consumables, support services, utilities, etc. to Construction Manager or to any Subcontractor in connection with the performance of Construction Manager’s obligations under the Contract, but who does not perform labor at the Jobsite.
 - 1.6.44. “Work” means all work conducted by Construction Manager or subcontractor pursuant to, and to the extent required by, the terms of this Agreement and all Project Agreements, including without limitation, engineering and design, procurement, manufacture, construction and erection, installation, training, Plant Start Up (including calibration, inspection and operation), and testing operation with respect to the Facility to be performed by Construction Manager, and all other services, equipment and materials necessary for Construction Manager to achieve the Performance Guaranties, if any, and Final Acceptance in accordance with the Agreement. Work also includes, but is not limited to, all or portions of the Facility, including without limitation, labor, materials, equipment, services, and any other items to be used by Construction Manager or its Subcontractors or Vendors in the prosecution of this Agreement, wherever the same are being engineered, designed, procured, manufactured, delivered, constructed, installed, trained, erected, tested, started-up or operated during start-up and testing and whether the same are on or off the Jobsite.
- 1.7 The parties acknowledge that the progress of the Project is subject to the continued participation and cooperation of third parties, which can affect both the availability and timing of funding, as well as critical path activities involving the design and construction of projects that are outside of this Agreement, but affect this Project. Accordingly, there is no representation by Owner that the amount, timing, or sequence of the work under this Project will occur as anticipated. Construction Manager will have no claim for delay in initiating work under the Project.

**ARTICLE 2
CONSTRUCTION MANAGER'S SERVICES**

The Construction Manager’s services shall be those necessary and appropriate to the successful completion of the Project in a timely and cost-effective manner and shall include, but are not limited to, those described or specified herein. The Construction Manager shall provide all requested services according to the capabilities reflected in its Qualifications Experience Questionnaire. The services described or specified shall not be deemed to constitute a comprehensive specification having the effect of excluding services not specifically mentioned.

Unless otherwise provided in this Agreement, or as agreed in writing between Owner and Construction Manager, the form and content of all systems, reports, forms and regular submittals by Construction Manager to Owner shall be subject to Owner’s prior approval, and Construction Manager shall submit such materials to Owner for approval prior to implementation. Owner’s approval thereof shall not limit Owner’s right to thereafter require reasonable changes or additions to approved systems, reports, forms and regular submittals by Construction Manager to Owner. Except as to shop plans and other design work performed by Construction Manager, its subcontractors or agents pursuant to this Agreement, Construction Manager’s services hereunder are not intended to include the performance of design work and Construction Manager does not assume any responsibility for the design of any work.

2.1. GENERAL SERVICES

2.1.1. Project Management Information System (PMIS).

- 2.1.1.1. Commencing immediately after the Effective Date of this Agreement, the Construction Manager shall implement and utilize throughout the life of this Agreement the Project Management Information System (PMIS) as described herein or modified by mutual agreement.
- 2.1.1.2. The reports, documents, and data to be provided under the PMIS shall represent at all times an accurate assessment of the current status of the Project and its component Projects and of the work remaining to be accomplished. Furthermore, the PMIS shall provide a sound basis for identifying variances and problems and shall serve as a resource for making management decisions. Utilizing computerized systems, reports shall be prepared and furnished to the members of the Project Team monthly. Data within the PMIS shall be accessible electronically (via website) by the members of the Project Team and sent as requested to Project Team.-
- 2.1.1.3. If requested by the Project Administrator, the Construction Manager shall conduct a comprehensive workshop in Lake City for participants designated by the Project Administrator and additional seminars as required to provide instruction to members of the Project Team to facilitate each participant's use and understanding of the PMIS. Furthermore, the workshop shall emphasize function and organization of the PMIS during the design and construction of the Project; and shall establish, with the full concurrence of the Project Team, procedures for accomplishing the management control aspect of the Project. All information conveyed in the instruction workshop shall have the full concurrence of the Project Administrator.

2.1.1.4. The PMIS shall include the following major elements:

- Narrative Reports
- Schedule Control,
- Cost Control, and Estimating,
- Project Accounting,
- Accounting and Payment,
- Action Reports, and
- Critical Issues Look Ahead.

All elements shall be maintained electronically, a portion of which will be accessible (via website) by the members of the Project Team.

2.1.2. Narrative Reporting

2.1.2.1. The Construction Manager shall prepare monthly written reports as described hereunder. All written reports shall be in 8 1/2" X 11" format. The Construction Manager shall ensure that each member of the Project Team is provided a copy.

2.1.2.2. The Narrative Reporting Subsystem shall include the following reports:

- a. A Monthly Executive Summary which provides an overview of the Project's progress, current issues and pending decisions, future developments and expected achievements, and any problems or delays, including code violations found by any permitting authority.
- b. A Monthly Cost Narrative describing the current construction cost estimate status of the overall Project. Specific attention to contract modification/Work Order status (i.e., amount, reason for change, responsibility), claim status or potential claims shall be addressed in detail.
- c. A Monthly Scheduling Narrative summarizing the current status of the overall Project schedule. This report shall include an analysis of the various project schedules, a description of the critical path, and other analyses as necessary to compare planned performance with actual performance.
- d. A Monthly Accounting Narrative describing the current cost and payment status of the entire project. This report shall relate current encumbrances and expenditures to the budget allocations.
- e. A Monthly Construction Progress Report during the construction phase summarizing the work of the various subcontractors. This report shall include information from the weekly job site meetings as applicable such as general conditions, long lead supplies, current deliveries, safety and labor relations Projects permits, construction problems and recommendations, and plans for the succeeding month.
- f. A Daily Construction Diary during the construction phase describing events and conditions on the site. The diary shall be maintained at the site available to members of the Project Team. A bound copy of the complete diary shall be submitted to the Owner at the conclusion of the Project.
- g. A monthly Disadvantaged Business Enterprise and Minority Business Enterprise participation report during the construction phase summarizing the participation of certified disadvantaged and minority subcontractors/material suppliers for the current month, and project to date in the form prescribed by the Project Administrator.

2.1.2.3. The written reports outlined in subsection 2.1.2.2(a) through (g) above shall be bound with applicable computer reports and submitted during design. Three reports will be submitted in the pre-construction phase at 90% & 100% CD's and monthly during the construction phase. Copies shall be transmitted to the members of the Project Team and others designated by the Project Administrator with the monthly pay requisition. Additional copies of the report outlined in subsection 2.1.2.2(a) shall be bound separately and distributed monthly as directed by the Project Administrator. Certain electronic copies of reports shall be transmitted electronically to the Project Administrator and other designated by the Project Administrator, as required.

2.1.3. Schedule Control.

2.1.3.1. Master Project Schedule. Within forty-five (45) days after the effective date of this Agreement, the Construction Manager shall develop and submit a master schedule covering the planning and design approvals, construction and Owner occupancy of the Project. The Construction Manager shall also develop and submit a master project schedule for the Project. This schedule will serve as the framework for the subsequent development of all detailed schedules. The master schedule shall be produced and updated monthly throughout the Project. A final master project schedule shall be submitted to the Owner at the time of the submission of a Project GMP. Once accepted by the Owner, the applicable master project schedule will be the basis for payment to the Construction Manager for Construction Phase services for a Project and will also serve to determine the impact of all proposed changes on a Project and the Project as a whole.

2.1.3.2. Construction Schedule. Within thirty (30) days after the date of the Owner's execution of a Project GMP, the Construction Manager shall prepare and submit to the Project Team a construction schedule, consistent

with the Master Schedule, graphically depicting the activities contemplated to occur as a necessary incident to performance of the work required to complete this project, and showing the sequence in which the Construction Manager proposes for each such activity to occur and duration (dates of commencement and completion, respectively) of each such activity.

- 2.1.3.3. Following development and submittal of the construction schedules described above, the Construction Manager shall, at the end of each calendar month occurring thereafter during the period of time required to finally complete this project, or at such earlier intervals as circumstances may require, update and/or revise this Project construction schedule to show the actual progress of the work performed, variance from scheduled completion dates, the occurrence of all events which have affected the progress of performance of the work already performed or will affect the progress of the performance of the work yet to be performed in contrast with the planned progress of performance of such work, as depicted on the original construction schedule, and all updates and/or revisions thereto as reflected in the updated and/or revised construction schedule last submitted prior to submittal of each such monthly update and revision. The Construction Manager shall also provide a short-term, look-ahead schedule and a summary schedule for this Project. Each such update and/or revision to a construction schedule for a Project and the overall Project shall be submitted to the Project Administrator and shall be available electronically to all members of the Project Team. The Construction Manager shall make recommendations to the Project Administrator in order to meet the milestone dates of the master schedule.
- 2.1.3.4. The Construction Manager shall prepare and incorporate into the schedule data base, at the required intervals, the following schedules for this project:
- a. Pre-Bid Schedules. The Construction Manager shall prepare a construction schedule for work encompassed in each bid scope. The schedule shall be sufficiently detailed as to be suitable for inclusion in the bid scope as a framework for contract completion by the successful bidder, shall show the interrelationships between the work of the successful bidder and that of other subcontractors for the applicable project, and shall establish milestones keyed to the applicable master project schedule.
 - b. Subcontractor Construction Schedules. Upon the award of each subcontract, the Construction Manager shall jointly with the subcontractor, develop a schedule that is more detailed than the pre-bid schedule included in the specifications, taking into account the work schedule of the other subcontractors. The construction schedule shall include as many activities as necessary to make the schedule an effective tool for construction planning and for monitoring the performance of the subcontractor. The subcontractor construction schedule shall also show pertinent activities for material purchase orders, manpower supply, shop plan schedules and material delivery schedules. All subcontractor schedules shall be integrated into, made a part of and conform to the master project schedule.
 - c. Occupancy Schedule. The Construction Manager shall jointly develop with the Project Team a detailed occupancy schedule plan, inclusive of substantial completion inspections, completion of punch lists, final inspections, maintenance training and turn-over procedures. The plan shall be used to ensure accomplishment of a smooth and phased transition from construction to Owner or tenant occupancy. The Occupancy Schedule shall be produced and updated monthly from its inception through final occupancy of that Project.

2.1.4. Cost Control.

The Construction Manager shall provide sufficient timely written detail in monthly Cost Control reports for the Project to permit the Project Team to control and adjust Project requirements, needs, materials, equipment and systems by building and site elements so that construction for the Project will be completed at a cost that will not exceed the maximum total Project budget.

2.1.5. Project Accounting.

The Construction Manager shall utilize its standard accounting system that will enable the Project Team to plan effectively and to monitor and control for the Project the funds available, cash flow, costs, contract modifications, payments, and other major financial factors by comparison of budget, estimate, total commitment, amounts invoiced, and amounts payable. The Project accounting system utilized by Construction Manager will serve as a basic accounting tool and an audit trail. The Construction Manager will retain all Project files in a manner consistent with proper accounting procedures that are sufficient for an audit by the Owner for a period of 5 years after final completion of the Project. The Project accounting system will include the following reports:

- a. Cost Status Report presenting the budget, estimate, and baseline costs (awarded subcontracts and purchase orders) for any given subcontract or budget line item. It shall show approved contract modifications for each subcontract that, when added to the base-line costs, will become the revised costs. Pending contract modifications will also be specifically identified and incorporated into the Cost Status Report to illustrate the total estimated probable cost to complete the Project.
- b. Payment Status Report showing the value in place (both current and cumulative), the amount invoiced to Construction Manager (both current and cumulative), the amount paid by the Construction Manager to date, the retainage, the amount payable (both current and cumulative), and the balance remaining. A summary of this report shall accompany each pay request.
- c. Detailed Status Report showing the complete activity history of each item in the Project accounting structure. It shall include the budget, estimate and base-line costs figures for each subcontract. It shall give the contract modification history including contract modification numbers, description, proposed and approved dates, the proposed and approved dollar amounts and detailed reasons for the contract modification, and parties responsible. It shall also show all pending or rejected contract modifications. The payment history shall include the date, value-in-place, retainage, and accounts payable.
- d. Cash Flow Diagram showing the projected accumulation of cash payments by the Construction Manager against the applicable Project Cash flow projections shall be generated for anticipated monthly payments as well as cumulative payments. This report shall be provided only if required by Owner or Project Administrator.
- e. Job Ledger shall be maintained as necessary to supplement the operation of the Project accounting system. The job ledger will be used for this Project to provide construction cost accountability for general conditions work, on-site reimbursable expenses, and costs requiring accounting needs.
- f. Report on Construction Contingency, reconciling the Construction Contingency to the GMP, showing the initial amount in both the construction Manager's Contingency and the Owner's Contingency, along with an itemization of expenditures charged to the respective contingencies.

2.1.6. Project Manual/Management Plans.

- 2.1.6.1. Within 60 days of the effective date of this Agreement, the Construction Manager shall develop, in conjunction with the Project Team, comprehensive Project management plans describing the services set forth in this Agreement and document such plans in a Project Manual. The Construction Manager shall provide a plan collectively for the Project and for each individual Project, where appropriate, for the control, direction, coordination and evaluation of work performed by members of the Project Team throughout the Project organization, including identification of key personnel, responsibilities, work flow diagrams, and strategy for bidding the work. The Project management plans shall be updated as necessary throughout the design, construction and Owner/tenant occupancy phases with any such updates. The Project Manual shall be available electronically to the members of the Project Team. In addition five copies of the Project Manual and any updates shall be submitted to the Project Administrator.

- 2.1.6.2. Contents of Project Manual. The Project Manual shall describe in detail the procedures for executing the work and the organizations participating in the Project. The Project Manual shall serve as a Project management plan, and shall include as a minimum the following sections:
- a. Project and Project Definition. The known characteristics of the Project shall be described in general terms that will provide the participants a basic understanding of the Project.
 - b. Project and Project Goals. A description of the goals and objectives for the Project including a general discussion of schedule, budget, physical, technical and other objectives.
 - c. Project and Project Strategy. A narrative description of the project delivery methods to be utilized to accomplish the Project and Project goals.
 - d. Project and Project Work Plan. A matrix display of the work to be performed by the each member of the Project Team during each phase of the Project.
 - e. Project Organization. A summary organization chart showing the interrelationships between the members of the Project Team, other supporting organizations, and permitting review agencies. Detailed charts showing organizational elements participating in this project shall be included for each member of the Project Team.
 - f. Responsibility Performance Chart. A detailed matrix showing the specific responsibilities and interrelationships of the Project Team. The responsibility performance chart shall indicate primary and secondary responsibility for each specific task required to deliver this Project. The Construction Manager shall develop a similar chart for the personnel within its own organization who are assigned to the project, and for the personnel of the members of the Project Team from data supplied by each.
 - g. Flow Diagrams. Charts displaying the flow of information and the decision process for the review and approval of shop plans and submittals, progress and contract modifications.
 - h. Communication Procedures. The Construction Manager shall establish written procedures for communications and coordination required between Project Team members throughout the Project. Procedures shall cover such items as correspondence, minutes, reports, inspections, team meetings, technical reviews, design reviews, and other necessary communications. The Construction Manager shall use electronic communication for all projects whenever possible.
 - i. Safety Plan. The Construction Manager shall develop a comprehensive safety program for the Project to meet all applicable federal, state and local safety requirements including provisions to be included in the Contract Documents. This will include an aggressive program for ensuring safety of all persons and property affected by the Work.
 - j. Quality Control Plan. The Construction Manager shall develop and maintain an effective quality control plan and procedures to assure that materials furnished and quality of work performed are in accordance with the Construction Documents, specifically the Standard Specifications for Road and Bridge Construction (Year), Section 105, and all modifications made thereto.
 - k. Crisis Management Plan. The Construction Manager shall develop a crisis management plan describing a general approach to and contacts in case of crisis situations, e.g., hurricane, riot, etc. that permits, to the fullest extent possible, uninterrupted work or prompt resumption of the work.
 - l. Labor Relations Plan. The Construction Manager shall develop, in consultation with the Project Team, an approach to labor relations for the Project that assures, to the fullest extent possible, the uninterrupted completion of the Project in accordance with the schedule and budget.
 - m. Security Plan. The Construction Manager shall develop and maintain a comprehensive plan to protect the Project sites and materials stored off-site against theft, vandalism, fire, and accidents, etc., as required by job and location conditions. Mobile equipment and operable equipment at the site, and hazardous parts of new construction subject to mischief, shall be locked or otherwise made inoperable or protected when unattended.
 - n. Public Relations Plan. Assist Project Team, as requested, in developing and implementing a comprehensive public relations plan including community outreach efforts to inform local small and medium size businesses of potential impacts of the construction on their operations. The Construction Manager shall assist the Project Team in coordination with other entities impacted by the Project.

- o. **Disadvantaged/Minority Business Enterprise Participation Plan.** The Construction Manager shall develop an implementation plan for the Disadvantaged/Minority Business Enterprise Participation Plan as proposed in the Construction Manager's Technical Proposal. The Construction Manager shall provide to the DBE/MBE office(s), reports and other pertinent information, as required.
- p. **Commissioning Plan.** The Construction Manager, in coordination with the Project Team, shall develop a commissioning plan that will be implemented during the design and construction phase, which will provide a smooth and successful Owner or tenant occupancy of the Project. The purpose of the commissioning plan is to ensure that building systems perform interactively according to the design intent and the Owner's and its tenant's operational needs. Specific objectives include:
 - i. Applicable equipment/systems are installed properly and receive adequate operational checkout by installing subcontractors;
 - ii. Verification and documentation of proper performance for installed equipment and systems;
 - iii. Verification that the design intent is being met continually;
 - iv. Documentation that operations and maintenance plans left on site are complete;
 - v. Documentation that the Owner's operating personnel are adequately trained;
 - vi. Documentation that record plans are accurately prepared during the construction of the Project;
 - vii. Interaction with permitting authorities to facilitate the issuance of a Certificate of Occupancy; and
 - viii. Review of Contract Documents for warranty effective dates to coincide with the issuance of a Certificate of Occupancy for the Project.
- q. **Market Analysis and Bidders Plan.** Within 60 days after the effective date of this Agreement, the Construction Manager shall submit a written "Construction Market Analysis and Prospective Bidders Report" reporting on availability of labor, material, equipment, potential bidders, and possible impact of any shortages or surpluses of labor or material, setting out recommendations and providing information as to prospective bidders for the Project. The Construction Manager shall develop a plan for stimulating interest of qualified contractors in bidding on the work and familiarizing those potential bidders with the requirements of the Project.
- r. **Maintenance of Traffic and Job Site Logistics.** The Construction Manager shall prepare, based on the Project-wide maintenance of traffic plan prepared by the Project Architect/Engineer, a logistics, access staging and maintenance of traffic plan for this Project. The plans shall contain specific procedures for minimizing the disruption of surrounding operations and inconvenience to the public accessing the project site(s). The plan shall include plans and other documents illustrating the scale and relationship of Project components based on the Projects current and future requirements, construction schedule and construction budget requirements. The Construction Manager shall ascertain what temporary enclosures, if any, of building areas should be provided for and may be provided as a practical matter, in order to assure orderly progress of the work in periods when extreme weather conditions are likely to be experienced.

2.2. CONSTRUCTION MANAGER'S STAFF

For each phase of services and for this project the Construction Manager is to perform hereunder, the Construction Manager shall maintain competent staff in all positions. The Construction Manager shall submit a staffing plan for each phase. The staffing plan shall detail the Construction Manager's organization for all applicable work levels, including the superintendent level and on-site and off-site personnel. The personnel presented in the Construction Manager's Qualifications Experience Questionnaire shall staff key positions. For all other positions listed in the staffing plan, if applicable, the Construction Manager shall provide resumes to the Project Administrator of the persons being proposed to staff those positions. The Owner reserves the right to disapprove any person proposed, and the Construction Manager shall offer substitutes therefore. It is expressly understood that failure of the Owner to disapprove a person does not confer the Owner's approval of such person. At any time, the Owner/Project Administrator has the reasonable right to request removal and replacement of any Construction Manager's personnel. Once in place, the Construction Manager shall not change any person filling a position listed in the organizational charts without the prior consent of the Owner/Project Administrator unless the Owner requests it or unless the person is leaving the employee of the Construction Manager.

2.3. JOB-SITE FACILITIES

The Construction Manager shall arrange for all job-site facilities at this project site as necessary to enable the members of the Project Team to effectively perform their respective duties in the management, inspection, and supervision of construction. For this project, the Construction Manager shall develop a proposal for Project Team approval, describing the facilities to be provided, the methods of acquisition of the facilities and disposition of the acquired facilities and equipment upon completion of the Project.

