

CONSTRUCTION PROJECT AGREEMENT

2021-RFP-GM/GC-015-TB

RFP for Construction Management Services to Tax Collector Building

County of Hernando
15470 Flight Path Drive
Brooksville, FL 34604



RESPONSES MUST BE SUBMITTED ELECTRONICALLY TO:

<https://procurement.opengov.com/portal/hernandocounty>

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1. RECITALS

CONSTRUCTION PROJECT AGREEMENT

BETWEEN OWNER AND CONSTRUCTION MANAGER

THIS AGREEMENT THIS AGREEMENT is entered into by and between the Hernando County, a political subdivision of the State of Florida, hereinafter referred to as the County, and TBD having its offices at Unknown engaged to serve as Architect/Engineer, hereinafter referred to as Architect Engineer., and Charles Perry Partners, Inc. 200 E. Palm Valley Drive Suite 1040 Oviedo, FL 32765 PHONE: 352-333-9292 hereinafter called the Construction Manager.

2. ARTICLE 1

THE CONSTRUCTION TEAM AND EXTENT OF AGREEMENT

The Construction Manager accepts the relationship of trust and confidence established with the Owner by this Agreement, covenants with the Owner to furnish its best skill and judgment and to cooperate with the Architect-Engineer in furthering the interests of the Owner, and agrees to furnish efficient business administration and superintendence and use its best efforts to complete the Project in the best and soundest way and in the most expeditious and economical manner consistent with the interest of the Owner.

2.1. The Construction Team

The Construction Manager, the Owner and the Architect-Engineer, called the "Construction Team", shall work jointly during design and through final construction completion and shall be available thereafter should additional services be required. The Architect-Engineer will provide leadership during the Preconstruction Phase with support from the Construction Manager and the Construction Manager shall provide leadership to the Construction Team on all matters relating to construction.

The specific representatives of the Construction Team are shown in Exhibit A attached.

2.2. Extent of Agreement

This Agreement is for the completion of "Test CW (Delete Later)" entered into between the Owner and the Construction Manager, and supersedes any prior negotiations, representations or agreements. When drawings, specifications and other descriptive documents defining the work to be included under a construction authorization are substantially complete, they shall be identified in the construction authorization issued by the Project Director. When drawings, specifications and other descriptive documents defining the work to be included in the guaranteed maximum price (GMP) are sufficiently complete, an Amendment to the Agreement shall be signed by the Owner and Construction Manager, acknowledging the final GMP amount and the drawings, specifications and other descriptive documents upon which the GMP is based. To expedite the preparation of this GMP Amendment by the Owner, the Construction Manager shall obtain three (3) sets of signed, sealed and dated drawings, specifications and other documents upon which the GMP is based from the Architect-Engineer, shall acknowledge on the face of each document of each set that it is the set upon which the Construction Manager based the GMP and shall send one set of the documents to the Owner's Contracts Administrator along with their GMP proposal, while keeping one set and returning one set to the Architect-Engineer. The GMP Proposal shall include the following sections:

- Section One: Summary of Work
- Section Two: GMP Price Summary – To include Construction Authorization & Tax Savings
- Section Three: Scope Clarifications and Assumptions
- Section Four: Detailed Estimate
- Section Five: Bid Tabulations and Recommendations

- Section Six: Preliminary Construction Schedule
- Section Seven: Contract Documents – Drawing List and Specification List

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.

2.3. Definitions

Architect-Engineer - (Company Name), (Street Address), (City, State, Zip), Phone (Number)

Construction Authorization – The term Construction Authorization shall mean a written work order based on a defined scope of work excluding Construction Managers fees as specified in Article 8, prepared by the Project Director and issued to the Construction Manager. Construction Authorizations shall be used prior to the date of the GMP Amendment and all work performed pursuant to Construction Authorizations shall be included in the GMP.

Construction Manager –The Construction Manager, responsible for the Project, shall be the single point of interface for all trade bidders and contractors for the duration of the Project. For the purposes hereunder, the Construction Manager (including its employees, contractors, subcontractors, etc.) is an independent contractor, and is not and shall not by its performance hereunder be deemed or construed under any circumstance to be, an employee, agent, representative, or servant of the Owner or the State of Florida.

Estimate - The Construction Manager's latest estimate of probable project construction cost.

Owner – Hernando County, a political subdivision of the State of Florida.

Owner's Representatives - The Project Director and their superiors or designees.

Permitting Authority - The local authority with jurisdiction over the area in which the project is located.

Project - The Project is the total and sum of all work to be performed by Construction Manager and its subcontractors under this Agreement. The Project consists of all permitting, construction services and work, and code inspection necessary to fully complete "Project (project Number), (Project Name), (State of Corporation), (Project Building),(Project City/State), (Phone Number)," as contemplated in the Owner's Construction Budget identified in Exhibit B.

Project Director - The person designated by the Owner to provide direct interface with the Construction Manager with respect to the Owner's responsibilities. (See Exhibit A)

2.4. Owner's Construction Budget

Owner's funds budgeted and requested for construction of the Project. The Owner's Construction Budget is a Fixed Limit of Construction Cost in the amount of Eleven Million, Three Hundred Thousand Dollars and Zero Cents including FF & E Dollars (11,300,000.00), 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 8 and 9. 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 identified by separate documentation as outlined in Article 7.

3. ARTICLE 2

CONSTRUCTION MANAGER'S SCOPE OF WORK

Construction Manager is responsible for fully and satisfactorily completing the Project, which shall include, but is not limited to, those services described or specified herein. The services described or specified shall not be deemed to constitute an exhaustive specification with the intended purpose or effect of excluding services or responsibilities not specifically mentioned. The Owner and Construction Manager acknowledge and agree that the Owner is contracting with the Construction Manager to perform or cause to be performed all work and services necessary to complete the Project.

3.1. Project Management Information System (PMIS) - General

- A. Commencing immediately after contract award, the Construction Manager shall implement and shall utilize throughout the life of this Agreement all subsystems of the Project Management Information System hereinafter referred to as PMIS.
- B. The reports, documents, and data to be provided shall represent an accurate assessment of the current status of the Project and of the work remaining to be accomplished and it shall provide a sound basis for identifying variances and problems and for making management decisions. It shall be prepared and furnished to the Owner and the Architect-Engineer monthly and shall accompany each pay request; alternatively, the Construction Manager may, and is encouraged by the Owner, to provide the Construction Team with secure Internet access to a maintained construction industry database project management software program, or provide the same through any other suitable and acceptable electronic or digital format.
- C. If requested by the Project Director, the Construction Manager shall conduct a comprehensive workshop in Brooksville, Florida for participants designated by the Project Director and additional seminars as required to provide instruction. This workshop and the seminars shall facilitate each participant's and the Owner's representatives' use and understanding of PMIS; shall support, in-part, the function of organizing in concert with the Architect-Engineer for the design and construction of the Project; and shall establish, with the full concurrence of the Owner and the Architect-Engineer, procedures for accomplishing the management control aspect of the Project.
- D. The PMIS shall be described in terms of the following major subsystems:
 1. Narrative Reporting, on a monthly basis,
 2. Schedule Control, on a monthly basis,
 3. Cost Control, and estimating,
 4. Project Accounting,
 5. Accounting and Payment, and (f) Action Reports.

3.2. Project Management Information System (PMIS) - Narrative Reporting Subsystem

- A. The Construction Manager shall prepare written reports as described hereunder. No other PMIS narrative reports shall be required. Any paper reports shall be in 8 1/2" X 11" format.
- B. The Narrative Reporting Subsystem shall include the following reports:
 - 1. A Monthly Executive Summary which provides an overview of current issues and pending decisions, future developments and expected achievements, and any problems or delays, including code violations found by Permitting Authority.
 - 2. A Monthly Cost Narrative describing the current construction cost estimate status of the Project.
 - 3. 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.
 - 4. 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.
 - 5. 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 programs permits, construction problems and recommendations, and plans for the succeeding month.
 - 6. A Daily Construction Diary during the construction phase describing events and conditions on the site.
 - 7. A monthly Minority Business Enterprise report during the construction phase summarizing the participation of certified minority subcontractors/material suppliers for the current month, and project to date. The report shall include the names, addresses, and dollar amount of each certified MBE participant.
 - 8. A Contractor's Minority Business Enterprises Status Report of Partial Payment form is attached to this Agreement as Exhibit I and is to be completed and submitted with each pay request.
 - 9. Construction Manager shall implement a direct tax savings purchase plan approved by the Department of Revenue that, upon acceptance, will be part of the Construction Manager's services.