The Construction Manager shall retain ownership of all materials removed from the job site unless specifically identified in other Contract Documents.

2.4. ADMINISTRATIVE RECORDS

The Construction Manager will maintain at the job site, unless agreed to otherwise by the Project Administrator, on a current basis, files and records such as, but not limited to the following:

- Punch Lists
- Cost Proposal Requests
- Bid Analysis/Negotiations/Award Information Contracts/Purchase Orders w/changes
- Material/Equipment
 - Delivery Logs
- Payment Records
- Transmittal Records
- Inspection Reports
- PMIS Schedule and Updates
- Suspense (Tickler) Files of Outstanding Requirements
- EEO/Davis Bacon Reports
- DBE/MBE Reports
 - With payment records
- Shop Plan Submittal/Approval Logs
- Contract Plans and Specifications with Addenda
- Warranties and Guarantees
- Cost Accounting Records:
 - Labor Costs
 - Material Costs
 - Equipment Costs
- Payment Record Requests
- Subcontractor Pay Exception Report
- Meeting Minutes
- Cost-Estimates
- Bulletin Quotations
- Lab Test Reports
- Insurance Certificates and Bonds
- Technical Standards
- Design Handbooks
- "As-Built" Marked Prints
- Operating & Maintenance Instruction
- Daily Progress Reports
- Monthly Progress Reports
- Correspondence Files
- Project Manual

Certain administrative records, as required shall be available to the members of the Project Team for reference or review.

2.5. PRE-CONSTRUCTION SERVICES

In addition to any other services to be performed during the pre-construction phase as may be specified elsewhere in this Agreement, the Construction Manager shall perform the following pre-construction phase services:

2.5.1. Preliminary Evaluation

The Construction Manager shall provide a preliminary evaluation of the Owner's Project and construction budget requirements, including a review of all background data made available by Owner as to requirements, criteria, priorities, feasibility, and physical and financial limitations with regard to the Project. The Construction Manager shall become thoroughly familiar with the site and conditions surrounding the site and document the conditions observed on the site with photos or videos as required by the Owner/Project Administrator. The Construction Manager shall review with Project Administrator and Project Architect/Engineer site data such as access, location of services, security, surveys, soils information, and other relevant information. The Construction Manager shall be responsible for the proper identification and location of all utilities, services and other underground facilities that may impact the Projects, but does not assume liability for damage to facilities which are not properly identified by the owner thereof, or its agent. The Construction Manager shall participate in a kick-off meeting with Project Team to establish rapport and develop a common appreciation of the goals of the Project.

2.5.2. Design Review and Recommendations

2.5.2.1. Review and Recommendations

- a. The Construction Manager, as part of its pre-construction phase services, shall follow the development of design through final Construction Documents, reviewing the in-progress Schematic Design Documents and Design Development Documents, and familiarize itself thoroughly with the evolving architectural, civil, mechanical, plumbing, electrical, and structural plans and specifications. The Construction Manager shall analyze the design for constructability, including construction feasibility and practicality, and alternative materials/methods. The Construction Manager shall assist and advise the Project Team in exploring alternative approaches, materials and systems including value engineering to minimize total construction and operation costs. Upon request, the Construction Manager shall assist Owner and Project Architect/Engineer in preparing comparative life-cycle studies of ownership, operating, and maintenance costs for each schematic design alternative considering costs relating to efficiency, usable life, maintenance, energy and operation.
- b. The Construction Manager shall continuously monitor the impact of proposed design on Project schedule and recommend adjustments in the design documents or construction bid packaging to ensure completion of the Project in the most expeditious manner possible.
- c. The Construction Manager shall advise and assist the Project Architect/Engineer, and represent Owner, if requested, in dealing appropriately with all applicable laws and with local utilities, communications, and other related infrastructure issues, as necessary.

2.5.2.2. Preliminary Estimates

- a. Cost Model: The Construction Manager shall prepare a cost model for estimating program costs and provide a copy of such model to the Project Administrator within 45 days after the effective date of this agreement. Such cost model shall serve as a basis for all estimates for the program including the development of all proposed GMP's.
- b. Initial Project Estimate. The Construction Manager shall prepare an Estimate for the Project within 45 days after the effective date of this Agreement.
- c. Project Estimate Updates. The Construction Manager shall prepare several levels of budgeting, estimating and pricing appropriate to each level of design, as described in the applicable Letter of Authorization. The Construction Manager shall continue to refine cost estimates as each project progresses through the design phases with input to the Program Team on clarifications needed to reduce allowances for contingencies. The Construction Manager shall continue to review and refine the estimate as construction documents are prepared for this project and advise the Project team immediately if it appears that the program or any project can not be completed within the budget or schedule.
- d. The Construction Manager shall update its estimate for this project at completion of design development documents for the project.
- e. Construction Document Estimates. During the bid phase, when the Construction Document working plans and specifications are complete, the Construction Manager shall prepare and submit at the time of GMP a cost estimate on the basis of a quantitative material take-off with current local cost for each bid group by subcontract package. Such Cost estimate shall remain confidential and exempt from

inspection under Section 119.07(1), Florida Statutes, to the extent permitted by law, until bids or proposals received by Construction Manager are opened.

With the updated estimates, the Construction Manager shall submit a report of line item variances from the previous estimate with information describing the basis for each variance. Formal design reviews with the Project Administrator will be scheduled at the indicated completion milestones.

- 2.5.2.3. Review Reports and Warranty. Within 45 days after receiving the Construction Documents for this project the Construction Manager shall perform a specific review thereof, focused upon construction feasibility and practicality and apparent defects. Promptly after completion of the review, the Construction Manager shall submit to the Project Administrator and the Project Architect/Engineer a written report covering suggestions or recommendations previously submitted, additional suggestions or recommendations, as it may deem appropriate, and all actions taken by the Project Architect/Engineer with respect to same, any comments it may deem to be appropriate with respect to separating the work into separate subcontracts, alternative materials, and all comments called for herein.

AT COMPLETION OF THE CONSTRUCTION MANAGER'S REVIEW OF THE CONSTRUCTION DOCUMENT PLANS AND SPECIFICATIONS FOR A PROJECT, EXCEPT ONLY AS TO SPECIFIC MATTERS AS MAY BE IDENTIFIED BY APPROPRIATE COMMENTS PURSUANT TO THIS SECTION, THE CONSTRUCTION MANAGER SHALL WARRANT, WITHOUT ASSUMING ANY ARCHITECTURAL OR ENGINEERING RESPONSIBILITY, THAT THE PLANS AND SPECIFICATIONS ARE CONSISTENT, PRACTICAL, FEASIBLE AND CONSTRUCTIBLE. CONSTRUCTION MANAGER SHALL WARRANT THAT THE WORK DESCRIBED IN THE PLANS AND SPECIFICATIONS FOR THE VARIOUS BIDDING PACKAGES OF THE PROJECT IS CONSTRUCTIBLE WITHIN THE SCHEDULED CONSTRUCTION TIME.

DISCLAIMER OF WARRANTY: - THE OWNER DISCLAIMS ANY WARRANTY THAT THE PLANS AND SPECIFICATIONS FOR ANY PROJECT ARE ACCURATE, PRACTICAL, CONSISTENT OR CONSTRUCTIBLE. OWNER'S REVIEW AND/OR APPROVAL OF THE PLANS AND SPECIFICATIONS SHALL IN NO WAY DIMINISH OR RELEASE THE WARRANTY OF ADEQUACY AND FITNESS FOR INTENDED PURPOSES.

2.6. PROCUREMENT PLANNING

- 2.6.1. Long Lead Procurements. The Construction Manager shall review the design for the purpose of identifying long lead procurement items (machinery, equipment, materials and supplies) for this project. When each item is identified, the Construction Manager shall notify the Project Team of the required procurement and schedule. Such information shall be included in the bid documents and be made a part of all affected subcontracts. As soon as the Project Architect/Engineer has completed plans and technical specifications and the Construction Manager has obtained permitting approval, the Construction Manager shall arrange for procurement of such long-lead items, as authorized by Owner. The Construction Manager shall keep informed of the progress of the respective subcontractors or suppliers, manufacturing or fabricating such items and advise the Project Administrator, of any problems or prospective delay in delivery. When such items are to be fabricated and partially or totally paid for by the Owner prior to the arrival of such items at the site, the Construction Manager shall require the assembler or manufacturer to provide a Uniform Commercial Code (UCC) Form No. 1, clearly establishing that the Owner has rights and privileges with regard to the item that has been paid for.
- 2.6.2. Separate Subcontracts Planning. The Construction Manager shall review the design and phasing plans for this project with the Project Architect/Engineer and make recommendations in writing to the Project Team with respect to dividing the work in such manner as will permit the Construction Manager to take bids and award separate construction subcontracts on the current schedule while the design is being completed. The evaluation shall speak to the benefits of the speed of erection and early completion of the Project overall. The Construction Manager shall take into consideration such factors as natural and practical lines of severability, sequencing effectiveness, access and availability constraints, total time for completion, construction market conditions, availability of labor and materials, community relations and any other factors pertinent to saving time and cost by overlapping design and construction that are authorized by the Owner/Project Administrator.
- 2.6.3. Interfacing. The Construction Manager shall review the design documents for clarity, consistency and coordination of documentation, and call to the Project Team's attention any apparent ambiguities or defects in the design, plans and specifications or other documents, use of illegal or restrictive requirements, overlap with any separate construction trade contracts, omissions, lack of correlation between plans and any other deficiencies noted in order that the Project Administrator and Project Architect/Engineer may arrange for necessary corrections. The Construction Manager shall take such measures as are appropriate to provide that all construction requirements for the Project will be covered in the separate subcontracts for procurement of long lead items, and that the separate construction subcontracts will be without duplication or overlap, and will be sequenced to maintain completion of all work on schedule. Particular attention shall

be given to provide that each bid scope clearly identifies the work included in that particular separate subcontract, its schedule for start and completion and its relationship to other separate contractors.

- 2.6.4. Warranties The Construction Manager shall review the Contract Documents to ensure that warranty effective dates coincide with the issuance of a Certificate of Occupancy for the Project.
- 2.6.5. Stimulation of Bidder Interest. The Construction Manager shall monitor conditions in the construction market to identify factors that will or may affect costs and time for completing the Project. As various bid scopes are prepared for bidding, the Construction Manager shall submit to the Project Team a list of potential bidders. The Construction Manager shall be responsible to stimulate bidder interest in the local, regional and national market place, and to identify and encourage bidding competition.
- 2.6.6. Preparation of GMP. When the Construction Documents for a Project are sufficiently complete to establish the work for the Project or any portion thereof, or at such time thereafter designated by the Owner, the Construction Manager will establish and submit in writing to the Owner for its approval a GMP proposal for the Project, guaranteeing the maximum price to the Owner, for the construction cost of the Project or designated part thereof. Such Guaranteed Maximum Price will be subject to modification for changes in the project as provided in Article 9. However, the actual price paid for the work by the Owner shall be the actual cost of all work subcontracts, supply contracts, direct labor costs, direct supervision costs, and direct job costs as defined under Article 8, plus the Construction Manager's fees or the GMP, whichever is less when the work is complete; provided, however, that Construction Manager shall also share in the "Project Cost Savings," as provided in this Agreement.
- 2.6.6.1. The GMP proposal for a Project shall include three (3) sets of signed, sealed and dated plans, specifications and other documents upon which the GMP is based from the Project Architect-Engineer, and shall acknowledge on the face of each document of each set that it is the set upon which the Construction Manager based its GMP. The Construction Manager shall send one set of the documents to the Project Administrator along with its GMP proposal, while keeping one set for itself and returning one set to the Project Architect-Engineer. The GMP proposal shall include the following sections:

Section One: Summary of Work
Section Two: GMP Price Summary – To include Letter of Authorization
Section Three: Scope Clarifications and Assumptions
Section Four: Detailed Estimate
Section Five: Bid Tabulations, where applicable
Section Six: Preliminary Construction Schedule
Section Seven: Contract Documents – Plan List and Specification List

2.7. CONSTRUCTION PHASE

In addition to any other services to be performed during the Construction Phase, as may be specified elsewhere in this Agreement, the Construction Manager shall perform the following Construction Phase services:

- 2.7.1. Construction Manager's Staff. The Construction Manager shall maintain at the Project site sufficient off-site support staff and competent full time staff who are authorized to act on behalf of the Construction Manager to provide continuous on-site monitoring and coordination, inspection and general direction of the work on the Project and progress of the subcontracts. Construction Manager shall not transfer or move either its Project Manager or any of his supervisory staff assigned to the Agreement without the prior written consent of Owner.
- 2.7.2. Lines of Authority. The Construction Manager shall establish and maintain lines of authority for its personnel, and shall provide this definition to the Project Manager and all other affected parties such as the inspectors, the subcontractors, the Architect/Engineers and the Project Administrator, to provide general direction of the work and progress of the various phases and subcontractors. Directions given to Construction Manager's supervisor by Owner shall be binding on Construction Manager. The Project Administrator, Owner and Architect/Engineers may attend meetings between the Construction Manager and its subcontractors; however, such attendance shall not diminish either the authority or responsibility of the Construction Manager to administer the subcontracts. At all times during the course of the Work, Construction Manager shall provide at this project Site a Project Manager who shall be satisfactory to Owner. Construction Manager's Project Manager shall have authority to represent Construction Manager. Upon Owner's written request, Construction Manager shall give the Project Manager, in writing, complete authority to act on behalf of and to bind Construction Manager in all matters pertaining to the Work and this Agreement. Construction Manager shall furnish Owner a copy of such authorization.
- 2.7.3. Schedule and Project Manual Provisions. The Construction Manager shall provide subcontractors with applicable portions of the Project Manual emphasizing their respective responsibilities for performance and the relationships of their work with respect to other subcontractors and suppliers. The Construction Manager shall also continue to provide current

scheduling information, direction and coordination regarding milestones, and beginning and finishing dates to enable them to perform their respective tasks so that the development of construction progresses in a smooth and efficient manner in conformance with the overall project schedule. The schedule shall include all phases of the construction work, material supplies, long lease procurement, approval of shop drawings, contract modifications in progress, schedules for contract modifications, and performance testing requirements. The Construction Manager shall review each subcontractor's construction schedule and conformance with applicable Contract Documents and ensure that established completion dates will comply with overall Project schedule requirements. The Construction Manager shall review the progress of construction of each subcontractor on a monthly basis, evaluate the percentage completion and compare actual progress to schedule, and determine and implement alternative courses of action that may be necessary to achieve timely and complete contract compliance by the subcontractor. The Construction Manager shall determine the effect on schedules of requested time extensions and require recovery schedules from subcontractors as needed.

- 2.7.4. Solicitation of Bids. Without assuming responsibilities of the Project Architect/Engineer, the Construction Manager shall prepare invitations for bids, or requests for proposal when applicable, as well as all contract documents for all procurements of long lead items, materials and services, site utilities, and for all subcontractor contracts. A minimum of three bids or proposals shall be solicited, if feasible. The Construction Manager shall schedule pre-bid conferences for subcontractors, material suppliers, equipment suppliers and others interested in the Project. For subcontracts, the Construction Manager shall request and receive bids/proposals from those subcontractors on the pre-qualified subcontractor's list, established pursuant to Section 4.2. For separate subcontract, the Construction Manager shall conduct a pre-bid conference with prospective bidders, the Project Architect/Engineer, and the Project Administrator. In the event that questions are raised which require an interpretation of the Bid Documents or otherwise indicate a need for a clarification or correction of the invitation, the Construction Manager shall coordinate the preparation of an addendum to the Bid Documents with the Project Architect/Engineer. The addendum shall be the medium for making any clarifications or corrections to the Bid Documents and will be issued to all of the prospective bidders. The Construction Manager shall analyze and evaluate the results of the various bids and their relationships to budgeted and estimated amounts, and prepare a bid tabulation analysis and such other support data as necessary to document the comparison of the various bids, their responsiveness to the desired scope of work, and the basis for the Construction Manager's selection.
- 2.7.5. Quality Control. The Construction Manager shall be responsible and accountable for the quality control of the work including quality control testing and inspection. The Construction Manager shall supervise the work of all subcontractors, reviewing construction means, methods, techniques, sequences and procedures, providing instructions to each when their work does not conform to the requirements of the Construction Documents for the Project. The Construction Manager shall continue to exert its influence and control over each subcontractor to ensure that corrections are made in a timely manner so as to not affect the efficient progress of the work. The Construction Manager shall receive copies of all claims or reports issued by the Project Architect/Engineers' Field Representative relative to the performance or acceptability of work. Should disagreement occur between the Construction Manager and either the Project Administrator or the Project Architect/Engineer over acceptability of work and its conformance with the requirements of the Construction Documents of the Project, the Owner shall be the final judge of performance and acceptability, and noncompliant work shall be corrected accordingly. The Project Administrator or the Owner may employ an independent firm for verification testing of the quality control testing. The Construction Manager will exercise reasonable care and diligence in discovering and promptly reporting to Owner any defects or deficiencies in the Work. The Construction Manager shall establish Project schedules and schedule milestones and review the progress schedules submitted by subcontractors in order to ensure proper completion of Work.
- 2.7.6. Subcontractor Interfacing. The Construction Manager shall be the single point of interface with all of its subcontractors and suppliers, and there is no requirement that Owner or any of its agents or representatives, including the Project Architect/Engineer, interface with such subcontractors and suppliers. The Construction Manager shall negotiate all contract modifications and field orders with all affected subcontractors. The Construction Manager shall review the costs of those proposals and advise the Owner and Project Architect/Engineer of their validity and reasonableness, acting in the Owner's best interest prior to requesting approval of each contract modification from the Owner. Before any work is begun on any contract modification, a written authorization from the Owner must be issued. However, when health and safety are threatened, the Construction Manager shall act immediately to remove the threat to health and safety. The Construction Manager shall also carefully review all shop drawings and then transmit the same to the Project Architect/Engineer for review and actions. The Project Architect/Engineer will transmit them back to the Construction Manager who will then issue the shop drawings to the affected subcontractor for fabrication or revision. The Construction Manager shall maintain a suspense control system to promote expeditious handling. The Construction Manager shall request the Project Architect/Engineer to make interpretations of the plans or specifications requested by the subcontractors via submission of a Request for Information form (as provided in the Project Procedures Manual). The Construction Manager shall maintain a document control/correspondence log system to promote expeditious handling of all submittals and Requests for Information. The Construction Manager shall advise Project Administrator and Project Architect/Engineer when timely response is not occurring on any of the above.

- 2.7.7. Coordination with Adjacent Work. The Construction Manager shall coordinate with any other contracts or assigned work Owner may issue directly for this Project pursuant to Section 1.2, and for any work adjacent to or interfacing with the Project.
- 2.7.8. Permits. The Construction Manager shall coordinate with the Project Architect/Engineer regarding the submittal of all required documents for permits. The Construction Manager shall secure all necessary building permits from applicable permitting authorities and all necessary utility connection permits, the cost of which will be considered a direct cost item.
- 2.7.9. Safety Program. The Construction Manager shall designate a full-time staff member as the Project safety director who shall oversee job safety and accident prevention for the Construction Manager. This individual shall review the proposed safety program of each subcontractor and make appropriate recommendations. The Construction Manager shall conduct a review of job safety and accident prevention at its progress meetings with subcontractors. The performance of such services by the Construction Manager shall not relieve the subcontractors of their responsibilities for the safety of persons and property, and for compliance with all federal, state and local statutes, rules, regulations and orders applicable to the conduct of the Work.
- 2.7.10. Inspection Coordination. The Construction Manager shall coordinate all technical inspection and testing provided by professionals designated by Project Administrator, the Owner, permitting authorities, and others. The Construction Manager shall also schedule the services of independent testing laboratories and provide the necessary testing of materials to ensure conformance to contract requirements and provide a copy of all inspection and testing reports to Project Administrator on the day of inspection or test. The Construction Manager shall provide reasonable prior notice to appropriate inspectors before the work is covered up, but in no event less than 24 hours before the work is covered up. All costs for uncovering work not inspected and any reconstruction due to lack of reasonable prior notice shall be borne by Construction Manager. If members of the Project Team are to observe said inspections, tests or approvals required by the Contract Documents, they shall be notified in writing by the Construction Manager of the dates and times of the inspections, tests or other approvals. The Construction Manager shall schedule, direct and/or review the services of or the reports and/or findings of surveyors, environmental consultants and testing and inspection agents engaged by the Owner. All Materials and Equipment furnished by Construction Manager and Work performed by Construction Manager shall at all times be subject to inspection and testing by Owner or inspectors or representatives appointed by Owner or by the Project Administrator. Whenever requested, Construction Manager shall give Owner and any inspectors or representatives appointed by Owner free access to its work during normal working hours either at the jobsite or its shops, factories, or places of business of Construction Manager and its subcontractors and suppliers for properly inspecting materials, equipment and work, and shall furnish them with full information as to the progress of the Work in its various parts. If any of the Work should be covered up without approval or consent of Owner's Project Administrator, or without necessary test and inspection, Construction Manager shall, if required by Owner's Project Administrator or by public authorities, uncover such Work for examination and testing, and shall re-cover same at Construction Manager's expense.
- 2.7.11. Construction Administration. The Construction Manager shall provide, as part of its construction phase fee, job site administrative functions during construction to assure proper supervision, coordination and documentation, including but not limited to such things as the following:
- 2.7.11.1. Supervision of Work. Provide full-time representation at the Project site to become familiar in detail with the progress and quality of the Work completed, to determine in detail if the Work is proceeding in accordance with all the requirements of the Contract Documents, to ensure compliance with the Plans and Specifications for the Project, coordination with other work, and to ensure compliance with all applicable laws, statutes, ordinances, codes, rules, regulations, orders and decrees.
- 2.7.11.2. Daily Logs. Maintain a log and electronic database of daily activities for the Project including, at a minimum, the following information in a bound log: the day, date, weather conditions and how any weather condition affected the progress of the Work; time of commencement of work for the day; the work being performed; material, labor, personnel, equipment and subcontractors at the Project site; visitors to the Project site including representatives of Owner, Project Administrator and Project Architect/Engineer; any special or unusual conditions or occurrences encountered; and the time of termination of work for the day. The log and database shall be available to the Owner, the Project Administrator, the Project Architect/Engineer, and the inspectors upon request.
- 2.7.11.3. Project Rosters. Maintain for the Project a roster of companies on the Project with names and telephone numbers of key personnel, and provide a means of identifying workers on site in accordance with the approved security plan.
- 2.7.11.4. Job Meetings. Hold weekly progress and coordination meetings with the Project Manager to provide for an easy flowing project and orderly progress of the work, including implementation of procedures, and to assure timely submittals and expeditious processing of approvals and return of shop drawings, samples, etc. The Construction Manager shall advise the other Project Team members of their required participation in any meeting or inspection, giving each approximately one week's notice, unless such notice is made

impossible by conditions beyond the Construction Manager's control. The Construction Manager shall hold job-site meetings at least once each month with the Project Team.

- 2.7.11.5. Project Team Meetings. The Construction Manager, Project Administrator and Project Architect/Engineer shall meet regularly as the progress of the Projects require, but in no case less than every two weeks for the Project, to review and agree upon the work performed to date and to establish the controlling items of work for the next two weeks.
- 2.7.11.6. Shop Drawing Submittals/Approvals. Work with the Project Team to establish and implement procedures for expediting and processing all shop drawings, samples, submittals and detail plans/drawings, and other documents, maximizing the use of electronic plan media to the greatest extent possible for submittal and transmittal to the Project Architect/Engineer of such plans for action, and closely monitor their submittal and approval process. The Construction Manager shall be responsible for the initial review and appropriate circulation of submittals.
- 2.7.11.7. Material and Equipment Expediting. Closely monitor material and equipment deliveries, critically important checking and follow-up procedures on supplier commitments of all subcontractors.
- 2.7.11.8. Payments to subcontractors. Review and process invoices from subcontractors and suppliers.
- 2.7.11.9. Document Interpretation. Refer all questions for interpretation of the documents prepared by the Project Architect/Engineer to the Project Architect/Engineer.
- 2.7.11.10. Reports and Project Site Documents. Record the progress of the project as required by this agreement, as well as directed by the Project Administrator. Submit written progress reports to the Owner and the Project Architect/Engineer including information on the subcontractor's work, and the percentage of completion. Keep a daily log available to the Owner, the Project Architect/Engineer and the permitting authority inspectors.
- 2.7.11.11. Subcontractors' Punch List. Prepare periodic punch lists for each subcontractor's work including unsatisfactory or incomplete items and schedules for their completion.
- 2.7.11.12. Signage. Arrange for all appropriate Project signage necessary for identification, direction, or control for safety and maintenance of traffic. The layout, need and location of all signage must be approved by the Project Administrator, and the signage shall be prepared by a professional sign maker.
- 2.7.11.13. Printing. Arrange for the printing and distribution of all required bidding documents and shop drawings, including the sets required by any permitting authority's inspectors.
- 2.7.11.14. Cleaning. Cause the subcontractors to keep the premises where the Work is underway reasonably free from accumulations of waste material or rubbish. Upon Substantial Completion of portions of the Work, the Construction Manager shall cause the appropriate subcontractors to remove all rubbish, tools, scaffolding and surplus materials from and about the premises and leave such Work area clean and ready for occupancy.
- 2.7.11.15. Protection of Property. Take all reasonable precautions for the safety of, and shall monitor the subcontractors for reasonable protection to prevent damage, injury or loss to all the Work and all materials and equipment to be incorporated therein, whether in storage on or off the site, under the care, custody or control of the Construction Manager or a subcontractor, and other property at the site or adjacent thereto, including walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction. The Construction Manager shall cause all subcontractors and other agents of Construction Manager to protect Owner's property from loss or injury that may arise in connection with the Work.
- 2.7.11.16. Contract Modification Administration. Administer contract modifications in conjunction with the Project Administrator regarding revised plans or sketches as prepared by the Architect for items of extra work or changes of scope (as required), review each requested change in the Work or directed extra Work to compare with the prices quoted by the subcontractors. With approval of Owner, conduct negotiations with subcontractors and develop contract modifications to incorporate the changes or extra work into the subcontracts and process each contract modification through the respective subcontractor and submit to Owner for approval. The Construction Manager shall evaluate the scope of subcontractor's proposal with respect to the proposed contract modifications and substitutions proposed by the subcontractor and make recommendations to Owner. Owner shall have the option to reject proposed contract modifications and substitutions and the Owner shall coordinate the revision of the Plans and Specifications accordingly. Any work performed under a proposed contract modification issued without prior Owner approval shall be

subject to removal and replacement at the Construction Manager's cost, should Owner subsequently object thereto. The Construction Manager shall have no authority to authorize changes in Contract Documents of any kind or to modify any deadlines for completion of Work specified in the Contract Documents.

- 2.7.11.17. Administration of Claims. The Construction Manager shall administer claims from subcontractors and suppliers as to their validity under the terms of the subcontracts. Upon being advised of any proposed contract modification, the Construction Manager shall submit to the Project Team the estimated cost of, or savings attributable to, such contract modification and the estimated impact thereof on the Project Schedule. No contract modification shall be effective until the Construction Manager receives approvals in writing from Owner. Upon receipt of such approval from Owner and execution by the applicable subcontractors, such contract modification shall become a part of the Contract Documents, and the Construction Manager shall promptly cause the performance of the Work so changed to proceed. In the event a contract modification necessitates a change in a Project schedule, such schedule and associated costs shall be changed by a reasonable amount, subject to the provisions of Article 9. Agreement on any contract modification shall constitute a final settlement on all items covered therein, subject to performance thereof and payment therefore pursuant to the terms of this Agreement.
- 2.7.11.18. Dispute Resolution. Resolve, in consultation with the Project Team, all disputes that may arise with or between subcontractors and/or material suppliers as a result of the construction.
- 2.7.11.19. Substitution of Material. If a subcontractor recommends or proposes substitution of material or other changes in the Work from the material or Work specified in the Construction Documents after bids and/or proposals for that Work have been received, evaluated and awarded, the Construction Manager, subject to the Project Administrator's and Project Architect/Engineer's review and approval, shall evaluate such proposal and make a recommendation to the Project Team. If approved, the Construction Manager shall process a contract modification.
- 2.7.11.20. Mechanical Completion. Prepare a procedure prior to completion checkout for Owner review and approval at least two (2) months prior to the scheduled commencement of checkout for Mechanical Completion.
- 2.7.11.21. Substantial Completion. Ascertain when the work or designated portions thereof are ready for the Project Architect/Engineer's substantial completion inspection. From the Project Architect/Engineer's list of incomplete or unsatisfactory items, prepare a schedule for completion of such items, indicating proposed completion dates for the Owner's review. If the Construction Manager wishes the Project Architect/Engineer to conduct a pre-substantial completion inspection in conjunction with its own forces, the Project Architect/Engineer will prepare the pre-substantial completion punch list from which the Construction Manager will develop a completion schedule. The Project Architect/Engineer will issue a certificate of substantial completion when the work on its pre-substantial completion punch list has been accomplished. Between two to three weeks after Substantial Completion of each Phase of a Project, conduct walk-through inspections of the Project and promptly advise Owner in writing of any known or observable defects or deficiencies in the Project and of any known or observable non-conformance of the Work with the Construction Documents. Construction Manager shall ensure timely correction of any defects or deficiencies in the Work.
- 2.7.11.22. Record Plans/Drawings. During the progress of the work for this project, the Construction Manager shall require the plumbing, air conditioning, heating, ventilating, elevator, and electrical subcontractors to record on their field sets of plans the exact locations, as installed, of all conduit, pipe and duct lines whether concealed or exposed which were not installed exactly as shown on the contract plans. The Construction Manager shall also record all plan revisions that have been authorized by contract modification that effect wall or partition locations, door and window locations and other template changes. Accurate dimensional locations for all items shall be recorded. The exact routing of conduit runs and underground utilities shall be shown on these plans. Each plan shall be noted "As Built" and shall bear the date and name of the subcontractors that performed the work. Where the work was installed exactly as shown on the contract plans the sheets shall not be disturbed except as noted above.

2.8. POST-CONSTRUCTION

In addition to any other services to be performed during the Construction Phase, as may be specified elsewhere in this Agreement, the Construction Manager shall perform the following Post-Construction Phase services:

- 2.8.1. Final Completion. Monitor the subcontractor's performance on the completion of this project and provide notice to the Owner and Project Architect/Engineer that the work is ready for final inspection.
- 2.8.2. Commissioning. Assist Owner and Project Architect/Engineer in preparing an operation and maintenance schedule manual for building systems and equipment which shall include, without limitation, the following: (i) all operation and maintenance manuals provided by the subcontractors; (ii) a complete listing of all vendors and material suppliers (firm name, address, telephone number and contact person for each such vendor and material supplier) cross referenced to the subcontractor responsible for procurement of the particular item purchased from each such vendor and material supplier; and (iii) a complete description of all safety precautions to be observed during routine or emergency maintenance. Deliver operating and maintenance manuals for building systems and equipment to Project Architect/Engineer.
- 2.8.3. Warranties. Secure and transmit to the Owner, through the Project Administrator, all required guarantees, affidavits, releases, bonds and waivers, manuals, record plans, and maintenance books.
- 2.8.4. Start-Up. With the Owner's personnel, direct the checkout of utilities, operations, systems and equipment for readiness and assist in their initial start-up and testing by the subcontractors.
- 2.8.5. Record Plans/Drawings. The Construction Manager shall review the completed As-Built plans and ascertain that all data furnished on the plans are accurate and truly represent the work as actually installed. When manholes, boxes, underground conduits, plumbing, hot or chilled water lines, inverts, etc. are involved as part of the work, the Construction Manager shall furnish true elevations and locations, all properly referenced by using the original bench mark used for the institution or for this project. As-Built for Roadway and Bridge Projects shall be in accordance with FDOT specifications.
- 2.8.6. Owner Occupancy. The Construction Manager shall provide consultation and project management to facilitate Owner occupancy and provide transitional services to get the work, as completed by the Construction Manager or subcontractors, "on line" in such conditions as will satisfy Owner operational requirements.
- 2.8.7. The Construction Manager shall catalog operational and maintenance requirements of equipment to be operated by maintenance personnel and convey these to the Owner in such a manner as to promote their usability. The Construction Manager shall provide operational training in equipment use for building operators.
- 2.8.8. The Construction Manager shall secure, assemble and deliver required guarantees and warranties to the Owner in a manner that will facilitate their maximum enforcement and assure their meaningful implementation.
- 2.8.9. Warranty. For this project, no work can be performed by the Construction Manager's own force, but where work is performed by subcontractors under contract for the Construction Manager, the Construction Manager shall warrant that all materials and equipment included in such. Work will be new except where indicated otherwise in Contract Documents, and that such Work will be of good quality, free from improper workmanship and defective materials and in conformance with the Plans and Specifications and will give proper and continuous service under all conditions of service required by, specified in, or which may be reasonably inferred from the Contract Documents. With respect to the same Work, the Construction Manager further agrees to correct all work found by the Owner to be defective in material and workmanship or not in conformance with the Plans and Specifications for a period of one year from the Date of Substantial Completion or for such longer periods of time as may be set forth with respect to specific warranties contained in the trade sections of the Specifications, as well as any damage to the Work resulting from defective design, materials, equipment, or workmanship which develop during construction or during the Warranty Period. The Construction Manager only has design responsibility for shop plans and other Construction Manager-initiated designs. The Construction Manager shall collect and deliver to the Owner any specific written warranties given by others as required by the Contract Documents. All such warranties shall commence upon Substantial Completion of the applicable Project, unless the warranted work is not completed or has been rejected, in which case the warranty for the work shall commence on the completion or acceptance of the work. Also, the Construction Manager shall conduct, jointly with the Owner and the Project Architect/Engineer, a warranty inspection nine (9) months after the date of Owner Occupancy.
 - 2.8.9.1. Any repair or replacements done under this Warranty shall comply with the requirements of the Contract Documents and shall be verified by the performance of Construction Manager testing as Owner may require. All costs incidental to such repair, replacement, and testing, including the removal, replacement, and reinstallation of equipment and materials necessary to gain access, shall be borne by Construction Manager. Construction Manager warrants such repaired or replaced work against defective design, materials, and workmanship for a period of twelve (12) months from and after substantial completion of the Project or twelve (12) months from the time of such repair or replacement, whichever occurs latest. The Construction Manager only has redesign responsibility for shop drawings and other Construction Manager-initiated designs. Should Construction Manager fail to promptly make the necessary redesign, repair, replacement, and tests, Owner may perform or cause to be performed the same at Construction Manager's expense. Construction Manager shall reimburse the expense incurred by Owner for such remedial work within thirty (30) days from the date of

receipt of Owner's invoice therefore. Construction Manager shall be liable for the satisfaction and full performance of the warranties as set forth herein.

2.9. PROJECT CLOSEOUT.

In addition to any other services to be performed during the Construction Phase or Post-Construction phase of any Project, as may be specified elsewhere in this Agreement, the Construction Manager shall perform such services relating to closing out the Project as requested by Owner, or as set forth in the Project Procedures Manual.

3.

OWNER'S RESPONSIBILITIES

- 3.1. Owner's Information. The Owner shall provide full information regarding its requirements for the Project.
- 3.2. Project Administrator. The Owner shall designate a representative for a Project who shall be fully acquainted with the Project. The Project Administrator shall serve as the day-to-day contact with the Construction Manager. A representative for the Project Administrator shall serve as the person designated by the Owner to provide direct interface with the Construction Manager with respect to the Owner's responsibilities. The Owner shall define the lines of the Project Administrator's authority to approve Project Construction Budgets and changes in Project. The Owner shall render decisions promptly and furnish information expeditiously.
- 3.3. Architect and Engineers' Agreements. The Owner shall retain Architect/Engineers for design and to prepare construction documents for this project. The Architect/Engineers' services, duties and responsibilities are described in the Agreements between the Owner and the Architect/Engineers, a copy of which will be furnished to the Construction Manager. The Construction Manager shall be provided written notification of all changes to agreements between the Owner and the Architect/Engineers.
- 3.4. Project Administrator's Agreement. The Owner may retain an independent Project Administrator for management of the Project. The Project Administrator shall maintain day-to-day contact with and oversee the Construction Manager. All communications between the Construction Manager and the Owner shall be through the Project Administrator.
- 3.5. Site Survey and Reports. The Owner shall provide for the furnishing for the site of this project all surveys describing the physical characteristics, soil reports, and subsurface investigations, legal limitations, utility locations, and a legal description.
- 3.6. Approvals. The Owner shall pay for necessary approvals, assessments and charges required for the construction, use or occupancy of permanent structures or for permanent changes in existing facilities.
- 3.7. Legal Services. The Owner shall obtain at its own cost such legal services as may be necessary for providing the items set forth in Section 3.6 and such auditing services as he may require.
- 3.8. Plans and Specifications. The Construction Manager will be furnished a reproducible set of all copies of plans and specifications for bid documents reasonably necessary and ready for printing. Delineation of specifications is as follows: from the footprint of the building in (including all out-buildings), the AIA specifications and all pertinent modifications thereto shall apply. From the footprint of the building out, the Standard Specifications for Road and Bridge Construction (2000) and all pertinent modifications thereto shall apply.
- 3.9. Cost of Surveys & Reports. The services, information, surveys and reports required by the above paragraphs shall be furnished with reasonable promptness in accordance with the approved schedule at the Owner's expense, and the Construction Manager shall be entitled to rely upon the accuracy and completeness thereof.
- 3.10 Project Fault Defects. If the Owner or Project Administrator becomes aware of any fault or defect in any Project or non-conformance with the plans and specifications, they shall give prompt written notice thereof to the Construction Manager and Architect-Engineer.
- 3.11 Funding. The Owner shall furnish, in accordance with the established schedule, reasonable evidence satisfactory to the Construction Manager that sufficient funds will be available and committed for the cost of this project or part of the Project.
- 3.12 Lines of Communication. The Owner, Project Administrator and Architect-Engineers shall communicate with the subcontractors or suppliers only through the Construction Manager as long as such method of communication is effective in maintaining project schedules and quality.
- 3.13 Lines of Authority. The Owner and Project Administrator shall establish and maintain lines of authority for their personnel and shall provide this definition to the Construction Manager and all other affected parties.
- 3.14 Permitting & Code Inspections. The Owner shall retain a threshold inspector as required by Chapter 553, Florida Statutes, and any other inspectors as the Owner deems necessary.

4.
PERFORMANCE OF WORK AND SUBCONTRACTS

- 4.1. Performance of Work by Construction Manager. It is the intent of this Agreement that the construction work under the Project shall be performed solely by subcontractors to the Construction Manager. However, the Construction Manager may perform portions of the work with its own personnel, with the approval of the Owner, if the services of a responsive and responsible subcontractor cannot be retained.
- 4.2. Pre-qualification of Bidders. The Construction Manager, in consultation with the Project Team, shall establish objective pre-qualification guidelines to be applied by the Construction Manager for subcontracts and major suppliers. Financial stability, past performance, bonding capacity, safety record, and personnel will be among the guidelines used. At the discretion of the Construction Manager, on subcontracts where the bid exceeds \$250,000.00, each subcontractor may be required to submit a completed experience questionnaire and financial information; and/or previously been pre-qualified as included in Construction Manager's estimating database. The subcontractor's financial condition must demonstrate that adequate fixed and liquid assets and equipment are available to properly perform the subcontract. The Construction Manager shall advertise all prospective subcontract work for purposes of pre-qualification using public means (e.g. newspaper) and shall receive letters of interest and other data deemed necessary by the Construction Manager for proper pre-qualification. Submittals by prospective subcontractors shall be evaluated by the Construction Manager pursuant to the pre-qualification guidelines. Proposers meeting the Construction Manager's pre-qualification guidelines shall be placed on a list of pre-qualified subcontractors. Except where a trade is represented by less than three pre-qualified subcontractors, bids shall only be accepted from the list of pre-qualified subcontractors or suppliers.
- 4.3. Subcontract and Supplier Bids and Proposals. The Construction Manager shall solicit subcontract bids or proposals from the pre-qualified subcontractors and suppliers. Such solicitations shall specifically state that no contractual relationship will be created with Owner. The Construction Manager shall award subcontracts to the lowest responsive and responsible bidders or proposers after the proposals are reviewed by the Construction Manager. The Construction Manager shall provide a summation and analysis of the apparent low subcontract bids, including the identity of any apparent low subcontract bidders that the Construction Manager does not wish to employ. Such identification and proposal of non-utilization by the Construction Manager shall require specific written reason for same. In no case shall the Project Administrator or the Owner have any contractual relationship with a subcontractor or responsibility for subcontractor performance.
- 4.4. Owners Right to Disapprove. The Owner retains the right to object to the award of a subcontract to any specific bidder if such award would be, in the Owner's judgment, prejudicial to its best interest. If the Owner objects to a subcontractor or supplier award by Construction Manager, the Construction Manager shall select an acceptable substitute. If the substituted subcontractor's bid exceeds the budgeted value of the work contained in an accepted Project GMP, a contract modification shall be issued to cover the additional costs occasioned by such substitution.
- 4.5. Third Party Relationship. Nothing in this Agreement, the subcontracts, or in purchase orders issued by the Construction Manager shall create any contractual relationship between the Owner and any subcontractor or supplier (except as may be necessary to provide the required indemnification and warranties). The subcontracts and purchase orders shall specifically state that no such relationship is created hereby. However, the Owner is mutually recognized as a third party beneficiary of all such subcontracts.
- 4.6. Required Subcontract Conditions.
- 4.6.1. Subcontractual Relations. By an appropriate written agreement, 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 that the Construction Manager by these Documents assumes toward the Owner and the Project Architect/Engineer. Said agreements shall preserve and protect the rights of the Owner and Project Architect/Engineer 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. The agreement shall also require the subcontractor to assume toward the Owner all obligations and responsibility that the subcontractor has to the Construction Manager in the event that this Agreement is terminated and the Owner desires to assume the subcontract. Where appropriate, the Construction Manager shall require each subcontractor to enter into similar agreements with its sub-subcontractor.