- C. The reports outlined in subsection (B)(1) through (5) above shall be bound with applicable computer reports and submitted monthly during design and construction phases and shall be current through the end of the preceding month. Copies shall be transmitted to the Owner and the Architect-Engineer and others designated by the Project Director with the monthly pay requisition. Additional copies of the report outlined in subsection (B)(1) shall be bound separately and distributed monthly as directed by the Project Director.
- D. The report outlined in subsection (B)(6) above shall be maintained at the site available to the Owner and Architect-Engineer. A copy, bound, of the complete diary shall be submitted to the Owner at the conclusion of the project.

3.3. Project Management Information System (PMIS) - Scheduled Control Subsystem

- A. Master Project Schedule - Upon award of this Agreement, the Construction Team, shall submit a master project schedule covering the planning and design approvals, construction and Owner occupancy of the Project. This schedule will serve as the framework for the subsequent development of all detailed schedules. The master project schedule shall be produced and updated monthly throughout the project.
- B. Construction Schedule And Requirements For Overtime Work For Projects With Construction Costs In Excess of \$5,000,000.00 Within thirty (30) days after the date of the Owner's issuance of a Notice to Proceed, the Construction Manager shall prepare and submit to the Architect-Engineer a construction schedule in quadruplicate graphically depicting the activities contemplated to occur as a necessary incident to performance of the work required to complete the project, showing the sequence in which the Construction Manager proposes for each such activity to occur and duration (dates of commencement and completion, respectively) of each such activity. An example of an acceptable form of such a construction schedule is contained in Appendix I of the Corps of Engineers' Regulation ER 1-1-11 entitled "Network Analysis System", a copy of which is available to the Construction Manager from the Architect-Engineer, upon request. Another form of construction schedule which provides the same kind of information and employs the same basic principles as illustrated in Appendix I of the Corps of Engineers' Regulation ER 1-1-11 will be acceptable to the Owner if used by the Construction Manager; provided, however, that the Architect-Engineer shall determine whether the construction schedule developed and submitted by the Construction Manager meets the requirements stated above and such determination shall be binding on the Construction Manager. Failure of the Construction Manager to develop and submit a construction schedule as aforesaid shall be sufficient grounds for the Architect-Engineer to find the Construction Manager in substantial default and certify to the Owner that sufficient cause exists to terminate the Agreement or to withhold any payment. Following development and submittal of the construction schedule as aforesaid, the Construction Manager shall, at the end of each calendar month occurring thereafter during the period of time required to finally complete the subject project, or at such

earlier intervals as circumstances may require, update and/or revise the construction schedule to show the actual progress of the work performed and 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. Each such update and/or revision to the construction schedule shall be submitted to the Architect-Engineer in duplicate. Failure of the Construction Manager to update, revise, and submit the construction schedule as aforesaid shall be sufficient grounds for the Architect-Engineer to find the Construction Manager in substantial default and certify to the Owner that sufficient cause exists to terminate the Agreement or to withhold payment to the Construction Manager until a schedule or schedule update acceptable to the Architect-Engineer is submitted.

- C. The Construction Manager shall prepare and incorporate into the schedule data base, at the required intervals, the following schedules:
1. Pre-Bid Schedules (Subnetworks) - The Construction Manager shall prepare a construction schedule for work encompassed in each bid package. The schedule shall be sufficiently detailed as to be suitable for inclusion in the bid package as a framework for contract completion by the successful bidder. It shall show the interrelationships between the work of the successful bidder and that of other subcontractors, and shall establish milestones keyed to the overall master schedule.
 2. Subcontractor Construction Schedules (Subnetworks) - Upon the award of each sub-contract, the Construction Manager shall jointly with the subcontractor, develop a schedule which 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 construction schedule shall also show pertinent activities for material purchase orders, manpower supply, shop drawing schedules and material delivery schedules.
 3. Occupancy Schedule - The Construction Manager shall jointly develop with the Architect-Engineer and Owner a detailed plan, inclusive of punch lists pursuant to Section 255.077, Florida Statutes, final inspections, maintenance training and turn-over procedures, to be used for ensuring accomplishment of a smooth and phased transition from construction to Owner occupancy. The Occupancy Schedule shall be produced and updated monthly from its inception through final Owner occupancy.

3.4. Project Management Information System (PMIS) - Cost Control Subsystem

The operation of this subsystem shall provide sufficient timely data and detail to permit the Construction Team to control and adjust the project requirements, needs, materials, equipment and systems by building and site elements so that construction will be completed at a cost which, together with all other project costs, will not exceed the maximum total project budget. Requirements of this subsystem include the following submissions at the following phases of the project:

Estimates

- A. At Completion of Design Development Phase For Each Item Or Bid Package.
- B. At Completion of 100% Construction Documents Phase For Each Item Or Bid Package.
- C. At establishment of the Guaranteed Maximum Price.
- D. Construction Documents Estimates - Prior to the bid of each bid package, when the working drawings and specifications are complete, the Construction Manager shall prepare and submit a cost estimate on the basis of a quantitative material take-off with current local cost for each bid group by subcontract package.

3.5. Project Management Information System (PMIS) - Project Accounting Subsystem

The operation of this subsystem shall enable the Construction Team to plan effectively and to monitor and control the funds available for the project, cash flow, costs, change orders, payments, and other major financial factors by comparison of budget, estimate, total commitment, amounts invoiced, and amounts payable. This subsystem will be produced and updated monthly and includes the following reports which together 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 would be sufficient for an audit by the Owner for a period of 5 years after final completion of the project. This report will also provide for accounting by building and site element.

- A. Costs Status Report presenting the budget, estimate, and base commitment (awarded contracts and purchase orders) for any given contract or budget line item. It shall show approved change orders for each contract which when added to the base commitment will become the total commitment. Pending change orders will also be shown to produce the total estimated probable cost to complete the work.
- B. A Payment Status Report showing the value in place (both current and cumulative), the amount invoiced (both current and cumulative), the retained, the amount payable (both current and cumulative), and the balance remaining. A summary of this report shall accompany each pay request.
- C. A Detailed Status Report showing the complete activity history of each item in the project accounting structure. It shall include the budget, estimate and base commitment figures for each contract. It shall give the change order history including change order numbers,

description, proposed and approved dates, and the proposed and approved dollar amounts. It shall also show all pending or rejected change orders.

- D. A Cash Flow Spreadsheet showing the projected accumulation of cash payments against the project. Cash flow projections shall be generated for anticipated monthly payments as well as cumulative payments.
- E. A Detailed Schedule of Values shall be maintained as necessary to supplement the operation of the project accounting subsystem. The detailed schedule of values will be used to provide construction cost accountability for general conditions work, on-site reimbursable expenses, and costs requiring accounting needs.