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 4.6, and identify to the Subcontractor any terms and conditions of the proposed Subcontract which may be at variance with the Contract Documents. Each Subcontractor shall similarly make copies of such Documents available to its Sub-subcontractors.

- 4.6.2. Subcontract Requirements.

- 4.6.2.1. Workforce. The subcontractor must agree to perform no less than 15% of the project construction work utilizing its own employees.
- 4.6.2.2. Supervision. The subcontractor must agree to provide field (on-site) supervision through a named superintendent for each trade (general concrete forming and placement, masonry, mechanical, plumbing, electrical and roofing). In addition, the subcontractor shall assign and name a qualified employee for scheduling direction for its work. The supervisory employees of the subcontractor (including field superintendent, foreman and schedulers at all levels) must have been employed in a supervisory (leadership) capacity of substantially equivalent level on a similar project for at least two years within the last five years. The subcontractor shall include a resume of experience for each employee identified by the subcontractor to supervise and schedule its work.
- 4.6.2.3. All subcontracts shall provide:
- a. **LIMITATION OF REMEDY - NO DAMAGES FOR DELAY**

That the subcontractor's exclusive remedy for damages for delays in the performance of the contract caused by events beyond its control, including delays claimed to be caused by the Owner, Project Administrator, or Architect-Engineer or attributable to the Owner, Project Administrator, or Architect-Engineer and including claims based on breach of contract or negligence, shall be an extension of its contract time; provided however that subcontractor shall also be entitled to its actual costs of delay, as defined in Article 8, if such delay is caused by Owner, Project Administrator or Architect-Engineer.

In the event of a change in the work the subcontractor's claim for adjustments in the contract sum are limited exclusively to its actual costs for such changes plus no more than 15% for overhead and profit and bond costs.

Each subcontract shall require the subcontractor to expressly agree that the foregoing constitutes the sole and exclusive remedies for delays and changes in the work and thus eliminate any other remedies for claim for increase in the contract price, damages, losses or additional compensation.
 - b. Each subcontract shall require that any claims by subcontractor for delay or additional cost must be submitted to Construction Manager within the time and in the manner in which the Construction Manager must submit such claims to the Owner, and that failure to comply with the conditions for giving notice and submitting claims shall result in the waiver of such claims.
 - c. Each subcontract shall include an acknowledgement by each subcontractor and supplier that the payment bond provided by Construction Manager pursuant to this Agreement is a substitute for the right to claim a lien on the project, and that any claims for nonpayment shall be made against the bond in accordance with Section 255.05, Florida Statutes.
- 4.6.3. Responsibilities for Acts and Omissions. The Construction Manager shall be responsible to the Owner for the acts and omissions of its employees and agents and its subcontractors, their agents and employees, and all other persons performing any of the work or supplying materials under a contract to the Construction Manager.
- 4.6.4. Subcontracts to be provided. The Construction Manager shall provide upon request a copy of each subcontract, including the general supplementary conditions, to the Owner.

5.

SCHEDULE, TIME OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

- 5.1. At the time a GMP is established, as provided for in Article 6, the Project Team shall establish a project substantial completion date, a project final completion date and an Owner Occupancy date for completion of the project in accordance with the master project schedule. The Construction Manager agrees to complete the construction in accordance with the agreed upon substantial completion date, final completion date and Owner Occupancy date. The Construction Manager acknowledges that failure to complete the project within the construction time set forth in the approved schedule may result in substantial damages to the Owner, for all of which damages the Construction Manager shall be liable. The parties agree to rely on the liquidated damages provided in the Standard Specifications for Road and Bridge Construction (YEAR) as the sole remedy for such delay.
- 5.2. Mechanical Completion of a Project shall be deemed to occur when:
- 5.2.1. The Construction Manager has completed all Work except the installation of insulation, painting, final clean-up, final grading and any portion of the Work not affecting the operability or safety or the mechanical, electrical or structural integrity of the

Work, and such remaining work shall be described on a Mechanical Completion Punch list prepared by Construction Manager and accepted by Owner;

- 5.2.2. The Work is structurally, mechanically, electrically and functionally constructed in accordance with the requirements of the Contract Documents;
- 5.2.3. The Construction Manager has provided Owner with a report of the results of required tests performed pursuant to the Contract Documents complete with sufficient detail to enable Owner to determine if Mechanical Completion has in fact been achieved;
- 5.2.4. All Pre-Commissioning activities, including alignment, balancing, lubrication and First-Fill have been completed;
- 5.2.5. The Work may be operated without damage to the Work or to the Facility;
- 5.2.6. The Work is capable of being operated within manufacturers' recommended limits and in compliance with Applicable Laws;
- 5.2.7. The Work is ready for commissioning, adjustment and performance testing; and
- 5.2.8. Construction Manager has corrected all defects, deficiencies and/or discrepancies to the entire Work as identified by Owner and Owner has accepted such corrections in writing.

Upon Owner's determination that Construction Manager has satisfactorily corrected all defects, deficiencies and/or discrepancies to the entire Work as identified by Owner, Owner will issue a Notice of Mechanical Acceptance, dated to reflect the actual date of Mechanical Acceptance.

5.3. Substantial Completion of a Project shall be deemed to occur when:

- 5.3.1. Mechanical Completion has been achieved;
- 5.3.2. Operational testing, whether by Subcontractor, or Construction Manager, or both, has been successfully completed;
- 5.3.3. Performance Guaranties, if any, have been demonstrated;
- 5.3.4. (Deleted. See 5.4.13)
- 5.3.5. Construction Manager has delivered to the Owner a Substantial Completion Punch List of items to be completed or corrected, prepared by Construction Manager and accepted by Owner (failure to include any items on such list does not alter the responsibility of the Construction Manager to complete all Work in accordance with the Contract Documents);
- 5.3.6. The Work is ready for uninterrupted operation;
- 5.3.7. Permitting agencies have issued temporary or permanent Certificate(s) of Occupancy; and
- 5.3.8. The Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that Owner can occupy the Work and utilize it for its intended use.

When the Owner, on the basis of an inspection, determines that the Work or designated portion thereof is substantially complete, and when the Construction Manager has complied with all other conditions precedent to Substantial Completion provided for in the Contract Documents, the Owner will then prepare a Notice of Substantial Completion which shall establish the Substantial Completion Date, shall state the responsibilities of Construction Manager, if any, for security, maintenance, heat, utilities, damage to the Work, and insurance, and shall fix the time within which the Construction Manager shall complete the items listed in the Substantial Completion Punch List. If the Owner issues a Notice of Substantial Completion on the basis of partial completion of a Project, or upon the basis of a partial or temporary Certificate of Occupancy, Owner may include such additional conditions, as it deems appropriate to protect its interests pending substantial completion of the entire project or issuance of a permanent Certificate of Occupancy.

5.4. Final Completion of a Project shall be deemed to have occurred if all the following have occurred:

- 5.4.1. Substantial Completion has occurred;
- 5.4.2. The Work can be used and operated in accordance with Applicable Laws and Applicable Permits;
- 5.4.3. All spare parts and special tools purchased by Construction Manager as part of Vendor supplies shall have been delivered to Owner and clear of all Liens;

- 5.4.4. All items on the Substantial Completion Punch List shall have been completed by Construction Manager to Owner's satisfaction;
 - 5.4.5. Construction Manager has satisfied the additional conditions prescribed by the Owner in conjunction with a Notice of Substantial Completion issued on the basis of partial completion of a Project, or a partial or temporary Certificate of Occupancy;
 - 5.4.6. Construction Manager shall have provided to Owner releases and waivers of liens for all Work performed by Construction Manager and each Subcontractor or Vendor where the applicable Contract price or purchase order value exceeds \$10,000;
 - 5.4.7. Construction Manager shall have delivered to Construction Manager a certification identifying all outstanding claims (exclusive of any Liens or other such encumbrances which must have been discharged) of Construction Manager (and of its subcontractors, Vendors and any other party against Construction Manager) under the Project with written documentation reasonably sufficient to support such claims;
 - 5.4.8. Construction Manager shall have made a written assignment to Owner of all warranties or guaranties which Construction Manager received from Subcontractors or Vendors to the extent Construction Manager is obligated to do so;
 - 5.4.9. Construction Manager shall have delivered to Owner a complete set of As-Built Documents and Project Record Plans/Drawings prepared in accordance with the Contract Documents;
 - 5.4.10. Construction Manager has delivered to Owner all other submittals required by the Contract documents, including, but not limited to, all installation, operations and maintenance manuals for equipment furnished by Construction Manager and all product data sheets for all materials furnished by Construction Manager;
 - 5.4.11. All rubbish and debris have been removed from the Jobsite; and
 - 5.4.12. All Construction Aids have been removed from the Jobsite.
 - 5.4.13. Construction Manager has delivered to the Owner all warranties and guarantees required by the Contract Documents.
- 5.5. Final Acceptance of a Project shall be deemed to have occurred if:
- 5.5.1. Final Completion has occurred;
 - 5.5.2. Owner shall have received from Construction Manager all information required for Owner's final tax and fixed asset records with respect to the Work; and
 - 5.5.3. Construction Manager agrees to cooperate in good faith with the Project Administrator to enable the Project Administrator to deliver to the Owner certification to the effect that the event or items referenced in Sections 5.3 through 5.5 have occurred.

Owner shall deliver to Construction Manager a Certificate of Final Acceptance as soon as practicable following declaration by Owner that Final Acceptance has occurred.

6.

GUARANTEED MAXIMUM PRICE FOR CONSTRUCTION

- 6.1. The initial schedule prepared by the Construction Manager for the Project shall reflect and track the design progress through the completion of design and through the presentation of the proposed GMP for the construction of the Project. The Construction Manager shall follow the process required by this Agreement for the preparation and submittal of a GMP for the Project. The Construction Manager shall propose for the Project, the amount to be included in the Project GMP for the Construction Manager's general conditions costs and contingency. The Owner shall have the option of accepting or rejecting the Project GMP as presented by the Construction Manager. Should the Project GMP be accepted, the GMP LOA reflecting that authorization and Notice to Proceed shall be issued. Once accepted by Owner, any mistakes by Construction Manager in estimating costs or work in its preparation of a GMP shall not serve as the basis for a claim by Construction Manager or upward adjustment to the GMP.

Upon acceptance of a proposed GMP and execution of the relevant Contract Documents for a project, the GMP for the project will be fixed and firm for the duration of the Work and include all Construction Manager costs, expenses, taxes, overhead and profit for full and complete performance of the Work, as further described below. The GMP is not subject to price escalation or de-escalation and is not subject to increase or decrease except for changes in the Scope of Work as provided for and in accordance with the relevant

provisions of the Contract Documents. The GMP shall be construed at any given point in time to include any firm fixed adjustments thereto made in accordance with the relevant provisions of the Contract Documents.

The proposed Project GMP shall form the basis of negotiations between the Construction Manager and the Owner. The Owner shall have no obligation to accept any GMP proposal of the Construction Manager regardless of that proposal's relationship to the Owner's Budget or the most current Estimate or for any other reason. After each negotiation session, unless agreement is reached the Owner shall determine if further negotiations are warranted. If not, the negotiations shall be declared not to be successful, and the Owner shall take possession and ownership of all documents produced for the design and bid phase, pay the Construction Manager any remaining undisputed Construction Manager's Fee, and proceed as follows:

- a. Reject the GMP and direct the Architect/Engineer for the Project and the Construction Manager to investigate, redesign, develop for Owner approval value engineering possibilities, and other cost savings and to re-submit a new, lesser, proposed GMP. This may, at the Owner's option, include reduction in scope; or,
- b. Reject the GMP, take possession of the plans and specification, and select a new construction manager for the Project, bid the work to a general contractor or otherwise complete with other forces or take such action, if any, that the Owner may determine is in its best interest. In this event, the Construction Manager shall not perform, nor be compensated for, any services at this site beyond the agreed Construction Manager's Preconstruction Fee for the project. In the event any option under this subparagraph is chosen by the Owner, the Construction Manager is obligated to immediately turn over to the Owner all plans, specifications and other project related documentation, and to coordinate its other work with the Owner's work pursuant to Section 2.7.7.

6.2. In addition to the Base GMP, a GMP for a Project will include an agreed upon sum as the Construction Contingency relating to construction of that Project. The Construction Contingency will be composed of two elements: the Construction Manager's Contingency and the Owner's Contingency, each of which will be specified in the GMP. The Construction Manager shall submit reports of utilization of the Construction Manager's Contingency and requests to utilize the Owner's Contingency through the claims process under Article 15.

6.2.1. The Construction Manager's Contingency shall be utilized to compensate for the increased Cost of the Project incurred by the Construction Manager due to unforeseen circumstances relating to construction of that Project which resulted in an unavoidable increase in costs, except when deemed the responsibility of the Owner. The Owner's Contingency shall be an amount, determined by the Owner, which will be available to compensate for the increased Cost of the Project incurred by the Construction Manager due to changes in the work made in the discretion of the Owner after issuance of a Letter of Authorization, as well as other increases in the Cost of the Project which are deemed the responsibility of Owner.

6.2.2. Construction Manager will be required to furnish documentation evidencing all expenditures charged to the Construction Contingency, and demonstrating that the costs incurred were necessary for the Work. Construction Manager shall identify the amount sought to be charged to the Construction Contingency, whether the charge is to be applied to the Construction Manager's Contingency or the Owner's Contingency, and the reasons why the amount should be charged to that Contingency. Documentation for use of the Contingency shall be determined by the Project Team, included in the Project Manual and displayed monthly in the PMIS. The Project Architect/Engineer shall have authority to verify the actual costs.

6.2.2.1. If bids are received below the applicable line items in the Project GMP, the surplus will be added to the Construction Manager's Contingency for that Project. If bids are received above the applicable line item in a Project GMP, the deficiency will be charged to the Construction Manager's contingency for that Project, however such events shall not be cause to increase the Base Project GMP.

6.2.2.2. If bids are not received for a portion of the work at or below the applicable line item amount in the GMP, the Construction Manager reserves the right to perform that portion of the work as approved by the Owner or negotiate for its performance for the specified line item lump sum amount or less.

6.2.2.3. If a Project GMP includes a general allowance for an item of work, and the plans or specifications do not provide a basis for estimating the cost of the work, any actual cost sought to be recovered by Construction Manager that exceeds the allowance will be charged to the Owner's contingency.

6.2.2.4. The increased Cost of the Project incurred by the Construction Manager resulting from Owner's express written changes in plans, specifications or work will be charged to the Owner's Contingency. The decision to make such changes, and to incur the costs that arise there from, shall be in the sole discretion of the Owner. No costs may be charged to the Owner's Contingency under this subsection without express approval of Owner.

- 6.2.2.5. The increased Cost of the Project incurred by the Construction Manager resulting from other actions of the Owner will be charged to the Owner's Contingency if they are deemed to be Owner's responsibility. Unless Construction Manager secures Owner's written agreement that such costs are Owner's responsibility, documentation of responsibility for such costs shall be submitted with the Construction Manager's claim. When Construction Manager has reason to anticipate that such costs may be incurred, it shall be the Construction Manager's responsibility, when feasible, to provide the Owner with sufficient advance notice (of no less than 14 days), so as to provide the Owner with a reasonable opportunity to avoid such costs. Such costs shall be deemed the Owner's responsibility if Owner subsequently agrees in writing to grant the claim and accept such responsibility, or if the claim is granted and responsibility assigned to Owner pursuant to the dispute resolution process under Section 16.6 and all reviews thereof are exhausted or waived by Owner.
- 6.2.2.6. The grant of a claim shall not result in a charge against the Owners' Contingency unless the claim expressly requests a charge against the Owner's Contingency and the grant of the claim expressly approves the charge against the Owner's Contingency.
- 6.2.2.7. The Owner retains the right to increase the Base GMP in lieu of charging the cost to the Owner's Contingency.

6.3. The GMP will only include those taxes in the cost of the project that are legally enacted at the time the GMP is established. Any sales tax savings as a result of this being a state project, whether by acquisition procedure or change in sales tax laws relating to public construction projects, shall be passed to the Owner either in the form of a reduction in the GMP or in an increase in a contingency, solely in the discretion of the Owner.

6.4. At the time of submission of a Project GMP proposal for a Project, the Construction Manager will propose a schedule for substantial completion of the Project. The Owner and the Construction Manager may negotiate incentives for early completion of the Project and sharing of cost savings. The Owner and the Construction Manager may also negotiate liquidated damages for failure to meet certain milestones or substantial completion of the Project.

6.5. The term "Project GMP," as used in this Agreement is a term of convenience only and is not intended to affect how a GMP or its components are to be determined or adjusted.

7. CONSTRUCTION MANAGER'S FEE

7.1. In consideration of the performance of the services specified in this Agreement with respect to the Project on which the Owner has issued a notice to proceed, the Owner agrees to pay the Construction Manager as compensation for its services relating to the Project, fees as set forth in Subsections 7.1.1, 7.1.2 and 7.1.3.

7.1.1. Preconstruction Phase Fee. For the performance of preconstruction services for this project including profit and overhead related to these preconstruction services, a fixed or "not to exceed" fee to be negotiated prior to the issuance of a Letter of Authorization for such Project. The Preconstruction Phase Fee shall be paid in installments at completion of specified Preconstruction Phase Services or deliverables. Pre-construction services for a Project shall include all services relating to design review through 100% Construction Documents for the Project and other services specified in Section 2.6. Pre-Construction Services for a Project may run concurrently with Construction Phase services for the Project. The fee for the Preconstruction phase shall be a fixed lump sum fee of \$XXXX, to be paid in two equal payments. The first payment will be at delivery of the cost model, the second will be at the time of GMP.

The Construction Manager's personnel to be assigned during this phase and their duties and responsibilities to this project and the duration of their assignments are shown on Exhibit C.

7.1.2. Construction Phase Fee (General Conditions). Prior to commencement of the Construction Phase for a Project, the Owner will issue a Letter of Authorization directing the Construction Manager to proceed into the Construction Phase. The Construction Manager's compensation for General Conditions work or services performed during the Construction Phase shall be a fixed lump sum amount fee negotiated as part of the Project GMP, based on a detailed schedule of General Conditions costs and services provided by the Construction Manager. (However, the Owner retains the right to review the need and effectiveness of any employee or employees assigned by the Construction Manager, should the Project Administrator question the need for the employee or employees). The Construction Phase Fee shall be invoiced and paid in monthly payments as agreed by the parties and set forth in the applicable Project GMP. The first monthly payment shall become due thirty days following the issuance of the first Notice to Proceed by the Owner and the final monthly payment shall be paid only when construction of the project is finally completed and occupancy of the project accepted by the Owner. If construction is authorized only for a part of the Project, the fee paid shall be proportionate to the amount of work authorized by the Owner.

- 7.1.2.1. Adjustments in Fee. For changes in a Project as provided in Article 9, the construction phase fee for the Project shall be adjusted as follows:
- a. The Construction Manager shall be paid an additional fee subject to negotiation with the Owner if the Construction Manager is placed in charge of reconstruction of an uninsured loss excluding any condition that may have been caused from negligent acts by the Construction Manager, its employees, agents, subcontractors and others for whom Construction Manager may be responsible.
 - b. Should the duration of the construction of a Project stipulated herein for final completion of a Project extend beyond the scheduled completion of the Project as set forth in the Project GMP, due to no fault of the Construction Manager or its subcontractors, the Construction Manager's Additional Construction Phase Fee will be negotiated and set forth as an adjustment to in the Project GMP on a per working day basis. The Construction Manager's staff during such time extensions shall be established and set forth in the Project GMP.
 - c. Construction Manager's Exclusive Remedy. In the event the construction Substantial or Final Completion date for a Project is extended, regardless of whether delay is caused by any act or neglect of the Owner or the Architect-Engineer, or is attributable to the Owner or the Architect-Engineer, the Construction Manager's sole and exclusive remedy is an extension of the construction completion date and payment of additional Construction Phase fees and Overhead and Profit for Construction Phase as provided herein.
- 7.1.2.2. Costs and Expenses Included in Fee. The following are included in the Construction Manager's fee for General Conditions services during the Construction Phase of a Project and not otherwise reimbursable:
- a. Salaries or other compensation of the Construction Manager's employees at its principal office and branch offices provided the personnel are assigned to the project.
 - b. The Construction Manager's personnel to be assigned to the Project during the construction phase, whose duties and responsibilities to the Project and the duration of their assignments shall be shown in the applicable Project GMP.
 - c. (Delete the labor multiplier for this project.)
 - d. (Delete the cost of data processing staff, see 8.2.21).
 - e. Salaries or other compensation of the Construction Manager's employees at the Project job site. The Construction Manager's personnel to be assigned to the site during the Construction Phase under the Project job site management and supervision fee, whose duties and responsibilities and the duration of their assignment will be established and included with the Project GMP.
 - f. A labor multiplier will not be used for this project for general operating expenses.
 - g. Those services set forth in Sections 2.7 and 2.8.
 - h. Job office supplies, including paper, pencils, paper clips, file folders, staples, etc., and janitorial supplies (photo copy or blue print paper not included) used in connection with the Project.
 - i. Minor General Conditions expenses at the Project site, such as telegrams, long distance telephone calls, telephone service, expressage, postage, and similar petty cash items in connection with the Project to be billed at cost.
 - j. Costs of all reproductions used for bidding or information purposes required by the Project to directly benefit the Project.
 - k. Costs for such temporary facilities during construction of the Project, including Construction Manager's trailer, temporary water, heat, power, sanitary facilities, telephones, radios and computers with software.
 - l. Temporary housing for Construction Manager's project employees.
 - m. (Delete. See 8.2.22).
 - n. Record retention/storage.

7.1.3 Overhead and Profit for Construction Phase. For overhead, profit and general expenses of any kind, except as may be expressly included in Article 8 and the applicable Project GMP, for services provided during and related to the construction phase of any Project the applicable Construction Overhead and Profit Fee shall be X% of the GMP and shall be paid for any Project proportionally to approved expenditures for Direct Cost Items under Section 8.2, and less retainage (see Section 11.1), subject to the Project GMP, less the unused Owner's Contingency. The balance of the Construction Overhead and Profit Fee for a Project shall be paid upon Substantial Completion.

7.2. Shared Savings. It is intended that the Construction Manager fee will include a share of the cost savings, if any, realized during construction of this project completed by Construction Manager. This potential cost savings is recognized as the amount by which a project GMP, less the unused Owner's Contingency, exceeds the Cost of the Project under Articles 8 and 9, plus the Construction Manager's fees under Sections 7.1.2 and 7.1.3. Construction Manager will receive fifty percent (50%) of the Project Cost Savings, as defined by Subsection 1.6.35, which shall be included in the Final Payment.

8. COST OF THE PROJECT

8.1. With respect to this project, the Owner agrees to pay the Construction Manager for the Cost of the Project as defined in this Article 8. Such payment shall be in addition to the Construction Manager's fees stipulated in Article 7.

8.2. Direct Cost Items

- 8.2.1. Wages paid for labor for personnel not included in the Construction Management Fee, but who are in the direct employ of the Construction Manager in the performance of the construction work for the Project, times a fixed multiple of 1.568 for salaried personnel and 1.531 for hourly personnel to cover benefits, payroll taxes and payroll insurance.
- 8.2.2. Cost of all materials, supplies and equipment incorporated in the Project, including costs of transportation and storage thereof.
- 8.2.3. Payments due to subcontractors from the Construction Manager or made by the Construction Manager to subcontractors for their work performed pursuant to subcontracts issued in accordance with this Agreement.
- 8.2.4. Cost, including transportation and maintenance, of all materials, supplies, equipment, temporary facilities, and hand tools not owned by the workmen, which are employed or consumed in the performance of the work.
- 8.2.5. Cost of materials, supplies, equipment, and temporary facilities used but not consumed in the performance of the work and which will be turned over to the Owner at the end of the project.
- 8.2.6. Cost less salvage value on materials, supplies, equipment, and temporary facilities used but not consumed and which remain the property of the Construction Manager.
- 8.2.7. Rental charges consistent with those prevailing in the area on all necessary machinery and equipment, exclusive of hand tools used at the site of the Project, whether rented from the Construction Manager or other. Such rental charges include installation, repairs and replacements, dismantling, removal, costs of lubrication, transportation and delivery costs thereof, which are used in the support of a sub-contractor or the Construction Manager's own forces in the performance of the work.
- 8.2.8. Cost of the premiums for all insurance and for all bonds specifically required for the Project. Casualty Insurance (including general liability) will be a fixed billing rate of X.XX% of the GMP. The Bond premium for the Construction Manager will be a fixed billing rate of X.XX% of the GMP. The cost for the Subguard Bond Protection Program for subcontractors (in lieu of individual subcontractor bonds) will be a fixed billing rate of XXX% of the total cost of all subcontractors/vendors. Builders Risk insurance shall be per the invoice cost of insurance.
- 8.2.9. Sales, use, gross receipts or similar taxes paid by the Construction Manager or its subcontractors related to allowable direct costs of the Project imposed by any governmental authority.
- 8.2.10. The cost of corrective work subject, however, to the Project GMP and the provisions of Section 6.2, and except for any corrective work made necessary because of defective workmanship or other causes contributed to by the Construction Manager or its subcontractors or suppliers. No costs shall be paid by the Owner to the Construction Manager for any expenses made necessary to correct defective workmanship or to correct any work not in conformance with the Plans and Specifications or applicable construction-related codes or to correct any deficiency or damage caused by negligent acts by the Construction Manager or its subcontractors and suppliers.

- 8.2.11. (Delete minor expenses such as long distance telephone calls, telephone services, postage and similar petty cash as it is addressed in another area.)
- 8.2.12. Costs for trash and debris control and removal from the site.
- 8.2.13. Costs incurred due to an emergency affecting the safety of persons and property.
- 8.2.14. Legal costs reasonably and properly resulting from prosecution of the Project for the Owner, including handling claims for changes by subcontractors and vendors, subject to the following limitations:
 - 8.2.14.1. The Owner approved incurring such costs in advance, which approval shall not be unreasonably denied; and
 - 8.2.14.2. The legal costs and claims were not incurred as result of the Construction Manager's own negligence or misconduct.
 - 8.2.14.3. This paragraph does not provide for payment of legal costs incurred in preparing or asserting claim or requests by Construction Manager for itself, or for contract modifications or in enforcing the obligations of this Agreement.
- ~~8.2.15.~~ (Deleted)
- 8.2.16. Costs for watchman, security services and temporary fencing for the Project.
- 8.2.17. Costs for efficient logistical control of the Project site, including horizontal and vertical transportation of materials and personnel, adequate storage, temporary roads and parking space for the Project.
- 8.2.18. (Deleted)
- 8.2.19. Costs for any Project job site items not referenced herein, not normally provided by the subcontractors, which will be provided by the Construction Manager as required to complete the work.
- 8.2.20. Cost of providing one set of as-built documents to the Architect. Information on these as-builts shall be incorporated into the construction documents by the Architect. The Architect will then produce an as-built set of construction documents on CADD to be issued to the Owner as part of its services to the Owner
- 8.2.21. The costs of data processing (information technology support) for the Project, at a billable fixed rate of 0.1% of the GMP.
- 8.2.22. Quality Control and Materials Testing.

8.3. Excluded Cost Items. Costs which are included in Article 7 are not reimbursable as a Cost of the Project under this Article 8.

9. CHANGE IN A PROJECT

- 9.1. Contract Modifications. The Owner, without invalidating this Agreement, may order Changes in a Project within the general scope of this Agreement consisting of additions, deletions or other revisions, with the Project GMP and the Project Construction Completion Date being adjusted accordingly. Adjustments to the Base GMP or charges to the Owner's contingency shall be in accordance with subsections 6.2.2.3 through 6.2.2.6. All changes in the Project not covered by an authorized contingency shall be authorized by contract modification signed by the Owner before the change is implemented. Contract modifications may be issued by the Owner on its own initiative or in response to a proposal by the Construction Manager, and shall be subject to the claims process under Section 15.1.
 - 9.1.1 A Project contract modification is a written order to the Construction Manager signed by the Owner issued after the execution of the Project GMP, authorizing a Change in the Project, the Construction Manager's fee for the Project, or the Project Construction Completion date. Each charge to the Owner's Contingency or adjustment in the Project GMP resulting from a Project contract modification shall clearly separate the amount attributable to the Cost of the Project. Except when issued in response to a claim pursuant to Section 15.2, a contract modification is subject to a claim for additional cost or time pursuant to Section 9.2. For purposes of Section 15.1.b, the twenty-day period to submit a notice of claim will commence upon issuance of the contract modification. However, no claim may be filed in response to a contract modification issued pursuant to Section 15.2, as the claim will already have been considered.

- 9.1.2 The increase or decrease in the Cost of the Project resulting from a change in the Project shall be determined in one or more of the following ways, subject to the provisions of Section 8.2.8:
- a. by mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation by the Project Administrator, Project Architect-Engineer and Owner;
 - b. by unit prices stated in the Project GMP or subsequently agreed upon;
 - c. by times and materials cost and a mutually acceptable fixed or percentage fee for the subcontractor; or
 - d. by the method provided in Subparagraph 9.1.3.
- 9.1.3 If none of the methods set forth in Section 9.1.2 is agreed upon, the Construction Manager, provided he receives a written order signed by the Owner, shall promptly proceed with the Work involved. The cost of such Work shall then be determined on the basis of the reasonable expenditures and savings of those performing the Work attributed to the change. However, in the event a contract modification is issued under these conditions, the Architect-Engineer will establish an estimated cost of the work and the Construction Manager shall not perform any work whose cost exceeds that estimate without prior written approval by the Owner. In such case, and also under Section 9.1.2 above, the Construction Manager shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data of the increase in the Cost of the Project as outlined in Article 8. The amount of decrease in the Project GMP to be allowed by the Construction Manager to the Owner for any deletion or change which results in a net decrease in cost for a Project will be the amount of the actual net decrease.
- 9.1.4 If unit prices are stated in a Project GMP or subsequently agreed upon, and if the quantities originally contemplated are so changed in a proposed contract modification that application of the agreed unit prices to the quantities of Work proposed will cause substantial inequity to the Owner or the Construction Manager, the applicable unit prices and the Project GMP shall be equitably adjusted.
- 9.1.5 Should concealed conditions encountered in the performance of the Work for a Project below the surface of the ground, or should concealed or unknown conditions in an existing structure be at variance with the conditions indicated by the Plans, Specifications for the Project, or Owner-furnished information, or should unknown physical conditions below the surface of the ground, or should 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 Agreement, be encountered, the Project GMP and the Project Construction Completion date shall be equitably adjusted by contract modification upon a request for contract modification in accordance with Section 9.2.
- 9.1.6 Increases in the Cost of the Project due to a change in the Project attributable to the Owner, either by Owner's agreement thereto or the grant of a Claim under Article 15, shall either be charged to the Owner's Contingency or result in an increase to the Base GMP, in the sole discretion of the Owner. Decreases in the Cost of the Project due to a change in the Project shall result in a decrease to the Base GMP. If the decrease in the Base GMP is substantial, Construction Manager's Contingency will be decreased proportionately.

9.2 Claims For Additional Cost or Time

Only delays that are determined to extend the critical path for the schedule for constructing a Project will result in a time extension. Neither the Owner nor the Construction Manager shall be considered to own the schedule float time. All claims for additional cost or time shall be made by request for a contract modification submitted as provided in Article 15.

If the Construction Manager is delayed at any time in the progress of the work by any act or neglect of the Owner, Project Administrator, an Architect/Engineer, or of any employee of either, or by any separate Construction Manager employed by the Owner, or by any changes ordered in the work by labor disputes, fire, or unusual delay in transportation, unavoidable casualties or any causes beyond the Construction Manager's control and its subcontractors, or by delay authorized by the Owner pending resolution of disputes and such delay extends the Project Construction Completion Date, the Project Substantial Completion Date shall be extended by contract modification for such reasonable time as the Project Team may determine.

9.3 Minor Changes In The Project

The Project Administrator/Project Architect-Engineer will have authority to order minor changes in a Project not involving an adjustment in the Project GMP or an extension of the Project Construction Completion Date and not inconsistent with the intent of the Plans and Specifications for the Project. Such changes shall be effected by written order. Documentation of changes shall be determined by the Project Team, included in the Project Manual and displayed monthly in the PMIS. Changes shall be approved by the Project Administrator, and the Project Architect-Engineer.

9.4 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 increase in the Guaranteed Maximum Price or extension of time claimed by the Construction Manager on account of emergency work shall be determined as provided in Article 9.

9.5 Hazardous Waste Removal.

The Construction Manager shall or shall cause the removal, encapsulation, transportation and disposal of any hazardous material as may be required in connection with the Work. Hazardous material brought by the Construction Manager or the subcontractors shall remain their responsibility for proper disposal. Any hazardous material not specifically shown on the Contract Documents shall be considered a concealed condition and may be the responsibility of the Construction Manager in a contract modification.

9.6 Force Majeure

- 9.6.1 A "Force Majeure" event is an event that (i) in fact causes a delay in the performance of a Party's obligations under the Contract Documents, and (ii) is beyond the reasonable control of the Party incurring the delay, and (iii) is not due to an intentional act, error, omission, or negligence of such Party, and (iv) could not have reasonably been foreseen and prepared for by such Party at any time prior to the occurrence of the event. Subject to the foregoing criteria, Force Majeure may include events such as war, civil insurrection, riot, fires, epidemics, sabotage, explosions, embargo restrictions, quarantine restrictions, acts or failures to act on the part of governmental authorities including changes in the law and court orders, transportation accidents, strikes, floods, strong hurricanes or tornadoes, earthquakes, or other acts of God which prevent performance. Force Majeure shall not include technological impossibility, failure of equipment supplied by Construction Manager, receipt of and incorporation of defective materials into the Work, failure of suppliers to deliver equipment and materials except where such failure is itself the result of a Force Majeure event, or failure of Construction Manager to secure the required permits for prosecution of the Work.
- 9.6.2 If Construction Manager's performance of its Contractual obligations is prevented or delayed by an event believed by Construction Manager to be Force Majeure, Construction Manager shall immediately upon learning of the occurrence of the event or of the commencement of any such delay, but in no case less than three (3) working days thereafter, give to Owner written Notice (i) of the occurrence of the delay, (ii) of the nature of the event and the cause thereof, (iii) of the anticipated impact on the Work, (iv) of the anticipated period of the delay, and (v) of what course of action Construction Manager plans to take in order to mitigate the detrimental effects of the event. Construction Manager's timely delivery to Owner of the Notice of the occurrence of a Force Majeure event is a condition precedent to allowance of an extension of time under this Section; however, receipt of such Notice by Owner shall not constitute acceptance that the event claimed to be a Force Majeure event is in fact Force Majeure. The burden of proof of the occurrence of a Force Majeure event shall be on Construction Manager. Failure to give such Notice promptly and within such time limit may be deemed sufficient reason for denial by Owner of any extension of time.
- 9.6.3 If in the opinion of Owner the event was a Force Majeure event, Construction Manager shall be entitled to such extension of time for completing the Project as, in the opinion of Owner, is reasonable and equitable. In determining whether any such extension shall be granted and in determining the length of such extension, Owner may take into consideration any omissions or alterations in the Work or equipment, materials and apparatus required by the Contract Documents whereby, in its opinion, the time necessary for completion has been reduced.
- 9.6.4 The suspension of Construction Manager's performance due to a Force Majeure event shall be of no greater scope and no longer duration than is required. Construction Manager shall use its reasonable best efforts to continue to perform its obligations hereunder to the extent such obligations are not affected or are only partially affected by the Force Majeure event, and to correct or cure the event or condition excusing performance and otherwise to remedy its inability to perform to the extent its inability to perform is the direct result of the Force Majeure event.
- 9.6.5 Construction Manager's obligations that arose before the occurrence of a Force Majeure event causing the suspension of performance shall not be excused as a result of such occurrence unless such occurrence makes such performance not reasonably possible. The obligation to pay money in a timely manner for obligations and liabilities which matured prior to the occurrence of a Force Majeure event shall not be subject to the Force Majeure provisions.
- 9.6.6 Any extension of time based on an acknowledged Force Majeure event will depend upon the extent to which the delay affects the Construction Schedule and will only extend the scheduled dates for the items of the Work so delayed. Scheduled dates for other portions of the Work not so delayed will remain unchanged. Delays due to Force Majeure events which do not affect the Critical Path of the Construction Schedule will not entitle Construction Manager to an extension of the Final Completion Deadline Date.
- 9.6.7 Construction Manager's sole remedy for the occurrence of a Force Majeure event shall be an extension of time for the activities on the Construction Schedule that are directly delayed by the Force Majeure event.

10
DISCOUNTS AND PENALTIES

10.1. All discounts for prompt payment shall accrue to the Owner to the extent the Cost of a Project is paid directly by the Owner or from a fund made available by the Owner to the Construction Manager for such payments. To the extent the Cost of the Project is paid with funds of the Construction Manager, all cash discounts shall accrue to the Construction Manager. All trade discounts, rebates and refunds, and all returns from sale of surplus materials and equipment, shall be credited to the Cost of a Project. All penalties incurred due to fault of the Construction Manager or its subcontractors for late payment of cost of a Project will be paid by the Construction Manager and will not be reimbursable as a Cost of the Work.

11
PAYMENTS TO THE CONSTRUCTION MANAGER

- 11.1 Monthly Statements. The Construction Manager shall submit to the Owner a statement, sworn to, along with the cost reports required under Section 2.1 showing in detail for this project all monies paid out, all releases of liens and waivers for subcontractors and suppliers who have been paid, and the amount of the Construction Manager's fees due for that Project as provided in Article 7. Retainage shall be withheld on all payments relating to the construction of a Project at the rate of ten percent (10%) until the construction cost of a Project is fifty percent (50%) complete, except when approved by the Owner certain suppliers and subcontractors may be paid the entire amount due when such payment is generally the practice of the industry. At 50% cost completion, the Owner may, at its discretion, approve a reduction of the retainage from 10% to 5% on future payments. Additional retainage shall not be withheld on services or fees set forth in Article 7. The Construction Manager's Preconstruction Services Fee or Construction Phase Fee and Overhead & Profit for the Project shall be shown as separate line items on the Schedule of Contract Values for the Project. Payment of the Construction Manager's Overhead and Profit shall be calculated based on approved invoiced amounts for Direct Cost Items under Section 8.2. The billable Construction Phase Fee for a Project will be paid in equal monthly installments, subject to Subsection 7.1.2.1.b. This data shall be attached to the Partial Pay Request prepared individually for this project. Payments by the Owner to the Construction Manager shall be made as described in Section 16.7 upon satisfaction of applicable provisions governing testing, inspection and acceptance.
- 11.2 Final Payment. Final payment constituting the unpaid balance of the Cost of the Project, retainage and the Construction Manager's fee for a Project shall be due and payable as described in Section 16.7 upon Substantial Completion. However, if there should remain work to be completed, the Construction Manager, the Project Administrator and the Project Architect-Engineer shall list those items prior to receiving final payment for the Project and the Owner may retain a sum equal to 200% of the estimated cost of completing any unfinished work, provided that said unfinished items are listed separately and the estimated cost of completing any unfinished items are likewise listed separately. Thereafter, Owner shall pay to Construction Manager monthly the amount retained for each incomplete item after each of said items is completed. Final Payment shall not relieve Construction Manager of any obligation under Contract warranty, guaranty and indemnification provisions and such other provisions that survive the termination of the Contract.
- 11.3 Payments for Materials and Equipment. Construction Manager may invoice Owner and Owner will pay for expenditures for materials and equipment received on the Project Site or another location prior to being consumed during construction or incorporated into the Work if the equipment and materials are in conformance with the Contract Documents, are received, inventoried and stored properly, Owner approves and accepts the same, and Owner acquires title upon payment therefore. Construction Manager nevertheless retains full responsibility for care, custody and control of such materials and equipment.