3.6. Project Manual

- A. Upon award of contract the Construction Manager shall develop a draft comprehensive Project Manual describing the services set forth in this Agreement. This shall provide a plan for the control, direction, coordination and evaluation of work performed throughout the project organization including identification of Key personnel, responsibilities of Construction Manager, Owner and Architect-Engineer; work flow diagrams; and strategy for bidding the work. The Project Manual shall be updated as necessary throughout the design, construction and Owner occupancy phases. Five copies of the Project Manual and any updates shall be submitted to the Owner and Architect-Engineer. In developing the Project Manual, the Construction Manager shall coordinate with the Owner and the Architect-Engineer.
- B. Contents of Project Manual - The Project Manual shall describe in detail the procedures for executing the work and the organizations participating. The Project Manual shall include as a minimum the following sections:
 - 1. Project Definition - The known characteristics of the project or subprojects shall be described in general terms which will provide the participants a basic understanding of the project or sub-projects.
 - 2. Project Goals - The schedule, budget, physical, technical and other objectives for the project shall be defined.
 - 3. Project Strategy - A narrative description of the project delivery methods shall be utilized to accomplish the project goals.
 - 4. Project Work Plan - A matrix display of the program of work to be performed by the Construction Manager, the Architect-Engineer and the Owner during each phase of the project.
 - 5. Project Organization - A summary organization chart showing the interrelationships between the Owner, the Construction Manager and the Architect-Engineer, and other supporting organizations and permitting review agencies. Detailed charts, one each for the

- Construction Manager, the Architect-Engineer, the Client Agency and Owner showing organizational elements participating in the project shall be included.
6. Responsibility Performance Chart - A detailed chart showing the specific responsibilities and interrelationships of the Owner, the Architect-Engineer, and Construction Manager. The Responsibility Performance Chart shall indicate major responsibility, and minor responsibility, for each specific task required to deliver the project. The Construction Manager shall develop a similar chart for the personnel within their organization who are assigned to the project, and also for the personnel of the Owner and the Architect-Engineer from data supplied by each.
 7. Flow Diagrams - These charts shall display the flow of information and the decision process for the review and approval of shop drawings and submittals, progress and change orders.
 8. Written Procedures - The Construction Manager will provide written procedures for communications and coordination required between Construction 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.

3.7. Design Review and Recommendations

- A. Review and Recommendations and Warranty. - The Construction Manager shall be thoroughly familiar with the evolving architectural, civil, mechanical, plumbing, electrical, and structural plans and specifications and shall follow the development of design from preliminaries through working drawings. The Construction Manager shall make recommendations with respect to the selection of systems and materials, and cost reducing alternatives including assistance to the Architect-Engineer, and Owner in evaluating alternative comparisons versus long term cost effects. The evaluation shall speak to the benefits of the speed of erection and early completion of the project. The Construction Manager shall furnish pertinent information as to the availability of materials and labor that will be required and shall submit to the Owner, Permitting Authority and Architect-Engineer such comments as may be appropriate concerning construction feasibility and practicality. Any apparent defects in the design, drawings and specifications or other documents shall be called to the Project Director's and the Architect-Engineer's attention. The Construction Manager shall prepare an estimate of the construction cost utilizing the unit quantity survey method.
- B. Review Reports and Warranty - Within 45 days after receiving the Construction Documents for each phase of the project, the Construction Manager shall perform a specific review focused upon factors of a nature encompassed in Paragraph (A) above and on factors set out in Paragraph (E). Promptly after completion of the review, the Construction Manager shall submit to the Project Director and Permitting Authority, with copies to the Architect-Engineer, a written report covering suggestions or recommendations previously submitted, additional suggestions

or recommendations as may be deemed appropriate, and all actions taken by the Architect-Engineer with respect to same, any comments deemed appropriate with respect to separating the work into separate contracts, alternative materials, and all comments called for under Paragraph (E). AT COMPLETION OF THE CONSTRUCTION MANAGER'S REVIEW OF THE PLANS AND SPECIFICATIONS, 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 IS CONSTRUCTIBLE WITHIN THE SCHEDULED CONSTRUCTION TIME. DISCLAIMER OF WARRANTY: - THE OWNER DISCLAIMS ANY WARRANTY THAT THE PLANS AND SPECIFICATIONS FOR THE PROJECT ARE ACCURATE, PRACTICAL, CONSISTENT OR CONSTRUCTIBLE.

- C. Long Lead Procurements - The Construction Manager shall review the design for the purpose of identifying long lead procurement items (machinery, equipment, materials and supplies). When each item is identified, the Construction Manager shall notify the subcontractors, the Project Director and the Architect-Engineer of the required procurement and schedule. Such information shall be included in the bid documents and made a part of all affected sub-contracts. As soon as the Architect-Engineer has completed drawings and technical specifications and the Construction Manager has obtained permitting approval, the Construction Manager shall prepare invitations for bids. The Construction Manager shall keep informed of the progress of the respective subcontractors or suppliers, manufacturing or fabricating such items and advise the Project Director, Owner and Architect-Engineer of any problems or prospective delay in delivery.
- D. Separate Contracts Planning - The Construction Manager shall review the design with the Architect-Engineer and make recommendations to the Owner and to the Architect-Engineer with respect to dividing the work in such manner as will permit the Construction Manager to take bids and award separate construction sub-contracts on the current schedule while the design is being completed. 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.
- E. Interfacing
 - 1. The Construction Manager shall take such measures as are appropriate to provide that all construction requirements will be covered in the separate subcontracts for procurement of long lead items, the separate construction subcontracts and the general conditions items performed without duplication or overlap, sequenced to maintain completion of all work on

- schedule. Particular attention shall be given to provide that each bid package clearly identifies the work included in that particular separate subcontract, its schedule for start and completion and its relationship to other separate Construction Managers.
2. Without assuming any Design responsibilities of the Architect-Engineer, the Construction Manager shall include in the reports required under Paragraph (B) comments on overlap with any other separate subcontracts, omissions, lack of correlation between drawings, and any other deficiencies noted, in order that the Project Director and Architect-Engineer may arrange for necessary corrections.
- F. Job-Site Facilities - The Construction Manager shall arrange for all job-site facilities necessary to enable the Construction Manager and the Owner's representatives and the Architect-Engineer to perform their respective duties in the management, inspection, and supervision of construction. Tangible personal property, otherwise referred to as Job-Site facilities, include but are not limited to such things as trailers, toilets, computers and any other equipment necessary to carry on the project. The method of acquiring such job-site facilities which are planned to become the property of the owner at the conclusion of the project shall be evaluated based on cost over the life of the project. Owning versus leasing shall be considered by the Construction Manager obtaining at least two (2) proposals for leasing and at least two (2) proposals for purchasing and then analyzing which is least expensive over the usage life of the item. The Construction Manager shall present the evaluation with recommendation to the Owner for approval. When the Construction Manager wishes to supply Job-Site Facilities from their own equipment pool, they shall first evaluate buy versus lease as discussed in the paragraph above. If leasing is found to be the least expensive approach, then such Job-Site Facilities may be leased from their own equipment pool at a price not greater than the lowest of the three (3) lease proposals obtained. For all such facilities purchased which may become the property of the Owner at the conclusion of the project, the Construction Manager shall maintain ownership responsibilities of such facilities until the project conclusion. Reimbursement for cost of such equipment will be made at the conclusion of the project at the documented purchase price. At that time, the Construction Manager shall provide the owner with a complete inventory for each unit of equipment. The inventory shall describe the equipment and identify the purchase price, serial number, model number and condition. Where said equipment has a title, said title shall be properly transferred to the Owner or to the Owner's designee. The Construction Manager is responsible for proper care and maintenance of all equipment while in his control. At the time of transfer to the owner, the owner may refuse acceptance of the equipment if the owner determines in its sole discretion that the equipment has not been properly cared for by the Construction Manager or that such acquisition would not otherwise be in the best interest of the Owner. In such event, the Construction Manager will be reimbursed for such item in accordance with Article 9 Direct Cost Items (D) hereof.
- G. Weather Protection - 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. The Construction Manager shall submit to the Construction Team its recommendations as to needed requirements of this nature and as to the contract or contracts in which they should be included.

H. Market Analysis and Stimulation of Bidder Interest

1. 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; shall make analysis as necessary to (1) determine and report on availability of labor, material, equipment, potential bidders, and possible impact of any shortages or surpluses of labor or material, and (2) in light of such determinations, make recommendations as may be appropriate with respect to long lead procurement, separation of construction into bid packages, sequencing of work, use of alternative materials, equipment or methods, other economics in design or construction, and other matters that will promote cost savings and completion within the scheduled time.
2. Within 30 days after receiving Notice to Proceed, the Construction Manager shall submit a written "Construction Market Analysis and Prospective Bidders Report" setting out recommendations and providing information as to prospective bidders. As various bid packages are prepared for bidding, the Construction Manager shall submit to the Project Director and the Architect-Engineer a list of potential bidders. The Construction Manager shall be responsible to stimulate bidder interest in the local market place and identify and encourage bidding competition.
3. The Construction Manager shall carry out an active program of stimulating interest of qualified Construction Managers in bidding on the work and of familiarizing those bidders with the requirements of this project.

3.8. Construction Phase - Construction Manager's Staff

The Construction Manager shall maintain sufficient off-site support staff, and competent full time staff at the Project site authorized to act on behalf of the Construction Manager to coordinate, inspect and provide general direction of the work and progress of the subcontractors and shall provide no less than those personnel during the respective phases of construction that are set forth in Exhibit "D" to this agreement. The Construction Manager shall not change any of those persons named in "D" unless mutually agreed to by the Owner and Construction Manager. In such case, the Owner shall have the right of approval of the qualifications of replacement personnel. Such approval will not be unreasonably withheld.

3.9. Construction Phase - Lines of Authority

The Construction Manager shall establish and maintain lines of authority for their personnel, and shall provide this definition to the Owner and all other affected parties such as the code inspectors of the Permitting Authority, the sub-contractors, the Architect-Engineer and the Owner's representatives, to

provide general direction of the work and progress of the various phases and subcontractors. The Owner and Architect-Engineer may attend meetings between the Construction Manager and their subcontractors, however, such attendance shall not diminish either the authority or responsibility of the Construction Manager to administer the subcontractor.

3.10. Construction Phase - Schedule and Project Manual Provisions

The Construction Manager shall provide subcontractors and the Owner, its representatives and the Architect-Engineer with copies of the Project Manual (total number of copies not to exceed 10) developed and updated as required by section "Project Manual" expanded for the Construction Phase employing their respective milestones, beginning and finishing dates, their respective responsibilities for performance and the relationships of their work with respect to subcontractors and suppliers. The Construction Manager shall also continue to provide current scheduling information and provide direction and coordination regarding milestones, beginning and finishing dates, responsibilities for performance and the relationships of the work to the work of their subcontractors and suppliers to enable them to perform their respective tasks so that the development of construction progresses in a smooth and efficient manner in conformance with the overall project schedule. The schedule shall include all phases of the construction work, material supplies, long lead procurement, approval of shop drawings, change orders in progress, schedules for change orders, and performance testing requirements. They shall advise the Owner, its representatives and the Architect-Engineer of their required participation in any meeting or inspection giving each at least one week notice unless such notice is made impossible by conditions beyond their control. They shall hold job-site meetings at least once each month with the Construction Team and at least once each week with the subcontractors and the Architect-Engineer's Field Representative, or more frequently as required by work progress, to review progress, discuss problems and their solutions and coordinate future work with all subcontractors.

3.11. Construction Phase - Advertisement and Competitive Bidding Procedures

- A. During the Project, without assuming responsibilities of the Architect-Engineer, the Construction Manager shall be responsible for complying with the advertising and competitive bidding procedures applicable to public construction projects, including but not limited to, invitations for bids, or requests for proposal when applicable, for all procurements of long lead items, materials and services, and for Subcontractor contracts. Accordingly, such solicitations shall be prepared and completed in accordance with the following guidelines:
 1. For contracts exceeding or projected to exceed \$1,000 but not \$35,000, a Contract may be executed with the firm whose proposal the Construction Manager determines best meets the needs of the Project. The Construction Manager shall first obtain a minimum of two (2) verbal quotations, whenever practical. Should verbal quotations be received, name and address of the company and amount quoted shall be a part of the written documentation. If at least two quotations are not received, a statement or why they were not received must be shown. Quotations shall be confirmed by written proposals of the firms defining the scope and quality of work to be provided. These quotations shall be entered on a bid tabulation sheet and a copy of such tabulation sent to the Owner, Architect-Engineer and to

- each firm. The successful quotation shall be confirmed by written contract or purchase order to the low bid firm defining the scope and quality of work to be provided. The Construction Manager shall engage the firm which submits the lowest verbal quotation.
2. For contracts exceeding or projected to exceed \$35,000 but not \$200,000, the Construction Manager may execute a contract with the firm whose proposal, in the Construction Manager's best judgement, best meets the needs of the Project. The Construction Manager shall first request at least three (3) firms to submit sealed written proposals based on a written drawings and/or specification. The written proposals shall all be opened publicly at the location, date and time named by the Construction Manager in the request for proposal. A tabulation of the results shall be furnished to the Owner, Architect-Engineer and to each firm. The Construction Manager shall engage the firm who is qualified and submits the lowest responsive proposal.
 3. For contracts exceeding or projected to exceed \$200,000 but not \$500,000, the Construction Manager shall publicly advertise the work in a newspaper of general circulation in the county where the project is located at least 21 calendar days prior to the established bid opening date. Work may not be divided for the purpose of evading these requirements. These proposals shall be based on approved plans and specifications. Bids shall be received and opened publicly at the location, date and time established in the bid advertisement. If the location, date, or time of the bid opening changes, written notice of the change must be given, as soon as practicable after the change is made, to all persons who are registered to receive any addenda to the plans and specifications. The Construction Manager shall engage the firm who is pre-qualified and submits the lowest responsive proposal. In the event of a valid emergency (such as an immediate danger to the public, an immediate danger of loss of public or private property, or an interruption in the delivery of an essential government service) the Construction Manager may request a waiver from these requirements from the Owner, to be approved or denied at its sole discretion.
 4. For contracts exceeding or projected to exceed \$500,000, the Construction Manager shall publicly advertise the work in a newspaper of general circulation in the county where the Project is located at least 30 calendar days prior to the established bid opening and at least 5 days prior to any scheduled pre-bid conference. Work may not be divided for the purpose of evading these requirements. These proposals shall be based on approved plans and specifications. Bids shall be received and opened publicly at the location, date and time established in the bid advertisement. If the location, date, or time of the bid opening changes, written notice of the change must be given, as soon as practicable after the change is made, to all persons who are registered to receive any addenda to the plans and specifications. The Construction Manager shall engage the firm who is pre-qualified and submits the lowest responsive proposal. In the event of a valid emergency (such as an immediate danger to the public, an immediate danger of loss of public or private property, or an interruption in the delivery of an essential government service) the Construction

Manager may request a waiver from these requirements from the Owner, to be approved or denied at its sole discretion.

5. Individual purchases of materials or rentals or leases of equipment amounting to less than \$1,000.00 each may be made without bids or quotes when reasonably necessary to expedite work on the project, however, the Construction Manager shall not divide or separate a procurement in order to avoid the requirements set forth above.
 6. Site utilities may be acquired at market rates from the entity(ies) providing such in the franchise area.
 7. It must be expressly noted in all advertisements and solicitations that all submitted quotations or bid proposals are made to the Construction Manager and that the Owner is not a party. Nothing in the bid documents, either express or implied, enjoins the Owner as a party to the receipt, review, or award of the bids received by the Construction Manager. Award of each subcontract shall be based solely on the best interests of the Project as determined by the Construction Manager.
 8. As part of such preparation, the Construction Manager shall review the specifications and drawings prepared by the Architect-Engineer. Ambiguities, conflicts or lack of clarity of language, use of illegally restrictive requirements, and any other defects in the specifications or in the drawings noted by the Construction Manager shall be brought to the attention of the Project Director and Architect-Engineer in written form.
- B. There are two steps in qualifying to perform construction of State projects:
1. Prequalification to submit a bid and Prequalification for award of the contract.
 - a. Prequalification to submit a bid. Each potential bidder on contracts exceeding \$200,000, whose field or area is governed by Chapter 399, 455, 489 or 633, Florida Statutes, for licensure will be prequalified by the Construction Manager to participate in the bid process for a specific field or area of construction based on the bidder's area of license or certification.
 - b. Contractors not governed by the requirements of Chapter 399, 455, 489, or 633, F.S., are not required to be prequalified under this section. The following information is acceptable:
 - i. Current State Contractor license certification or registration as required under Florida Statutes.
 - ii. Current Corporate Charter registration, if the potential bidder is a Florida corporation or authority to transact business if the potential bidder is a non-Florida corporation, as may be required by Florida law.