12
BONDS, INSURANCE, INDEMNITY AND WAIVER OF SUBROGATION

12.1 Bonds. In accordance with the provisions of Section 255.05, Florida Statutes, the Construction Manager shall provide to the Owner, on forms furnished by the Owner, a 100% Performance Bond and a 100% Labor and Material Payment Bond for this project, each in an amount not less than the total construction cost for the Project as defined in Article 8, and inclusive of the Construction Manager's fees pursuant to Article 7 for the Project. The bonds shall be delivered to Owner within ten (10) days after execution of a Project GMP and shall not expire until expiration of the Warranty Period for the Project. The Construction Manager shall not commence any construction work in connection with a Project until the bonds have been approved by Owner.

To be acceptable as Surety for Performance Bonds and Labor and Material Payment Bonds, a Surety Company shall comply with the following provisions:

- 12.1.1 The Surety Company shall have a currently valid Certificate of Authority, issued by the State of Florida, Department of Insurance, authorizing it to write surety bonds in the State of Florida.

- 12.1.2 The Surety Company shall have a currently valid Certificate of Authority issued by the United States Department of Treasury under Sections 9304 to 9308 of Title 31 of the United States Code.
- 12.1.3 The Surety Company shall be in full compliance with the provisions of the Florida Insurance Code.
- 12.1.4 The Surety Company shall have at least twice the minimum surplus and capital required by the Florida Insurance Code at the time the invitation to bid is issued.
- 12.1.5 The Surety Company shall have at least an A- policyholder's rating and a Class VII financial rating in the latest issue of Best's Key Rating Guide.

The Surety Company must agree not to expose itself to any loss on any one risk in an amount exceeding ten (10) percent of its surplus to policyholders, provided:

- a. Any risk or portion of any risk being reinsured shall be deducted in determining the limitation of the risk as prescribed in this section. These minimum requirements shall apply to the reinsuring carrier providing authorization or approval by the State of Florida, Department of Insurance to do business in this state have been met.
- b. In the case of the surety insurance company, in addition to the deduction for reinsurance, the amount assumed by any co-surety, the value of any security deposited, pledged or held subject to the consent of the surety and for the protection of the surety shall be deducted.

12.2. Indemnity:

- 12.2.1. The Construction Manager shall indemnify and hold harmless the Owner, Agent and Project Administrator and their agents, officers and employees from and against all liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the Construction Manager and all persons employed or utilized by the Construction Manager in the performance of the Work and this Contract. This obligation shall not be construed to negate, abridge, or otherwise reduce any other right to indemnity which would otherwise exist as to any party or person described in this Article.
- 12.2.2. The Construction Manager hereby acknowledges receipt of ten dollars and other good and valuable consideration from the Owner, and acknowledges receipt of ten dollars and other good and valuable consideration from the Project Administrator, for giving the Owner and Project Administrator, respectively, the indemnification provided in this Article.

12.3. Construction Manager's Insurance:

- 12.3.1. Unless otherwise specified, Construction Manager shall, at its own expense, carry and maintain the following minimum insurance coverage, as well as any insurance coverage required by law:
 - 12.3.1.1 Worker's Compensation Insurance and Employer's Liability Insurance with a lower limit of \$1,000,000 per occurrence, including, without limitation, coverage for Occupational Diseases, to provide for the payment of benefits to its employees employed on or in connection with the Work covered by this Agreement and/or to their dependents, including, without limitation, and to the extent applicable, the U.S. Longshoremen's and Harbor Workers' Compensation Act and the Jones Act.
 - 12.3.1.2 Broad Form Commercial General Liability Insurance (on an occurrence basis), including but not limited to: (a) Completed Operations and Products Liability Insurance for at least two (2) years following the Final Acceptance Date of the Work, (b) Blanket Contractual Liability, (c) Owner's and Construction Managers' Protective Liability, (d) Personal Injury Liability, (e) XCU coverage, (f) Protection and Indemnity Coverage, and (g) Aviation/Aircraft Liability coverage (including passengers and crew), with a minimum combined single limit for Bodily Injury, including Death, of at least \$5,000,000 per occurrence and for Property Damage (Broad Form) of at least \$5,000,000 per occurrence.
 - 12.3.1.3 Automobile Liability Insurance with minimum Bodily Injury and Death limits of \$1,000,000 for any one person and \$1,000,000 per accident, and a minimum Property Damage Limit per accident of \$1,000,000.
 - 12.3.1.4 Excess or Umbrella Liability Insurance shall have an aggregate limit of \$10,000,000 for each occurrence and annual aggregate when combined with the Automobile Liability and Commercial General Liability coverage above. The Excess or Umbrella Liability coverage shall be no more restrictive than the primary Automobile and Commercial General Liability policies listed above.

- 12.3.1.5 In the event that the Scope of Work includes professional design services for elements of the Work that will become permanently incorporated into the Work and the Project, Professional Liability Insurance having limits of \$1,000,000 for each claim and \$1,000,000 annual aggregate. Such insurance shall remain in full force and effect during the term of the Contract and shall remain in effect for a period of six (6) years following Final Completion of the Work or the end of the Project, whichever occurs last.
- 12.3.2. The Construction Manager shall likewise require its Subcontractors to provide for such benefits and carry and maintain such insurance at no expense to the Owner with the exception that certain limits and benefits may be reduced for Subcontractors to coincide with industry standards and Construction Manager's requirements as stipulated by Construction Manager.
- 12.3.3. Owner and Project Administrator and their respective successors and assigns shall be named as "Additional Insureds" on all policies.
- 12.3.4. All policies shall provide a severability of interests or a cross-liability clause. All insurance shall be primary to any insurance carried by the Additional Insureds and not in excess to or contributing with any insurance or self-insurance maintained by any Additional Insured.
- 12.3.5. All policies shall provide for a waiver of subrogation against the Additional Insureds, their subsidiaries, affiliates, employees, insurers and underwriters, and a waiver of any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such Person insured under any such policy. Exception: For Subcontractors, the waiver of subrogation will be provided for workers compensation insurance only.
- 12.3.6. All policies shall be underwritten by carrier(s) rated A minus or better by Best's Insurance Guide, and which are authorized and admitted to underwrite such insurance contracts in the jurisdiction within which the Jobsite is located.
- 12.3.7. All policies required by this Section shall be written for and dedicated to the Work.
- 12.3.8. Before any of Construction Manager's or its subcontractors' employees shall do any work at the Jobsite, Construction Manager shall submit to Owner a certificate or certificates of insurance evidencing that such benefits have been provided and that such insurance is being carried and maintained. Such certificates shall stipulate that the insurance will not be canceled or materially changed without thirty (30) days prior written notice by certified mail to Owner, and shall also specify the date when such benefits and insurance expire. Construction Manager agrees that such benefits shall be provided and such insurance carried and maintained until Final Acceptance of the Work.
- 12.3.9. Such benefits and such coverage as are required herein, or in any other document to be considered a part hereof, shall not be deemed to limit Construction Manager's liability under this Agreement.
- 12.3.10. Builder's Risk Coverage. The Construction Manager shall take out and maintain during the life of this Agreement a "Builder's Risk Policy" completed value form as a cost of the Projects, issued to provide coverage on an "all risk" basis including theft. This coverage shall not be lapsed or cancelled because of partial occupancy by the Owner prior to final acceptance of a Project.
- 12.3.11. Certificate of Insurance. The Owner shall be furnished proof of coverage for each type of Insurance as follows:
- 12.3.11.1. Certificate of Insurance form will be furnished to the Owner along with the executed Agreement. These shall be completed and signed by the authorized Florida Resident Agent, and returned to the office of Project Administrator. This Certificate shall be dated and show:
- a. The name of the insured Construction Manager, the specific Project by name and Project number, the name of the insurer, the number of the policy, its effective date, and its termination date.
 - b. Statement that the Insurer will mail notice to the Owner and a copy to the Project Administrator at least fifteen (15) days prior to any material changes in provisions or cancellation of the policy.
 - c. Certificate of Insurance shall be in the form as approved by Insurance Standards Office (ISO) and such Certificate shall clearly state all the coverages required in this Section commencing at 12.3.1 and ending with 12.3.10.
 - d. Certificate of Insurance shall state that the Owner, Agent, and Project Administrator are listed as additional insured on all appropriate policies.
 - e. Copy of the endorsement or additional insured rider to the General Liability Policy.
 - f. Date of Birth of authorized Resident Agent.

12.4 Waiver of Subrogation

12.4.1. The Owner, Project Administrator, and the Construction Manager waive all rights against each other for damages caused by perils covered by insurance provided under Section 12.3 to the extent covered by such insurance, except such rights as they may have to the proceeds of such insurance held by the Owner, Project Administrator, and Construction Manager as trustees. The Construction Manager shall require similar waivers from all subcontractors and their sub-subcontractors.

12.4.2 The Owner and Construction Manager waive all rights against each other for loss or damage to any equipment used in connection with the Project and covered by any property insurance. The Construction Manager shall require similar waivers from all subcontractors and their sub-subcontractors.

12.4.3 The Owner waives subrogation against the Construction Manager on all property and consequential loss policies carried by the Owner on adjacent properties and under property and consequential loss policies purchased for the Project after its completion.

12.4.4. If the policies of insurance referred to in this Article require an endorsement to provide for continued coverage where there is a waiver of subrogation, the owner of such policies will cause them to be so endorsed Failure to obtain proper endorsement nullifies the waiver of subrogation.

12.5 OCIP or CCIP. Owner may elect to implement an Owner Controlled Insurance Project (OCIP) designed to encompass the insurance requirements of this subsection. Any Contractor Controlled Insurance Project (CCIP) implemented by Construction Manager will be subject to agreement by the parties and shall encompass the requirements of this subsection.

13

SUSPENSION OF WORK; TERMINATION OF THE AGREEMENT; OWNER'S RIGHT TO PERFORM CONSTRUCTION MANAGER'S OBLIGATION

13.1 Suspension of Work By Construction Manager. If the Owner should fail to pay the Construction Manager within 45 days after Owner's approval of a payment request from the Construction Manager, then the Construction Manager may, upon seven (7) additional days written notice to the Owner, Project Administrator and the Project Architect-Engineer, stop the applicable Project until payment of the amount owing has been received.

13.2 Suspension of Work By Owner.

13.2.1. For Cause. Upon the failure of Construction Manager or its subcontractors or Suppliers to comply with any of the requirements of this Agreement or any Project Agreement, including but not limited to Construction Manager's failure to maintain proper safety precautions, Owner shall have the authority to stop any of the Work affected by such failure until such failure is remedied. In the event of the issuance of a Stop Work Order by Owner, Owner shall not be liable for any costs or expenses claimed by Construction Manager arising out of such issuance and the Construction Schedule shall not be delayed or extended as a result of such issuance.

13.2.1.1. Upon receipt of any such Notice, Construction Manager shall, unless the Notice requires otherwise:

- a. Immediately discontinue work on the date and to the extent specified in the Notice;
- b. Place no further orders or subcontracts for material, services, or facilities with respect to the suspended Work other than to the extent required in the Notice;
- c. Promptly make every reasonable effort to obtain suspension upon terms satisfactory to Owner of all orders, subcontracts, and rental agreements to the extent they relate to performance of the Work suspended; and,
- d. Continue to protect and maintain the Work, including those portions on which work has been suspended.

13.2.1.2 Upon receipt of Notice to resume suspended Work, Construction Manager shall immediately resume performance of the suspended Work to the extent required in the Notice.

13.2.2 Without Cause. By Notice in writing to Construction Manager, Owner may suspend at any time, at its sole option and for any reason including convenience, the performance of all or any portion of the Work to be performed under the Project Agreement. Upon such Notice of Suspension of the Work, Owner will designate the amount and type of plant,

labor, and equipment to be committed to the work site during the period of suspension. Construction Manager shall use its best efforts to utilize its plant, labor, and equipment in such a manner as to minimize costs associated with such suspension.

13.2.2.1. The Construction Manager shall comply with Sections 13.2.1.1 through 13.2.1.2.

13.2.2.2 As full compensation for such suspension, Construction Manager will be reimbursed for the following costs, without duplication of any item, to the extent that such costs were reasonably incurred and directly result from such suspension of the Work:

- a. A standby charge to be paid to Construction Manager during the period of suspension of the Work, which standby charge shall be sufficient to compensate Construction Manager for keeping, to the extent required in the Notice, its organization and equipment committed to the Work in a standby status;
- b. All reasonable costs, as determined to be equitable by Owner, associated with demobilization and subsequent remobilization of Construction Manager's plant, forces, and equipment; and
- c. An equitable amount to reimburse Construction Manager for the cost of maintaining and protecting that portion of the Work upon which work has been suspended.
- d. Any claim on the part of Construction Manager for such compensation shall be made within ten (10) working days after receipt by Construction Manager of a Notice to suspend the Work.

13.2.2.3. If, as a result of any such suspension of the Work, the cost to Construction Manager of subsequently performing the Work is increased or decreased, an equitable adjustment will be made in the cost of performing the suspended Work in accordance with Subsection 9.1.2. Any claim on the part of Construction Manager for additional time or compensation shall be made within ten (10) working days after receipt of Notice to resume the Work, and Construction Manager shall submit a revised Construction Schedule for review and approval by Owner.

13.2.3. In the event such suspension continues for more than ninety (90) calendar days, Owner may release to Construction Manager, for the Work satisfactorily completed by Construction Manager, approved and accepted by Owner, any amounts retained by Owner under the terms of the Project Agreement. Such retention shall only be released to Construction Manager after Construction Manager's complete compliance with the suspension notice and the requirements of the Contract Documents.

13.2.4. No compensation or extension of time will be granted if suspension results from Construction Manager's noncompliance with any requirements of the Contract Documents.

13.3. Owners Right to Perform Construction Manager's Obligations and Termination by Owner for Cause.

13.3.1 If the Construction Manager fails to perform any of its obligations under this Agreement with respect to any Project including any obligation he assumes to perform Work with its own forces, the Owner may, after seven (7) days written notice during which period the Construction Manager fails to commence correction of such obligation, make good such deficiencies. The Project GMP or the actual cost of the Project, whichever is less, shall be reduced by the actual cost to the Owner of making good such deficiencies, and the Construction Manager's Construction Phase Fee for such Project shall be reduced by an amount required to manage the making good of such deficiencies, without limiting the Owner's other remedies under this Agreement.

If the Construction Manager is adjudged a bankrupt, or if he makes a general assignment for the benefit of its creditors, or if a receiver is appointed on account of its insolvency, or if the Construction Manager persistently or repeatedly refuses or fails, except in a case for which extension of time is provided, to supply enough properly skilled workers or proper materials for any Project and fails to maintain an established Project schedule (failure to maintain schedule shall be defined as any activity on the critical path that falls 45 days or more behind schedule) which has been adopted by the Project Team, or if any representation made by Construction Manager herein was false or materially misleading when made, or the merger, acquisition, sale or transfer of assets of Construction Manager occurs which has a material adverse effect on Construction Manager's net worth or on Construction Manager's ability to meet its obligations under this Agreement or any Project Agreement or results in the assumption of this Agreement or any Project Agreement by any other Person, in any case without the prior written consent of Owner, or if Construction Manager fails to make prompt payment to subcontractors for materials or labor, or persistently disregards laws, rules, ordinances, regulations, or orders of any public authority having jurisdiction, or fails to provide required insurance coverage, or if such insurance coverage are canceled, terminated, or modified so that the required insurance coverage are no longer in full force and effect, or fails to furnish the required

performance and payment bond, or otherwise is guilty of a substantial violation of a provision of the Agreement, then the Owner may, without prejudice to any right or remedy and after giving the Construction Manager and its surety, if any, seven (7) days written notice, during which period Construction Manager fails to commence correction of the violation, terminate the employment of the Construction Manager with respect to such Project and, at its option, all other Projects for which the Construction Manager is responsible, and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Construction Manager, and may finish the Projects by whatever method the Owner may deem expedient. In such case, the Construction Manager shall not be entitled to receive any further payment until the Project is finished, nor shall it be relieved from its obligations assumed under Article 6. Reasonable terminal expenses incurred by the Owner may be deducted from any payments left owing the Construction Manager (excluding monies owed the Construction Manager for subcontract work), without limiting the Owner's other remedies under this Agreement.

13.3.2. If the Construction Manager refuses to allow public access to all documents, papers, letters, or other material subject to the inspection provisions of Chapter 119, Florida Statutes, and made or received by the Construction Manager in conjunction with this Agreement, then the Owner may, without prejudice to any right or remedy and after giving the Construction Manager and its surety, if any, seven (7) days written notice, during which period Construction Manager still fails to allow access, terminate the employment of the Construction Manager and take possession of the Project sites and of all materials, equipment, tools, construction equipment and machinery thereon, owned by the Construction Manager, and may finish the Projects by whatever method the Owner may deem expedient. In such case, the Construction Manager shall not be entitled to receive any further payment until the Project is finished nor shall it be relieved from its obligations assumed under Article 6. Reasonable terminal expenses incurred by the Owner may be deducted from any payments left owing the Construction Manager (excluding monies owed the Construction Manager for subcontract work).

13.4 Termination by Owner Without Cause.

13.4.1. If the Owner terminates this Agreement other than pursuant to Section 13.3 with respect to this Project as a whole, the Owner shall reimburse the Construction Manager for any unpaid Cost of the Project or impacted due it under Article 9, plus that part of the unpaid balance of the Construction Phase Fee for the impacted Project in an amount as will increase the payment on account of its fee to a sum which bears the same ratio to the Construction Phase Fee as the Cost of the Project at the time of termination bears to the Project GMPs, if established, otherwise to the Owner's Project Construction Budgets. The Owner shall also pay to the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment retained, as well as move-out and demobilization costs. In case of such termination of Agreement, at the sole discretion of the Project Administrator, the Owner may require the Construction Manager to assign to the Owner any unsettled contractual claim for which performance of the work and nonpayment by the Owner can be, in the sole discretion of the Project Administrator, properly documented. The Construction Manager may, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps including the legal assignment of its contractual rights as requested by the Owner, or as the Owner may require for the purpose of fully vesting the rights and benefits of the Construction Manager under such obligations or commitments.

13.4.2 After the establishment of a Project GMP or at the completion of the Preconstruction Phase for a Project, if the final cost estimates or lack of legislative funding make a Project no longer feasible, such determination being at the sole discretion of the Owner, the Owner may terminate this Agreement and pay the Construction Manager its proportionate fee due in accordance with Section 7.1 plus any costs incurred pursuant to Articles 8 and 9, and no fees for activities not yet undertaken or authorized by the Owner shall be paid.

13.4.3. The payments to Construction Manager pursuant to the foregoing sections shall be the sole right and remedy of Construction Manager upon any such termination and Construction Manager shall have no claims for damages, including loss of anticipated profits on account of termination.

13.4.4. Upon receipt of a notice of termination, Construction Manager and its Subcontractors shall, unless the Notice requires otherwise:

13.4.4.1. Immediately discontinue the Work or portions thereof that can be discontinued without creating a hazardous condition, on the date and to the extent specified in the Notice.

13.4.4.2 Cancel all outstanding commitments for labor, materials, equipment, and apparatus on the terminated portion of the Work that may be canceled without undue cost. Construction Manager shall notify Owner of any commitment that cannot be canceled without undue cost and Owner shall have the right to accept delivery or to reject delivery and pay the agreed upon costs;

13.4.4.3 Place no further orders or Contracts for labor, materials, services, or facilities, other than as may be necessary or required for completion of such portion of the Work under the Project that is not terminated;

13.4.4.4. Assist Owner, as specifically requested in writing, in the maintenance, protection, and disposition of property acquired by Owner under the Project Agreement.