- c. For projects that require a contractor with specific expertise and experience, the Construction Manager may establish additional prequalification requirements relating to demonstrated performance of similar work of similar size and complexity and the possession or availability of facilities or equipment needed for performance of the work in addition to prequalification requirements in accordance with conditions that will be established in the bidding documents.
 - d. In each instance where the bid documents set forth certain additional prequalification requirements each potential bidder shall submit these prequalification data to the Construction Manager as provided in the bid documents. The conditions may include a deadline date for submittal of additional prequalification data, which date will be earlier than the deadline for submission of bids. Bids are to be accepted only from those potential bidders who have prequalified in accordance with this section and the terms of the bidding documents.
 2. Any bidder that has submitted a bid on a contract exceeding \$200,000 must satisfy the following requirements as judged by the Construction Manager in order to be eligible for award of the contract:
 - a. Satisfactory compliance with bid prequalification criteria, if applicable.
 - b. On projects where the bid exceeds \$100,000 the bidder must provide with the bid, a good faith deposit in the amount of 5% of the bid by way of a bid bond from a surety insurer authorized to do business in this State as surety or a certified check accompanying the bid, such requirement may be satisfied by the bidder depositing in lieu of such certified check, a cashier's check, treasurer's check or bank draft of any national or state bank.
 - c. On projects where the bid exceeds \$100,000, unless such requirement has been waived by the Owner, the bidder must provide with the bid or within two working days of being notified as the low responsive, qualified bidder, evidence of ability to provide the necessary performance and payment bonds for the project by providing a letter of intent to provide a 100% performance bond and a 100% labor and material payment bond from a surety company authorized to do business in the State of Florida, and meeting the financial and performance rating required by the bidding documents. For contract amounts not exceeding \$500,000, the provisions of Section 287.0935, F.S., shall govern.
 - d. The bidder must provide at any time prior to the Construction Manager's execution of the contract, evidence of insurance in effect, equal to or exceeding the limits required by the bidding documents.
 - e. On contracts exceeding \$200,000 the bidder must provide, if requested by the Owner, a list of projects and their status for a period of thirty-six months prior to solicitation and a

copy of the contractor's current financial statement to the Construction Manager. The Contractor's financial condition must demonstrate that adequate liquid assets and equipment are available to properly perform this project as follows:

- i. The value of liquid assets must be no less than one-twentieth of the amount of the base bid.
 - ii. Liquid assets shall include cash, stocks, bonds, pre-paid expenses and receivables, but shall not include the value of equipment are available to properly perform this project as follows:
 - iii. The value of liquid assets must be no less than one-twentieth of the amount of the base bid.
 - iv. Liquid assets shall include cash, stocks, bonds, pre-paid expenses and receivables, but shall not include the value of equipment.
- f. Unless waived by the Construction Manager for good cause, on contracts exceeding \$200,000, the contractor must agree to establish or have an active office, or an ongoing project, which office or project is located within 300 road miles of the project site. Good cause shall be the bidder's refusal to establish a project office with qualified management personnel at or within 300 miles of the project site or a finding by the agency that a bidder's office within 300 miles of the project site is not in fact an active office staffed with qualified management staff.
3. On contracts exceeding \$500,000, the bidder must agree to perform no less than 15% of the project management and construction work utilizing its own employees. The bidder must have successfully completed no less than two projects of similar size and complexity within the last three years.
 4. The firm determined by the Construction Manager to have submitted the low, responsive bid must complete and submit the above required qualification data where applicable within seven working days after being notified as the low responsive bidder. The Construction Manager will evaluate all data submitted within fourteen days of receipt and determine whether the firm is a qualified bidder. Should the bidder be judged unqualified, its bid will be rejected and the bidder submitting the next low responsive bid will be given seven working days to submit its qualification data.
- C. For each separate construction contract exceeding \$65,000, the Construction Manager shall, unless waived by Owner, conduct a pre-bid conference with prospective bidders, the Architect-Engineer and Project Director. In the event questions are raised which require an interpretation of the bidding documents or otherwise indicate a need for clarification or correction of the invitation, the Construction Manager shall transmit these to the Architect-Engineer and upon

receiving clarification or correction in writing shall prepare an addendum to the bidding document, and issue same to all of the prospective bidders.

- D. For all contracts exceeding \$65,000, the Construction Manager shall establish a pre-qualification procedure for applicable subcontract trades.
- E. All contracts, except where competitive bidding is waived, will be publicly bid in accordance with the provisions in the project specifications bidding documents. Award of contract will be made to the responsive bidder, determined to be qualified in accordance with the provisions herein and meeting the requirements of the bidding documents, that submits the lowest valid bid for the work. The lowest bid will be the bid from the responsive bidder that has submitted the lowest price for the base bid or the base bid plus the additive alternates or less the deductive alternates chosen by the Construction Manager to be included in or excluded from the proposed contract, taken in numerical order listed in the bid documents. The order of the alternates may be selected by the Construction Manager in any sequence so long as such acceptance out of order does not alter the designation of the low bidder. On contracts whose bidding documents provide for evaluation of the bids based on first cost and life cycle cost and performance criteria, the lowest bid will be the bid by the firm whose bid products are determined to yield the lowest total cost in accordance with the criteria set forth in the bidding documents.
- F. The Construction Manager shall reserve the right to reject any or all bids or portions thereof under any of the following circumstances:
 - 1. When the bidding process, including the procedure followed by the agency, involves a material conflict with a rule or statutory or case law;
 - 2. When the Construction Manager has evidence to indicate that collusion exists among the bidders;
 - 3. When the base bid or the base bid minus all deductive alternates exceeds the funds available for construction;
 - 4. When the Construction Manager has evidence to indicate the bidder is not in a position to satisfactorily perform the contract;
 - 5. When the Construction Manager has evidence to indicate the bidder has interest in more than one proposal for the same work;
 - 6. When the Construction Manager finds the unit price provided with a bid proposal is not approximately the same as the unit cost for the same work provided as a lump sum for a specified quantity in the base bid, or alternate;
 - 7. When the Construction Manager determines that the bid is not valid according to the bid specifications;
 - 8. When the Construction Manager determines that a conflict of interest exists.

9. When the Construction Manager determines that a bid is unreasonably low (at least 20% below the next lowest bid), where requiring the contractor to perform the contract at the stated price would likely result in unacceptable quality of performance or abandonment of the project. When the Construction Manager suspects that the apparent low responsive bid is unreasonably low, the Construction Manager shall advise the bidder of why the bid is suspected of being unreasonably low and require the bidder to reconsider the bid. In response, the bidder, upon reconsideration, within 10 working days, (or longer if the parties agree), from the date the bidder received the Construction Manager's request for reconsideration, shall inform the Construction Manager of its position on whether the bid is unreasonably low and furnish the Construction Manager all relevant information including the documents that pertain to the reconsideration. The bidder shall demonstrate to the Construction Manager that its position is correct, whether the decision was affirmative or negative. If the Construction ultimately concludes that the bid is unreasonably low, the Construction Manager shall give notice of intention to reject the bid. If the bidder fails to furnish evidence in support of the bid, the Construction Manager may presume that the bid is unreasonably low.

3.12. Construction Phase - 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 each in an amount not less than the total construction cost as defined in Article 9 and inclusive of the Construction Manager's fees.

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

- A. The Surety Company shall have a currently valid Certificate of Authority, issued by the State of Florida, Department of Financial Services, Office of Insurance Regulation, authorizing it to write surety bonds in the State of Florida.
- B. The Surety Company shall have 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.
- C. The Surety Company shall be in full compliance with the provisions of the Florida Insurance Code.
- D. 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.
- E. If the Contract Award Amount exceeds \$500,000, the Surety Company shall also comply with the following provisions:

1. The Surety Company shall have at least the following minimum ratings in the latest issue of Best's Key Rating Guide.
 - a. CONTRACT AMOUNT POLICYHOLDER'S RATING REQUIRED FINANCIAL RATING
 - b. \$ 500,000 TO \$1,000,000 A- CLASS I
 - c. \$1,000,000 TO \$2,000,000 A- CLASS II
 - d. \$2,000,000 TO \$5,000,000 A- CLASS III
 - e. \$5,000,000 TO \$10,000,000 A- CLASS IV
 - f. \$10,000,000 TO \$25,000,000 A- CLASS V
 - g. \$25,000,000 TO \$50,000,000 A- CLASS VI
 - h. \$50,000,000 TO \$100,000,000 A- CLASS VII
 - i. \$50,000,000 TO \$100,000,000 A- CLASS VII
2. The Surety Company shall not 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 Financial Services, Office of Insurance Regulation 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.

3.13. Construction Phase - Quality Control

The Construction Manager shall develop and maintain a program, acceptable to the Owner and Architect-Engineer, to assure quality control of the construction. They shall supervise the work of all subcontractors providing instructions to each when their work does not conform to the requirements of the plans and specifications and shall continue to exert their influence and control over each subcontractor to ensure that corrections are made in a timely manner so as to not affect the efficient progress of the work. Should disagreement occur between the Construction Manager, the Owner or the Architect-Engineer over acceptability of work and conformance with the requirements of the specifications and plans, the Owner shall be the final judge of performance and acceptability.

3.14. Construction Phase - Subcontractor Interfacing

Subcontractor Interfacing - The Construction Manager shall be the single point of interface with all subcontractors for the Owner and all of its agents and representatives including the Architect-Engineer.

The Construction Manager shall negotiate all change orders, field orders and request for proposals, with all affected subcontractors and shall review the costs of those proposals and advise the Owner and Architect-Engineer of their validity and reasonableness, acting in the Owner's best interest prior to requesting approval of each change order from the Owner. Before any work is begun on any change order, 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. They shall also carefully review all shop drawings and then forward the same to the Architect-Engineer for review and actions. The 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. They shall request the Architect-Engineer to make interpretations of the drawings or specifications requested by the subcontractors and shall maintain a suspense control system to promote timely response. The Construction Manager shall advise the Project Director and Architect-Engineer when timely response is not occurring on any of the above.

3.15. Construction Phase - Permits

The Construction Manager shall secure all necessary building permits from the Permitting Authority and all necessary utility connection permits, the cost of which will be considered a direct cost item.

3.16. Construction Phase - Job Site Requirements

- A. The Construction Manager shall provide for each of the following activities as a part of the Construction Phase fee:
 1. Maintain a log of daily activities, including manpower records, weather, delays, major decisions, etc.
 2. Maintain a roster of companies on the project with names and telephone numbers of key personnel.
 3. Establish and enforce job rules governing parking, clean-up, use of facilities and worker discipline.
 4. Provide labor relations management for a harmonious, productive project.
 5. Provide a safety program for the project to meet OSHA requirements. Monitor for subcontractor compliance without relieving them of responsibilities to perform work in accordance with the best acceptable practice.
 6. Provide a quality control program as developed under "Construction Phase - Quality Control" hereinabove.
 7. Miscellaneous office supplies that support the construction efforts which are used by their own forces.
 8. Travel to and from the home office to the project site and Tallahassee as the project requires.

- B. The Construction Manager shall provide personnel and equipment or shall arrange for separate subcontracts to provide each of the following as a direct cost item:
 - 1. Schedule the services of independent testing laboratories and provide the necessary testing of materials to ensure conformance to contract requirements.
 - 2. The printing and distribution of all required bidding documents and shop drawings, including the sets required by the Permitting Authority's inspectors.

3.17. Construction Phase - Job Site Administration

The Construction Manager shall provide as part of their construction phase fee, job site administrative functions during construction to assure proper documentation, including but not limited to such things as the following:

- A. Job Meetings - Hold weekly progress and coordination meetings to provide for an easy flowing project. Implement procedures and assure timely submittals, expedite processing approvals and return of shop drawings, samples, etc. Coordinate and expedite critical ordering including direct tax saving purchases and delivery of materials, work sequences, inspection and testing, labor allocation, etc. Review and coordinate each subcontractor's work. Review and implement revisions to the Schedule. Monitor and promote safety requirements. In addition, regular project status meetings will be held between the Architect-Engineer, Owner and Construction Manager either biweekly or monthly, whichever is designated by the Project Director. Use the job site meeting as a tool for preplanning of work and enforcing schedules and for establishing procedures, responsibilities, and identification of authority for all to clearly understand. Identify party or parties responsible for follow up on any problems, delay items or questions and record course for solution. Revisit each pending item at each subsequent meeting until resolution is achieved. Require all present to make any problems or delaying event known to those present for appropriate attention and resolution.
- B. Shop Drawing Submittals/Approvals - Provide staff to check shop drawings and to implement procedures for submittal and transmittal to the Architect-Engineer of such drawings for action, and closely monitor their submittal and approval process.
- C. Material and Equipment Expediting - Provide staff to closely monitor material and equipment deliveries, critically important checking and follow-up procedures on supplier commitments of all subcontractors.
- D. Payments to subcontractors - Develop and implement a procedure for review, processing, and payment of applications by subcontractors for progress and final payments.
- E. Document Interpretation - Refer all questions for interpretation of the documents prepared by the Architect-Engineer to the Architect-Engineer.
- F. Reports and Project Site Documents - Record the progress of the project. Submit written progress reports to the Owner and the Architect-Engineer including information on the

subcontractor's work, and the percentage of completion. Keep a daily log available to the Owner, the Architect-Engineer and the Permitting Authority inspectors.

- G. Subcontractor's Progress - Prepare periodic punch lists for subcontractor's work including unsatisfactory or incomplete items and schedules for their completion.
- H. Substantial Completion - Ascertain when the work or designated portions thereof are ready for the Architect-Engineer's substantial completion inspection. From the Architect-Engineer's list of incomplete or unsatisfactory items, prepare a schedule for their completion indicating completion dates for the Owner's review. If the Construction Manager wishes the Architect-Engineer to conduct a pre-substantial completion inspection in conjunction with its own forces, the Architect-Engineer will prepare the pre-substantial punch list from which the Construction Manager will develop a completion schedule. The Architect-Engineer will issue a certificate of substantial completion when the work on the pre-substantial punch list has been accomplished (See Exhibit E).
- I. Final Completion - Monitor the Subcontractor's performance on the completion of the project and provide notice to the Owner and Architect-Engineer that the work is ready for final inspection. Secure and transmit to the Owner, through the Architect-Engineer, all required guarantees, affidavits, releases, bonds and waivers, manuals, record drawings, and maintenance books including the Final Completion form shown in Exhibit F.
- J. 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 trade Construction Managers.
- K. Record Drawings - During the progress of the work, the Construction Manager shall require the plumbing, air conditioning, heating, ventilating, elevator, and electrical subcontractors to record on their field sets of drawings 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 drawings. The Construction Manager shall also record all drawing revisions that have been authorized by change order that effect wall or partition locations, door and window locations and other template changes. The exact routing of conduit runs shall be shown on these drawings.

Each drawing 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 drawings the sheets shall not be disturbed except as noted above.

The Construction Manager shall review the completed As-Built drawings and ascertain that all data furnished on the drawings 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

3.18. Construction Phase - Administrative Records

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

- Contracts or Purchase Orders
- Shop Drawing Submittal/Approval Logs
- Equipment Purchase/Delivery Logs-
- Contract Drawings and Specifications with Addenda Warranties and Guarantees Cost Accounting Records:
- Sales Tax Recovery Status Report
- Labor Costs
- Material Costs
- Subcontractor Payment Exception Report
- Equipment Costs
- Cost Proposal Requests
- Payment Request Records
- Meeting Minutes
- Cost-Estimates
- Bulletin Quotations
- Lab Test Reports
- Insurance Certificates and Bonds
- Contract Changes
- Purchase Orders
- Material Purchase Delivery Logs
- Technical Standards
- Design Handbooks
- As-Built" Marked Prints
- Operating & Maintenance Instruction
- Daily Progress Reports

- Monthly Progress Reports
- Correspondence Files
- Transmittal Records
- Inspection Reports
- Bid/Award Information
- Bid Analysis and Negotiations
- Punch Lists
- PMIS Schedule and Updates
- Suspense (Tickler) Files of Outstanding Requirements
- Project Manual

The project records shall be available at all times to the Owner and Architect-Engineer for reference or review.