13.5. Termination by the Construction Manager. If the Project in its entirety is stopped for a period of one hundred twenty (120) days under an order of any court or other public authority having jurisdiction or as a result of an official act of government, such as a declaration of a national emergency making materials unavailable, through no act or fault of the Construction Manager, its agents employees, subcontractors or suppliers, and Owner and Construction Manager are unable to reach agreement concerning compensation to Construction Manager during the suspension and other material matters concerning the status of the Project during the period of suspension, then with respect to any impacted Project the Construction Manager may, upon thirty days written notice to the Owner, terminate the project and request payment for all Work executed, the Construction Manager's fees earned to date, and for any proven loss sustained upon any materials, equipment, tools, construction equipment, and machinery, including reasonable profit, damages and terminal expenses incurred by the Construction Manager. This provision does not apply to circumstances described in Section 1.7.

14

ASSIGNMENT AND GOVERNING LAW

- 14.1. Neither the Owner nor the Construction Manager shall assign its interest in this Agreement without the written consent of the other, except as to the assignment of proceeds. Notwithstanding the foregoing, Owner may assign its interest in this Agreement or any portion thereof to any local or state governmental body, special taxing district, or any person authorized by law to construct or own the Project. Such assignee shall be bound to comply with the terms of this Agreement.
- 14.2. This Agreement shall be governed by the Laws of the State of Florida.
- 14.3. The venue for all civil and administrative actions against the Owner shall be in Leon County, unless otherwise agreed by the parties.

15

NOTICE OF CLAIM: WAIVER OF REMEDIES

- 15.1. The Owner's liability to Construction Manager for any claims arising out of or related to the subject matter of this Agreement, whether in contract or tort, including, but not limited to, claims for extension of construction time, for payment by the Owner of the costs, damages or losses because of changed conditions under which the work is to be performed, or for additional work, shall be governed by the following provisions:
- a. All claims must be submitted as a Request for contract modification in the manner as provided herein;
 - b. The Construction Manager must submit a Notice of Claim to Owner, the Project Administrator and to the applicable Project Architect-Engineer within 20 days of when the Construction Manager became aware of the occurrence of the event giving rise to the claim; and
 - c. Within 10 days of submitting its Notice of Claim, the Construction Manager shall submit to the Owner/Project Administrator its Request for contract modification, which shall include a written statement of all details of the claim, including a description of the work affected.

The Construction Manager agrees that the Owner shall not be liable for any claim that the Construction Manager fails to timely submit as a Request for contract modification as provided in this paragraph.

Claims may be submitted in response to a contract modification issued by the Owner on its own initiative or in response to a proposal by the Construction Manager, but not in response to a contract modification issued pursuant to Section 15.2.

- 15.2. After receipt of a Request for contract modification, the Owner, in consultation with the Project Administrator and the applicable Project Architect-Engineer, shall deliver to the Construction Manager its written determination of the claim and issue any corresponding contract modification. The provisions of Section 16.6.1 through 16.6.4 shall be employed during this process. As to matters subject to the determination by final agency action (not actions for breach of contract or tort) the Owner's written decision shall be final agency action unless the Construction Manager requests an administrative proceeding pursuant to Section 120.57, Florida Statutes, by filing a petition in compliance with Rule Chapter 28-106, Florida Administrative Code, within twenty-one (21) days of the Construction Manager's receipt of the Owner's determination.
- 15.3. For work the Construction Manager performs with its own forces, and in addition to the adjustments provided for in Article 7, the Construction Manager's exclusive remedy for delays in performance of the construction caused by events beyond its control,

including delays claimed to be caused by or attributable to the Owner, Project Administrator or the Project Architect-Engineer, and including claims based on breach of contract or negligence, shall be a claim submitted in compliance with 15.1 above and be limited to an extension of the scheduled construction time and actual costs, pursuant to Section 8.2. If such event results in a Change in the Work, the Construction Manager's sole remedy is a claim for adjustments in the contract sum, limited exclusively to its actual costs for such changes, **plus X% for profit**. The Construction Manager expressly agrees that the foregoing constitute its sole and exclusive remedies for delays and changes in such work, and waives any other remedies for any claim for increase in the contract price, delays, changes in the work, damages, losses or additional compensation.

16 MISCELLANEOUS

- 16.1. Harmony. Construction Manager is advised and hereby agrees that it will exert every reasonable and diligent effort to assure that all labor employed by Construction Manager and its subcontractors for work on the Project shall work in harmony with and be compatible with all other labor being used by other contractors now or hereafter on the site of the Project. Construction Manager further agrees that this provision will be included in all subcontracts of the subcontractors as well as the Construction Manager's own contract; provided, however, that this provision shall not be interpreted or enforced so as to deny or abridge, on account of membership or non-membership in any labor union or labor organization, the right of any person to work as guaranteed by Article 1, Section 6 of the Florida Constitution.
- 16.2. Apprentices. If the Construction Manager employs apprentices on the Project, the behavior of the Construction Manager and the Owner shall be governed by the provisions of Chapter 446, Florida Statutes, and by applicable standards and policies governing apprentice Projects and agreements established by the Division of Workforce Development of the State of Florida Department of Education. The Construction Manager will include a provision similar to the foregoing sentence in each subcontract.
- 16.3. Invoices. Invoices shall be submitted in detail sufficient for a proper pre-audit and post-audit thereof. Invoices for any travel expenses authorized by Owner shall be submitted in accordance with procedures specified in Section 112.061, Florida Statutes, governing payments by the State for travel expenses.
- 16.4. Construction Manager's Project Records. The Construction Manager's Project Records shall be maintained as prescribed hereinabove in accordance with the State of Florida General Records Schedule for State Agencies A-1, and shall be made available to the Owner or its authorized representative at mutually convenient times. Construction Manager shall maintain records, books, files, correspondence, documents, receipts, vouchers, invoices, memoranda, and similar data relating to the work performed under this Agreement and all Project Agreements (hereinafter collectively called the "Records") in a proper business-like fashion, conforming to accepted accounting principles, and in such detail as will properly and accurately reflect the Work performed under this Agreement and all Project Agreements, as well as the costs thereof.
- 16.4.1. Owner and/or its authorized representative shall have the right, after reasonable Notice and at all reasonable times, to examine and make copies of all records.
- 16.4.2. Construction Manager shall preserve and make available to Owner and/or its authorized representative all Records for a period of five (5) years from the date of Final Payment, termination settlement, or until the conclusion of any claim, litigation or appeal, whichever is longer; or for such longer period, if any, required by Applicable Law or regulation.
- 16.4.3. At Owner's expense, Owner or an independent certified public accountant designated by Owner shall have the right to audit, copy and inspect said records and accounts at all reasonable times during the course of such Work and for the above five (5) year period.
- 16.5. Technical Proposal. The Construction Manager acknowledges that it was selected for this Agreement in part by the proposed approaches and plans submitted as part of its Technical Proposal. The Construction Manager agrees to provide its services under this Agreement at a level not inferior to that referenced in its Technical Proposal.
- 16.6. Dispute Resolution. The parties agree to make a diligent, good-faith effort to attempt to amicably resolve all disputes arising under or relating to this Agreement, the Project thereunder by conference and negotiations and in the following manner:
- 16.6.1. The Jobsite managers of Owner and Construction Manager shall use their best efforts to settle the dispute within fifteen (15) calendar days from submission of a claim pursuant to Section 15.1.
- 16.6.2. If unresolved in said fifteen (15) day period, the Project Administrator of Owner and Construction Manager or equivalent level person shall use their best efforts to settle the dispute within fifteen (15) days of their receiving it from their respective site managers.

- 16.6.3. If unresolved in said second fifteen (15) day period, senior management of both parties shall use their best efforts to settle the dispute within fourteen (14) days. For the purposes of this Agreement, senior management is defined as that level of corporate management one or more levels senior to the Project Administrator/Manager to whom the Project Administrators/Manager are accountable functionally and administratively.
- 16.6.4. In the event that a dispute is not resolved through the above process, or upon mutual agreement to forego the above process, the parties will refer the matter to a Dispute Resolution Board pursuant to the terms of the General Conditions.
- 16.6.5. In the event that the matter is not resolved by mutual agreement after issuance of a written recommendation by the Disputes Resolution Board and issuance of the written determination of the claim under Section 15.2:
 - 16.6.5.1. For all claims within the jurisdiction of the State Arbitration Board, to the limits of its authority under Section 337.185, Florida Statutes, the parties will submit such claims to State Arbitration Board, including those up to one million dollars in value per contract;
 - 16.6.5.2. For claims outside of the jurisdiction of the State Arbitration Board under Section 337.185, Florida Statutes, the parties will submit such claims to binding arbitration pursuant to procedures set forth in the General Conditions.

16.7 Construction Manager's Payment Rights:

COMPENSATION AND PAYMENT (as in Contractual Services, FDOT, standard written agreement)

- A. Payment shall be made only after receipt and approval of goods and services unless advance payments are authorized by the State Comptroller under Section 215.422(14), Florida Statutes.
- B. If this Agreement involves units of deliverables, then such units must be received and accepted in writing by the Project Administrator prior to payments.
- C. Bills for fees or other compensation for services or expenses shall be submitted in detail sufficient for a proper pre audit and post audit thereof.
- D. The bills for any travel expenses, when authorized by terms of this Agreement and by the Department's Project Administrator, shall be submitted in accordance with Section 112.061, Florida Statutes, and Chapter 3 - Travel, Department's Disbursement Operations Manual, 350-030-400.
- E. Vendors providing goods and services to the Department should be aware of the following time frames. Upon receipt, the Department has five (5) working days to inspect and approve the goods and services, unless otherwise specified herein. The Department has twenty (20) days to deliver a request for payment (voucher) to the Department of Banking and Finance. The twenty (20) days are measured from the latter of the date the invoice is received or the goods or services are received, inspected and approved.
- F. If a payment is not available within forty (40) days, a separate interest penalty as established pursuant to Section 215.422, Florida Statutes, shall be due and payable, in addition to the invoice amount, to the Vendor. Interest penalties of less than one (1) dollar shall not be enforced unless the Vendor requests payment. Invoices which have to be returned to a Vendor because of Vendor preparation errors shall result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to the Department.
- G. A Vendor Ombudsman has been established within the Department of Banking and Finance. The duties of this individual include acting as an advocate for vendors who may be experiencing problems in obtaining timely payment(s) from a state agency. The Vendor Ombudsman may be contacted at (850) 488-2924 or by calling the State Comptroller's Hotline at 1-800-848-3792.
- H. Records of costs incurred under terms of this Agreement shall be maintained and made available upon request to the Department at all times during the period of this Agreement and for three (5) years after final payment for the work pursuant to this Agreement is made. Copies of these documents and records shall be furnished to the Department upon request. Records of costs incurred shall include the Vendor's general accounting records and the project records, together with supporting documents and records of the Vendor and all subcontractors performing work on the project, and all other records of the Vendor and subcontractors considered necessary by the Department for a proper audit of project costs.
- I. The Department, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this sub-section is null and void, and no money may be paid on such contract. The Department shall require a statement from the comptroller of the Department that funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding one (1) year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years. Accordingly, the Department's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature.

- 16.8 Public Entity Crime Information Statement. "A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a Construction Manager, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list."
- 16.9 Discrimination; Denial Or Revocation For The Right To Transact Business With Public Entities. An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity.
- 16.10 Unauthorized Aliens. The Owner shall consider the employment by any Construction Manager of unauthorized aliens a violation of section 274A(e) of the Immigration and Nationalization Act. Such violation shall be cause for unilateral cancellation of this Agreement.
- 16.11 Available Funds. The Owner will not, during any fiscal year, expend money, incur any liability, or enter into any contract that, by its terms, involves the expenditures of money in excess of the amounts budgeted as available for expenditure during such fiscal year. If the Owner enters into such a contract, verbal or written, in violation of this subsection, such contract is null and void, and the Owner will not make any payments thereon. The Owner will require a statement from the Owner's comptroller that funds are available prior to entering into any such contract. Nothing herein contained prevents the Owner from executing contracts for a period exceeding one year, but the Owner will make such contracts executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years.
- 16.12 Consequential Damages. Except for those damages specifically recoverable by the Owner or Construction Manager as set forth elsewhere in this Agreement, including but not limited to any provision for liquidated damages or any damages under this Agreement, neither Owner nor Construction Manager shall be liable to the other, whether such liability arises out of contract, tort (including negligence), strict liability or any other cause or form of action whatsoever, for any consequential, special, indirect, or incidental damages including, but not limited to, lost profits, loss of anticipated profits, lost revenue or loss of use of the Project, or any other special, incidental, indirect or consequential loss or damage of any nature arising out of or in connection with the Construction Manager, other than special, incidental, indirect or consequential loss or damage resulting from the willful misconduct of Owner or Construction Manager

16.13 Patents, Trademarks, and Copyrights.

- 16.13.1. Construction Manager shall grant to Owner an assignable, irrevocable, nonexclusive, royalty-free license, for use in connection with operation, maintenance, repair or alteration of the Work or any portion thereof, with respect to any invention based wholly or in part on or derived from proprietary information received from Owner and conceived or first reduced to practice by Construction Manager, its employees or agents during the course of the Work.
- 16.13.2. Construction Manager further agrees to grant and hereby grants to Owner an assignable, irrevocable, nonexclusive, royalty-free license, under all patents, trademarks, copyrights, trade secrets and similar rights now or hereafter owned or controlled by Construction Manager, to the extent necessary for the operation, maintenance, repair or alteration of the Work or any unit or component thereof designed, specified or constructed by Construction Manager under this Agreement.
- 16.13.3. Construction Manager further agrees to secure from all subcontractors, suppliers and others, and convey to Owner, all licenses and other rights to use all patents, trademarks, copyrights, trade secrets and similar rights associated with the Work, to the extent necessary for the operation, maintenance, repair or alteration of the Work or any unit or component thereof designed, specified or constructed by Construction Manager under this Agreement.
- 16.13.4. Plans, prints, technical documents and data prepared or developed by Construction Manager, subcontractors or Suppliers and furnished to Owner in the performance of the Work shall be the property of Owner and may be used by Owner without restriction. Owner shall have the right to reproduce any and all plans, prints, technical documents or other data received from Construction Manager that are considered necessary for engineering, construction, start-up, commissioning, maintenance, or other purposes related to the Project, despite any notice to the contrary appearing on the document.
- 16.13.5. Construction Manager shall, at Construction Manager's own expense, defend all suits or proceedings instituted against Owner through counsel selected by Construction Manager and reasonably satisfactory to Owner, and shall fully indemnify and hold Owner harmless and otherwise pay any award of damages and all costs (including, but not limited to court costs and attorney's fees) assessed against the Owner, in such suits or proceedings, insofar as the same are based on (i) any claim that the material, equipment, apparatus or other item furnished under this Agreement or a Project Agreement or any part thereof constitutes an infringement of any United States patent, trademark or copyright, or (ii) any claim that the performance of the Work by Construction Manager, including the use of tools, implements or construction constitutes an infringement of any United States patent, trademark or copyright; provided that Owner shall give to Construction Manager prompt notice in writing of the institution of any such suit or proceeding and shall furnish Construction Manager (at Construction Manager's expense) all needed information, authority, and assistance to enable Construction Manager to defend the same.

If such material, equipment, apparatus, or other item is in any such suit or proceeding held to constitute infringement and its use is enjoined, Construction Manager, within a reasonable time, shall either secure for Owner at Construction Manager's own expense, the right to continue using said material, equipment, apparatus or other item by suspension of the injunction or by procuring for Owner a license to use the infringing material, equipment, apparatus, or other item. In lieu of the foregoing, Construction Manager at its own expense and as the Owner may elect shall replace such material, equipment, apparatus or other item with non-infringing material, equipment, apparatus or item or shall modify it so that it becomes non-infringing.

The ultimate remedy shall be without damage or injury to any other property of Owner and shall be at Construction Manager's sole expense.

- 16.14. Publicity. Construction Manager shall not engage in any advertising, publicity, or other promotional activities that in any way directly or indirectly mentions or refers to this Agreement, the relationship between the parties created thereby or the services and material furnished there under, without obtaining the prior written consent of Owner. Construction Manager shall not display any signs, posters, or other advertising matter in or on any part of the Work without specific written approval of Owner.
- 16.15. Survival of Provisions. In order that the Parties to this Agreement may fully exercise their rights and perform their obligations hereunder arising from the performance of the Work, any provisions of this Agreement that are required to ensure exercise of such rights or performance shall survive termination of this Agreement regardless of the cause for such termination and regardless of whether or not such termination applies to all or only part of the Agreement.

- 16.16. Severability. The invalidity or unenforceability of any portion or provision of this Agreement shall in no way affect the validity or enforceability of any other portion or provision hereof. Any invalid or unenforceable portion or provision shall be deemed severed from this Agreement and the balance of the Agreement shall be construed and enforced as if the Agreement did not contain such invalid or unenforceable portion or provision. In the event any such provision of this Agreement is declared invalid, the Parties shall promptly negotiate in good faith new provisions to eliminate such invalidity and to restore this Agreement as near as possible to its original intent and effect.
- 16.17. No Waiver. No waiver of any breach or failure to enforce any of the terms, covenants, conditions or other provisions of this Agreement by either party at any time shall in any way affect, limit, modify or waive that Party's right thereafter to enforce or compel strict compliance with every term, covenant, condition or other provision hereof, any course of dealing or custom of the trade notwithstanding.
- 16.18. FHWA Requirements. The Construction Manager acknowledges that this Project is not funded in part by monies from the Federal Highway Administration; however, federal requirements including, but not limited to, the following will be applicable to the Work:
- a. The Americans With Disabilities Act of 1990 and implementing regulations (42 U.S.C. §§ 12101 et seq.; 28 C.F.R. § 35; 29 C.F.R. § 1630);
 - b. Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. §§ 2000d et seq.) and United States Department of Transportation regulation, 49 C.F.R. Part 21;
 - c. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. §§ 4601 et seq.), with the understanding that the requirements of said Act are not applicable with respect to utility relocations except with respect to acquisitions by the Borrower of easements or other real property rights for the relocated facilities;
 - d. Equal employment opportunity requirements under Executive Order 11246 dated September 24, 1965 (30 F.R. 12319), any Executive Order amending such order, and implementing regulations (29 C.F.R. §§ 1625-27, 1630; 28 C.F.R. § 35; 41 C.F.R. § 60; and 49 C.F.R. § 27);
 - e. Restrictions governing the use of Federal appropriated funds for lobbying (31 U.S.C. § 1352; 49 C.F.R. § 20);
 - f. The Clean Air Act, as amended (42 U.S.C. §§ 1857 et seq., as amended by Pub. L. 91-604);
 - g. The National Environmental Policy Act of 1969 (42 U.S.C. §§ 4321 et seq.);
 - h. The Federal Water Pollution Control Act, as amended (33 U.S.C. §§ 1251 et seq., as amended by Pub. L. 92-500);
 - i. The environmental mitigation requirements and commitments made by the Borrower that result in Lender's approval of the Final Environmental Impact Statement (issued pursuant to 42 U.S.C. § 4332(2)(C)) and issuance of the Record of Decision for the Project;
 - j. The health and safety requirements set forth in 23 C.F.R. § 635.108;
 - k. The Buy America requirements set forth in Section 165 of the Surface Transportation Assistance Act of 1982 and implementing regulations (23 C.F.R. § 635.410);
 - l. The requirements of 23 U.S.C. §§ 101 et seq. and 23 C.F.R.; and
 - m.** The applicable requirements of 49 C.F.R. Part 26 relating to the Disadvantaged Business Enterprise Project.