3.19. Construction Phase - Owner Occupancy

The Construction Manager shall provide services during the design and construction phases, which will provide a smooth and successful Owner occupancy of the project. 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 "on line" in such conditions as will satisfy Owner operational requirements.

Construction Manager shall conduct their preliminary punch list inspection and coordinate the completion of all punch list work to be done with Owner occupancy requirements in mind.

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. They shall provide operational training, in equipment use, for building operators.

Construction Manager shall secure required guarantees and warranties, assemble and deliver same to the Owner in a manner that will facilitate their maximum enforcement and assure their meaningful implementation.

Construction Manager shall continuously review "As-Built" Drawings and mark up progress prints to provide as much accuracy as possible.

The Owner will not occupy or take control of the Project until the above items discussed in this paragraph have been completed and the "Substantial Completion", "Start-Up", "Record Drawing", and "Warranty" requirements specified in paragraphs 2.4(10)h, 2.4(10)j, 2.4(10)k, and 2.4(13) have been completed to the Owner's satisfaction excluding the requirements for a warranty inspection nine (9) months after Owner Occupancy.

3.20. Construction Phase - Warranty

Where any Work is performed by the Construction Manager's own forces or by subcontractors under contract with 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 Drawings and specifications. 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 Drawings and Specifications for a period of one (1) 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. The Construction Manager shall collect and deliver to the Owner any specific written warranties given by others as required by the Contract Documents. Also, the Construction Manager shall conduct, jointly with the Owner and the Architect-Engineer, a warranty inspection nine (9) months after the date of Owner Occupancy.

3.21. Direct Purchase Materials

When requested by the Owner, the Construction Manager shall implement a direct tax savings purchase plan approved by the Department of Revenue that, upon acceptance, will be part of the Construction Manager's services as outlined below:

- A. The Owner may elect to purchase materials and equipment included in any Trade Contractor's bid for a portion of the work directly from the supplier of such materials or equipment in order to achieve sales tax savings. Such materials and equipment are referred to herein as "Direct Purchase Materials". At the time the Construction Manager will provide the Owner with the bid tabulation analysis as required by section "Construction Phase" of this Agreement (which bids shall include the cost of all potential Direct Purchase Materials, freight charges F.O.B. project site, and sales taxes applicable thereto), the Construction Manager shall submit to the Owner a list, prepared by applicable Trade Contractors, of materials and equipment appropriate for consideration by the Owner as Direct Purchase Materials.
- B. If Owner elects to purchase any Direct Purchase Materials, it shall so notify the Construction Manager and the Construction Manager shall thereafter promptly furnish to the Owner, at least seven (7) days prior to the date such Direct Purchase Materials must be ordered, a purchase order request reflecting the approved Direct Purchase Materials, together with acceptable evidence that the Construction Manager competitively bid the Trade Contracts in accordance with section "Construction Phase" of this Agreement which includes the Direct Purchase Materials. Acceptable evidence means, at a minimum, that the Construction Manager performed all advertising required by section "Construction Phase" of this Agreement, utilized pre-qualification criteria approved by the Owner and obtained written, sealed quotes from at least three (3) bidders for the applicable Trade Contracts; or provide a written explanation if any of the above criteria is not met. In addition, the Construction Manager shall reduce the

applicable Trade Contractor's subcontract amount by the cost of the Direct Purchase Materials and sales tax related thereto.

- C. Upon issuance of a purchase order to the material supplier, the Construction Manager shall:
1. Execute, in conjunction with the Owner, a deductive change order to this Agreement for the value of the Direct Purchase Material, excluding sales tax.
 2. Issue and execute a deductive change order to the Trade Contractor's subcontract for the value of the Direct Purchase Material, including related sales tax.
 3. Apply the value of the sales tax towards the pre-credit included in the Guaranteed Maximum Price.
 4. The Construction Manager shall provide an accounting to the Owner of the Sales Tax pre-credit on a monthly basis within the Project PMIS report.
 5. The Construction Manager shall develop an Owner's pre-credit sales tax savings contingency budget within the Schedule of Values. Use of these funds will be at the sole discretion of the Owner and may, at the direction of the Owner, be incorporated into a deductive change to the Guaranteed Maximum Price.
 6. If, for any reason, the value of the sales tax savings achieved through this program, does not equal or exceed the pre-credit included in the Guaranteed Maximum Price, then the Owner shall execute a Change Order to the Construction Manager for the difference between the actual sales tax savings achieved and the pre-credit included in the Guaranteed Maximum Price.
- D. Upon Owner's receipt of the purchase order request and supporting materials, the Owner will review the same and, if approved, issue a purchase order directly to the supplier of the applicable Direct Purchase Material, with delivery F.O.B. project site. Upon delivery of the Direct Purchase Materials to the project site, the Construction Manager shall ensure that the Direct Purchase Materials are as requested in the Owner's purchase order. The Construction Manager shall immediately document receipt of the materials and the content of the shipment and shall forward all paperwork including receiving reports, bills of lading, packing slips, invoices and associated back-up documentation to the Owner. Upon receipt of the documentation confirming the shipment, the Owner will take title to the Direct Purchase Materials. Upon receipt of a properly prepared invoice from the supplier issued to Owner, the Owner will process the invoices and issue payment directly to the applicable supplier.
- E. Whenever Owner-Furnished Contractor-Installed materials or equipment are shipped to the project site, the Construction Manager shall notify the Owner and shall be responsible for their acceptance, proper storage, and incorporation into the work provided the scope of the Owner-Furnished Contractor-Installed work is included within the Guaranteed Maximum Price.

- F. At no additional cost to the Owner and as required by the Agreement, the Construction Manager shall continue builder's risk insurance on the Direct Purchase Materials, naming the Owner as the insured or an additional insured. The Owner shall reimburse the Construction Manager for the cost of such insurance as provided by the Agreement.
- G. Except to the extent modified by this section, the Construction Manager shall be responsible for satisfying all of its other obligations with respect to the Direct Purchase Materials pursuant to this Agreement, as if the Direct Purchase Materials had been purchased by it. There shall be no additional charge to the Owner for services provided pursuant to this section.

4. ARTICLE 3

OWNER'S RESPONSIBILITIES

4.1. OWNER'S RESPONSIBILITIES

- A. Owner's Information - The Owner shall provide full information regarding the requirements for the Project.
- B. Owner's Representative - The Owner shall designate a representative who shall be fully acquainted with the Project and shall define the lines of Owner authority to approve Project Construction Budgets, and changes in the Project. He shall render decisions promptly and furnish information expeditiously.
- C. Architect and Engineer's Agreement - The Owner shall retain an Architect-Engineer for design and to prepare construction documents for the Project. The Architect-Engineer's services, duties and responsibilities are described in the Agreement between the Owner and the Architect-Engineer, a copy of which will be furnished to the Construction Manager. The Agreement between the Owner and the Architect-Engineer shall not be modified without written notification to the Construction Manager.
- D. Site Survey and Reports - The Owner shall provide for the furnishing for the site of the project all surveys describing the physical characteristics, soil reports, and subsurface investigations, legal limitations, utility locations, and a legal description.
- E. Approvals and Easements - The Owner shall pay for necessary approvals, easements, assessments and charges required for the construction, use or occupancy of permanent structures or for permanent changes in existing facilities, as part of the GMP.
- F. Legal Services - The Owner shall furnish such legal services as may be necessary for providing the items set forth in Article 3.5 and such auditing services as may be required.
- G. Drawings and Specifications - The Construction Manager will be furnished a reproducible set of all copies of Drawings and Specifications reasonably necessary and ready for printing by the Architect-Engineer
- H. 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.
- I. Project Fault Defects - If the Owner becomes aware of any fault or defect in the Project or non-conformance with the drawings and specifications, prompt written notice shall be given to the Construction Manager and Architect-Engineer.

- J. 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 each part of the Project. The Construction Manager shall not commence any work, unless authorized in writing by the Owner.
- K. Lines of Communication - The Owner and Architect-Engineer shall communicate with the Construction Manager's subcontractors or suppliers only through the Construction Manager.
- L. Lines of Authority - The Owner shall establish and maintain lines of authority for its personnel and shall provide this definition to the Construction Manager and all other affected parties.
- M. Permitting & Code Inspections - The Construction Manager must recognize and fully cooperate and coordinate with the Permitting Authority during the course of the Project.