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

“CONSTRUCTION MANAGER” COMPANY

Attest:

APPROVED:

By _____
Corporate Secretary

By _____
Corporate President / Date

As Witnessed:

By _____

(Corporate Seal)

FLORIDA DEPARTMENT OF TRANSPORTATION

As Witnessed:

APPROVED:

By _____
Jane E. Jones-Redd
Contracts Administrator

By _____
Aage Schroder
District 2 Secretary

Approved As To Form And Legality:

By _____
Office of District 2 General Counsel,
Department of Transportation

EXHIBIT A

PROJECT TEAM ASSIGNED REPRESENTATIVES

Florida Department of Transportation

DCE Name - District Construction Engineer

RE Name - Resident Engineer

E-mail Address

Project Administrators Name - FDOT Project Administrator - Civil

E-Mail Address

Project Administrator Name - FDOT Project Administrator - Architectural

E-Mail Address

Name- FDOT Quality Initiatives

E-Mail Address

Name - FDOT - FHWA coordinator

E-Mail Address

Name - FDOT Design Representative

E-mail Address

Name - FDOT Procurement Director

E-mail address

Name - FDOT District Maintenance Representative

E-mail Address

EXHIBIT B

Project Description
County State
Construction Scope Items

1. Project Description
County State

EXHIBIT C

Construction Manager

Pre-construction & Construction Phase Personnel

Office Staff

Name – Executive Vice President – Part Time

Name – Senior Estimator – Part Time

Name – Senior Project Manager – Part Time

Name – Project Manager – Part Time

On-Site Staff

Name – Assistant Project Manager – Full Time

Name – Project Superintendent – Full Time

Name – Assistant Project Superintendent – Full Time

The owner, for the performance of specific pre-construction duties, will approve other personnel on a case-by-case basis, for a specific period of time.

EXHIBIT “D”

FORMS

The attached forms will be used throughout the project, to be due at different times.

TABLE OF CONTENTS FOR FORMS

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DBE PARTICIPATION STATEMENT

Note: The Contractors is to complete the following information and submit this form with at the Oral Presentation.

Project Description: _____

Contractors/vendor/contractor Name: _____

This Contractors/vendor/contractor (is _____) (is not _____) a Department of Transportation certified Disadvantaged Business Enterprise (DBE).

Expected percentage of contract fees to be subcontracted to DBE(s): _____ %

If the intention is to subcontract a portion of the contract fees to DBE(s), the proposed DBE sub-contractors are as follows:

DBE Sub-Contractor

Type of Work/Commodity

By: _____

Title: _____

Date: _____

BID OPPORTUNITY LIST

Complete and mail, fax or e-mail to **Equal Opportunity Office**, 605 Suwannee St., MS 65, Tallahassee, FL 32399-0450, Telephone: (850) 414-4747, Fax: (850) 488-3914, Valeria.Robinson@dot.state.fl.us.

Prime

Contractor: _____ **Address/Ph#:** _____

Quote/Bids received During Mth/Yr: _____ **Project #** _____.

49 CFR Part 26.11 requires the FDOT to develop and maintain a "bid opportunity list." This is intended to be a listing of contractors that are participating, or attempting to participate, on FDOT-assisted contracts. The list must include contractors that bid on prime contracts, bid/quote subcontracts and material supplies on FDOT-assisted projects, including DBEs and non-DBEs. Prime contractors must provide information for # 1 and should provide information on # 2, 3, 4 and 5 for themselves and sub-contractors.

<p>1. Contractors Name/Address/Phone: _____ _____ _____ _____</p>	<p>3.</p>	<p>DBE</p> <p>Non-DBE</p>	<p><input type="checkbox"/></p> <p><input type="checkbox"/></p> <p><input type="checkbox"/></p> <p><input type="checkbox"/></p>	<p>Annual Gross Receipts: Less than \$1M Between \$1-\$5M Between \$5-\$10M Between \$10-\$15M More than \$15M</p>
<p>2. Age of Contractors: _____</p>				

<p>1. Contractors Name/Address/Phone: _____ _____ _____ _____</p>	<p>3.</p>	<p>DBE</p> <p>Non-DBE</p>	<p><input type="checkbox"/></p> <p><input type="checkbox"/></p> <p><input type="checkbox"/></p> <p><input type="checkbox"/></p>	<p>Annual Gross Receipts: Less than \$1M Between \$1-\$5M Between \$5-\$10M Between \$10-\$15M More than \$15M</p>
<p>2. Age of Contractors: _____</p>				

<p>1. Contractors Name/Address/Phone: _____ _____ _____ _____</p>	<p>3.</p>	<p>DBE</p> <p>Non-DBE</p>	<p><input type="checkbox"/></p> <p><input type="checkbox"/></p> <p><input type="checkbox"/></p> <p><input type="checkbox"/></p>	<p>Annual Gross Receipts: Less than \$1M Between \$1-\$5M Between \$5-\$10M Between \$10-\$15M More than \$15M</p>
<p>2. Age of Contractors: _____</p>				

<p>1. Contractors Name/Address/Phone: _____ _____ _____ _____</p>	<p>3.</p>	<p>DBE</p> <p>Non-DBE</p>	<p><input type="checkbox"/></p> <p><input type="checkbox"/></p> <p><input type="checkbox"/></p> <p><input type="checkbox"/></p>	<p>Annual Gross Receipts: Less than \$1M Between \$1-\$5M Between \$5-\$10M Between \$10-\$15M More than \$15M</p>
<p>2. Age of Contractors: _____</p>				

<p>1. Contractors Name/Address/Phone: _____ _____ _____ _____</p>	<p>3.</p>	<p>DBE</p> <p>Non-DBE</p>	<p><input type="checkbox"/></p> <p><input type="checkbox"/></p> <p><input type="checkbox"/></p> <p><input type="checkbox"/></p>	<p>5. Annual Gross Less than \$1M Between \$1-\$5M Between \$5-\$10M Between \$10-\$15M More than \$15M</p>
<p>Receipts: _____ _____ _____ _____</p>	<p>4.</p>	<p>Sub-cont.</p>	<p><input type="checkbox"/></p>	
<p>2. Age of Contractors: _____</p>				

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
MBE UTILIZATION CERTIFICATION

FORM 375-040-24
CONTRACTUAL SERVICES
06/00

RFP NO. _____ FINANCIAL PROJECT NO. _____

DESCRIPTION: _____

I, _____, _____
(name) (title)

of _____, hereby certify that this firm:
(Name of Prime Consultant)

[] is a Certified Minority Business Enterprise (MBE), certified by the Minority Business Advocacy and Assistance Office of the Department of Labor and Employment Security.

[] is not a Certified Minority Business Enterprise (MBE), certified by the Minority Business Advocacy and Assistance Office of the Department of Labor and Employment Security.

I also certify that our firm will subcontract at least _____ % (percent) of the project costs on the above referenced project to Certified Minority Business Enterprises.

If I have indicated above that a portion of the project costs will be subcontracted to certified MBE(s), the firms considered as proposed MBE subconsultants/contractors and the types of services or commodities to be subcontracted are as follows:

MBE SUBCONSULTANTS/CONTRACTORS

TYPES OF SERVICES/COMMODITIES

I understand that the Prime Consultant's/Contractor's failure to utilize certified MBE(s) for the percent indicated, can be considered a breach of contract.

Signed: _____

Title: _____

Date: _____

THIS FORM MUST BE EXECUTED AND RETURNED WITH THE PRICE PROPOSAL TO RECEIVE POINTS FOR MBE UTILIZATION.

RECYCLED PAPER



STATE OF FLORIDA - DEPARTMENT OF TRANSPORTATION

**MINORITY BUSINESS ENTERPRISES (MBE)
PAYMENT CERTIFICATION**

This is to certify that _____
MBE Subcontractor / Subconsultant

received a progress payment of \$ _____ on _____ (date)
from _____ (Prime Contractor)

for labor and/or materials used on: Contract Number _____
Financial Project Number _____
County _____

No MBE payment made this invoice period. (If this item is selected, no further information is necessary, other than signature of the Prime Contractor / Consultant.)

Signed by Official of Prime Contractor / Consultant: _____

Date: _____ Typed or Printed Name _____
Title _____

Total dollars committed to MBE Subcontractor / Subconsultant	\$ _____
Total paid this month	\$ _____
Total previously paid	\$ _____
Total paid to date	\$ _____

Signed by Official of MBE Subcontractor / Subconsultant: _____

Date: _____ Typed or Printed Name _____
Title _____

NOTE: Contractor/Consultant shall include the MBE Payment Certification Form with each pay request submitted and must be signed by both the MBE Subcontractor / Subconsultant and the Prime Contractor / Consultant. Also, for contracts where preference points are given, the Prime Contractor / Consultant's failure to achieve the MBE Subcontractor / Subconsultant commitment without acceptable justification may be considered a breach of contract.

Distribution: 1) Owner's Project Administrator
2) District FCO Coordinator
3) Central Procurement Office, Mail Sta. 20

LABOR AND MATERIALS PAYMENT BOND

PERFORMANCE BOND

IN WITNESS WHEREOF, Principal and Surety have executed these presents and the Surety has affixed its seal, this _____ day of _____, 20____.

NOTE: BY SIGNATURE THE ATTORNEY-IN-FACT FOR THE SURETY ATTESTS THAT SAID SURETY COMPLIES WITH ALL PROVISIONS CONTAINED IN THE NON-TECHNICAL SPECIFICATIONS.

CONTRACTOR: _____ Date: _____

Authorized Signature: _____

Print Name & Title: _____

NAME OF SURETY: _____ Date: _____

Signature (Attorney-in-Fact): _____ (Affix Seal)

Signature of Florida Resident Agent: _____

Print Full Name, Address and Telephone No.: _____

CONTRACTOR SHALL RECORD THIS BOND IN THE PUBLIC RECORDS OF THE COUNTY WHERE THE IMPROVEMENT IS LOCATED PRIOR TO COMMENCING THE WORK IN ACCORDANCE WITH SECTION

NOTES CONCERNING SURETY AND EXECUTION:

A. SURETY COMPANY REQUIREMENTS

To be acceptable to the Owner, the Surety shall comply with all of the requirements of Non-Technical Specifications, Section A, Instructions to the Bidders.

B. EXECUTION OF BOND

1. Enter the Surety's name and address on each copy of the Bond in the space provided.
2. Have each copy of the Bond signed by the same person that signed the Contract Agreement on behalf of the Contractor (affix Corporate Seal, if appropriate).
3. Have each copy of the Bond signed by the person authorized to sign on behalf of the Surety. Put the date the signature was affixed in the space provided. Print that person's name in the place provided on each copy of the Bond. Also, have the Surety's Corporate Seal affixed to each copy of the Bond beside that person's signature (No Facsimiles are acceptable).
4. Have each copy of the Bond signed by a Florida Resident Agent (Reference Sections 624.425 and 624.426, Florida Statutes). Print that person's name, address and phone number in the place provided on each copy of the Bond. This may be the same person indicated in B.3 above, if this person is a Florida Resident Agent and is also authorized to sign on behalf of the Surety as Attorney-In-Fact.
5. Each copy of the Bond must have a Power of Attorney attached indicating that the person in item B.3 above is authorized to sign on behalf of the Surety.
6. Each copy of the Power of Attorney must have the Surety's Corporate Seal manually affixed unless facsimile seal is authorized.
7. The date of execution of the Power of Attorney is the same as the date shown on the signature line for the Surety Attorney-In-Fact.
8. If Bond is backed by the Small Business Administration, then a certified true and correct copy of the Surety Bond Guarantee Agreement, SBA Form 990, must be attached to each copy of the Bond.

IN WITNESS WHEREOF, Principal and Surety have executed these presents and the Surety has affixed its seal, this _____ day of _____, 20_____.

NOTE: BY SIGNATURE THE ATTORNEY-IN-FACT FOR THE SURETY ATTESTS THAT SAID SURETY COMPLIES WITH ALL PROVISIONS CONTAINED IN THE NON-TECHNICAL SPECIFICATIONS.

CONTRACTOR: _____ Date: _____

Authorized Signature: _____

Print Name & Title: _____

NAME OF SURETY: _____ Date: _____

Signature (Attorney-in-Fact): _____ (Affix Seal)

Signature of Florida Resident Agent: _____

Print Full Name, Address and Telephone No. _____

CONTRACTOR SHALL RECORD THIS BOND IN THE PUBLIC RECORDS OF THE COUNTY WHERE THE IMPROVEMENT IS LOCATED PRIOR TO COMMENCING THE WORK IN ACCORDANCE WITH SECTION 255.05(1)(a), FLORIDA STATUTE.

NOTES CONCERNING SURETY AND EXECUTION:

A. SURETY COMPANY REQUIREMENTS

To be acceptable to the Owner, the Surety shall comply with all of the requirements of Non-Technical Specifications, Section A, Instructions to the Bidders.

B. EXECUTION OF BOND

1. Enter the Surety's name and address on each copy of the Bond in the space provided.
2. Have each copy of the Bond signed by the same person that signed the Contract Agreement on behalf of the Contractor (affix Corporate Seal, if appropriate).
3. Have each copy of the Bond signed by the person authorized to sign on behalf of the Surety. Put the date the signature was affixed in the space provided. Print that person's name in the place provided on each copy of the Bond. Also, have the Surety's Corporate Seal affixed to each copy of the Bond beside that person's signature (No Facsimiles are acceptable).
4. Have each copy of the Bond signed by a Florida Resident Agent (Reference Sections 624.425 and 624.426, Florida Statutes). Print that person's name, address and phone number in the place provided on each copy of the Bond. This may be the same person indicated in B.3 above, if this person is a Florida Resident Agent and is also authorized to sign on behalf of the Surety as Attorney-In-Fact.
5. Each copy of the Bond must have a Power of Attorney attached indicating that the person in item B.3 above is authorized to sign on behalf of the Surety.
6. Each copy of the Power of Attorney must have the Surety's Corporate Seal manually affixed unless facsimile seal is authorized.
7. The date of execution of the Power of Attorney is the same as the date shown on the signature line for the Surety Attorney-In-Fact.
8. If Bond is backed by the Small Business Administration, then a certified true and correct copy of the Surety Bond Guarantee Agreement, SBA Form 990, must be attached to each copy of the Bond.

LIST OF SUBCONTRACTORS

THIS LIST IS ATTACHED TO, AND IS AN INTEGRAL PART OF THE BID SUBMITTED BY: Date: _____

Bidder's Full Name: _____

Street Address: _____

City, State, Zip Code: _____

FOR CONSTRUCTION OF: _____

The undersigned, hereinafter called Bidder, lists below the name of each subcontractor who will perform the phases of the work indicated. Failure of the Bidder to supply sufficient information to allow verification of the Corporate and Discipline License Status of the subcontractor may deem the bid as non-responsive and rejected. If applicable, complete the Minority Business Enterprises (MBE) Column identifying whether the Subcontractor is a certified or non-certified MBE. (NOTE: MBE data shall in no way influence the bid selection, order of acceptances, or rejection.)

TYPE OF WORK / PHASE SUBCONTRACT	NAME OF SUBCONTRACTOR	CORPORATE - OR - NONCORPORATE	DISCIPLINE LICENSE STATUS	MINORITY BUSINESS ENTERPRISE (MBE) <i>(Certified - OR - Non-Certified)</i>

NOTE: If the prime contractor does not list a Subcontractor for the specified discipline(s), the prime contractor must have all necessary licenses to perform the work.
 Completed by: _____ (Signature of Bidder)

CONTRACTOR'S AFFIDAVIT / CERTIFICATE OF CONTRACT COMPLETION

FINANCIAL PROJECT NUMBER: _____

PROJECT NAME: _____

PROJECT LOCATION: _____

CONTRACTOR: _____

CONTRACT FOR: _____

CONTRACT DATE: _____ CONTRACT AMOUNT: \$ _____

CONTRACTOR'S AFFIDAVIT

I solemnly swear and affirm: The work under the above named contract and all amendments thereto have been completed in accordance with the requirements of said contract; that all costs incurred for equipment, materials, labor, and services against the project have been paid; that no liens have been attached against the project; that no suits are pending by reason of work on the project under the contract; that all Workers' Compensation claims are covered by Workers' Compensation insurance as required by law; that all public liability claims are adequately covered by insurance, and that the Contractor shall save, protect, defend, indemnify, and hold harmless the Owner from and against any and all claims which arise as a direct or indirect result of any transaction, event, or occurrence related to performance of the work contemplated under said contract.

Contractor's Signature: _____ Date: _____

Printed Name & Title: _____

Address: _____

STATE OF FLORIDA COUNTY OF _____

Personally appeared before me this _____ day of _____, YR _____ known (or made known to me to be the _____

(Sole Proprietor, Partner, or Corporate Officer's Name & Title)

Contractor(s), who, being by me duly sworn, subscribed to the foregoing affidavit in my presence.

(Form of Identification Produced) (Notary Public - Print Name)

My Commission Expires: _____
(Notary Public - Signature)

CONTRACTOR'S AFFIDAVIT / CERTIFICATE OF CONTRACT COMPLETION

FINANCIAL PROJECT NUMBER: _____

PROJECT NAME: _____

CONTRACTOR: _____

CONTRACT DATE: _____ DATE OF FINAL COMPLETION: _____

CERTIFICATE OF ARCHITECT-ENGINEER:

I CERTIFY, the work under the above Contract has been satisfactorily completed on the date set forth in accordance with the terms of the Contract; that the Contractor has submitted its sworn affidavit as evidence that the Contractor has paid all labor, materials, and other charges against the project in accordance with the terms of the Contract.

Architect-Engineer Contractors Name: _____

By: _____ Date: _____

<u>TO BE COMPLETED BY ARCHITECT-ENGINEER THROUGH SUBSTANTIAL COMPLETION PHASE</u>	<u>DATE</u>	<u>DAYS</u>	<u>LIQUIDATED DAMAGES to be Completed by the Owner</u>
1. Notice to Proceed (N.T.P.)			@\$ Per Day=\$
2. Time Specified in Original Contract for Substantial Completion (S.C.)			
3. Extension Granted by Change Orders (Days Between Original Contract S.C. and Final Contract S.C.)			
4. Total Days Allowable to Substantial Completion (Add Lines 2 and 3)			
5. Project Substantially Completed as Certified by Architect-Engineer (Total Days from N.T.P. through Date Certified by Architect-Engineer)			
6. Substantial Completion Overrun (Subtract Line 4 from 5 and Enter Overrun)			

THROUGH THE FINAL COMPLETION PHASE

1. Time Specified in Contract, Between Substantial and Final Completion		
2. Extensions Granted by Change Orders (Days Between Substantial Completion and Final Completion)		
3. Total Days Allowable Between Substantial and Final Completion (Add Lines 1 and 2)		
4. Date Actually Completed and Total Days Between Actual Substantial Completion and Date Certified By Architect-Engineer as Actually Being Finally Completed.		
5. Final Completion Overrun (Subtract Line 3 from 4 and Enter Overrun)		

TOTAL LIQUIDATED DAMAGES Per Day= \$

Project Administrator's Signature: _____ Date: _____

CONTRACTOR'S CERTIFICATION OF NO ASBESTOS-CONTAINING MATERIALS

Project Name: _____

Project Location: _____

Financial Project Number: _____ Contract Number: _____

**I CERTIFY THAT NO MATERIALS CONTAINING ASBESTOS WERE USED IN THE
CONSTRUCTION OF THIS PROJECT.**

Contractor's Signature

Date

Contractor's Name (Typed)

Name of Contractor's Contractors:

Street Address:

City, State & Zip:

Telephone () _____ FAX () _____

FEID Number

CONSTRUCTION CONTRACT CHANGE ORDER

Change Order No.: _____ Contract No.: _____ Financial Project No.: _____

State Project Name: _____

Architect/Engineer: _____ Contractor: _____

Address: _____ Address: _____

City: _____ City: _____

State: _____ Zip: _____ State: _____ Zip _____

Telephone: _____ Telephone: _____

DESCRIPTION OF CHANGE (attach additional sheet if necessary)			Decrease In	Increase In
Notice to Proceed Date			Original Contract Sum	
Contract Time	# Days	Date	Contract Sum	
Original Contract Time			Subtotal	
Present Contract Time			Net-Add-(Deduct)	
This Change-Add-(Deduct)			Present Contract Sum	
New Contract Time			New Contract Sum	

The Change Order is an amendment to the Contract Agreement between the Contractor and Owner, and all contract provisions shall apply unless specifically exempted. The amount and time change designated are the maximum agreed to by both the Owner and Contractor for this change. In consideration of the foregoing adjustments in contract time and contract sum the Contractor hereby releases the Owner from all claims, demands, or causes of action arising out of the transactions, events and occurrences giving rise to this Change Order. This written Change Order is the entire agreement between the Owner and Contractor with respect to this Change Order. No other agreements or modifications shall apply to this contract amendment unless expressly provided herein.

RECOMMENDED:

AGREED:

AGREED:

Signature (Architect/Engineer)

Signature (Contractor)

Signature (Owner)

Date: _____

Date: _____

Date: _____