5. ARTICLE 4

PERMITTING AND INSPECTION

Before Work can begin, it is necessary by statute for the Construction Manager to obtain a Building Permit. In addition, construction will be inspected for code compliance, compliance with drawings and specifications, and quality by inspectors working for the Permitting Authority. The building permitting and code inspection requirements shall be as described in Building Permits through Code Inspections hereinafter.

5.1. Building Permits

The Owner shall pay for all permits. The Owner and Architect-Engineer shall be required to provide such information to the Permitting Authority as is necessary to obtain approval from the Permitting Authority to commence construction prior to beginning construction. The Contract Manager shall pull the Building Permit, and shall be responsible for delivering and posting the Building Permit at the Project Site prior to the commencement of construction. The Owner and Architect-Engineer E shall fully cooperate with the CM when and where necessary.

5.2. Code Inspections

All projects will require detailed code compliance inspections by the local authorities with jurisdiction over the area in which the project is located. The disciplines normally include, but are not necessarily limited to, structural, mechanical, electrical, plumbing and general building. The Construction Manager shall make all permits, drawings, specifications, previous inspection reports, and change documents available to Code Inspectors. The contractor shall provide a copy of each inspection report to the Architect/Engineer in a timely fashion.

6. ARTICLE 5

SUBCONTRACTS

6.1. Definition

A subcontractor is a person or organization who has a direct contract with the Construction Manager to perform any of the work at the site. Nothing contained in the Contract Document shall create any contractual relation between the Owner or Architect-Engineer and any subcontractor.

6.2. Proposals

Subject to Article 9 and, in accordance with Article 2, Construction Phase - Advertisement and Competitive Bidding Procedures, the Construction Manager shall request and receive proposals from subcontractors and suppliers and will award those contracts to the qualified low bidder after review of each proposal and is satisfied that the subcontractor is qualified to perform the work.

6.3. Required Subcontractors' Qualifications and Subcontract Conditions

- A. 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 which the Construction Manager by these Documents, assumes toward the Owner and the Architect-Engineer. Said agreements shall preserve and protect the rights of the Owner and 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. Where appropriate, the Construction Manager shall require each subcontractor to enter into similar agreements with their sub-subcontractor. The Construction Manager shall make available to each proposed subcontractor, prior to the execution of a subcontract, copies of the Contract Documents to which the subcontractor will be bound by this Article 5.3 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 his sub-subcontractors.
- B. Subcontract Requirements
 1. On all subcontracts where the bid exceeds \$100,000, the Construction Manager shall require subcontractors to provide a 100% performance bond and a 100% labor and material payment bond from a surety company authorized to do business in the State of Florida by the Department of Financial Services, Office of Insurance Regulation. If the Construction Manager wishes to award subcontracts to subcontractors unable to supply this bonding, special authorization may be requested to do so from the Owner.
 2. On all subcontracts where the bid exceeds \$200,000.00, each subcontractor must provide proof of their experience to perform the trade and a financial statement to the Construction

- Manager. The subcontractors' financial condition must demonstrate that adequate fixed and liquid assets and equipment are available to properly perform the subcontract.
3. Workforce - The subcontractor must agree to perform no less than 15% of the project construction work utilizing its own employees.
 4. Subcontractor experience - The subcontractor must have successfully completed no less than two projects of similar size and complexity within the last five years.
 5. 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) included in the subcontract. 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 they have identified to supervise and schedule the work.
 6. All subcontracts shall provide:
 - a. LIMITATION OF REMEDY - NO DAMAGES FOR DELAY
 - i. That the subcontractor's exclusive remedy for delays in the performance of the contract caused by events beyond its control, including delays claimed to be caused by the Owner or Architect-Engineer or attributable to the Owner or Architect-Engineer and including claims based on breach of contract or negligence, shall be an extension of its contract time.
 - ii. 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.
 - iii. Each subcontract shall require the subcontractor to expressly agree that the foregoing constitute 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.

6.4. Responsibilities for Acts and Omissions

The Construction Manager shall be responsible to the Owner for the acts and omissions of their employees and agents and their subcontractors, their agents and employees, and all other persons performing any of the work or supplying materials under a contract to the Construction Manager.

6.5. Subcontracts to be provided

The Construction Manager shall include a copy of each subcontract, including the general supplementary conditions, in the project manual.

7. ARTICLE 6

SCHEDULE, TIME OF COMMENCEMENT AND SUBSTANTIAL

7.1. SCHEDULE, TIME OF COMMENCEMENT AND SUBSTANTIAL

At the time a Guaranteed Maximum Price (GMP) is established, as provided for in Article 7, 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, shall also be established by the Construction Team. 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 date of Owner Occupancy shall occur as described in Article 2, Construction Phase - Owner Occupancy hereinabove. Warranties called for by this Agreement or by the Drawings and Specifications shall commence on the Date of Owner Occupancy of the project.

8. ARTICLE 7

GUARANTEED MAXIMUM PRICE FOR CONSTRUCTION

8.1. GUARANTEED MAXIMUM PRICE FOR CONSTRUCTION

When the Design Development Documents are sufficiently complete to establish the scope of work for the project or any portion thereof, as generally defined by a design document listing to be provided by the Architect-Engineer and Construction Manager upon execution of this Agreement, which is to be used only as a guide in developing the specifications and plan data necessary to establish a Guaranteed Maximum Price, or at such time thereafter designated by the Owner, the Construction Manager will establish and submit in writing to the Owner for approval a Guaranteed Maximum Price, guaranteeing the maximum price to the Owner, for the construction cost of the Project or designated portion thereof. The Guaranteed Maximum Price will be subject to modification for changes in the project as provided in Article 10. However, the actual price paid for the work by the Owner shall be the actual cost of all Work necessary for the Construction Manager to complete the Project, including subcontracts, supply contracts, direct labor costs, direct supervision costs, and direct job costs as defined under Article 9, plus the Construction Manager's fees or the GMP, whichever is less when the Work is complete.

The GMP will only include those taxes in the cost of the Project which are legally applicable at the time the GMP is established.

When the Project is bid and 100% of the Trade Contracts have been executed, the contingency within the GMP may be decreased in proportion to the percent of the work completed. In other words, if 10% of the work has been completed and the Owner requests that the contingency within the GMP be adjusted, then 10% of the contingency within the GMP will be removed from the GMP by change order.

At the time of submission of a Guaranteed Maximum Price, the Construction Manager will verify the time schedule for activities and work which were adopted by the Construction Team and used to determine the Construction Manager's cost of work. In addition to the cost of work, a GMP will include an agreed upon sum as the construction contingency which is included for the purpose of defraying the expenses due to unforeseen circumstances relating to construction. The Construction Manager will be required to furnish documentation evidencing expenditures charged to this contingency prior to the release of funds by the Owner. Documentation for use of the Contingency shall be determined by the Construction Team, included in the Project Manual and displayed monthly in the PMIS. The Architect-Engineer shall verify the actual costs. If bids are received below the applicable line items in the GMP, the surplus will be added to the contingency.

If bids are received above the applicable line item in the GMP the deficiency will be taken from the contingency, however such events shall not be cause to increase the GMP.

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 acknowledged by the Owner or negotiate for its performance for the specified line item lump sum amount or less.

9. ARTICLE 8

CONSTRUCTION MANAGER'S FEE

9.1. CONSTRUCTION MANAGER'S FEE

- A. In consideration of the performance of the Agreement, the Owner agrees to pay the Construction Manager as compensation for his services, fees as set forth in Subparagraphs A(1), A(2) and A(3).
1. Preconstruction Phase Fee - For the performance of the services set forth under Article 2, Scheduled Control Subsystem, Cost Control Subsystem , DESIGN REVIEW AND RECOMMENDATIONS (Review and Recommendations and Warranty) and (Review Reports and Warranty) and for profit and overhead related to these services, a total fee of (\$ Amount). The Preconstruction Phase Fees is based on constructability review, value engineering and estimates of probable cost and shall be paid as follows:
 - a. At Submittal of 50% Construction Documents/Estimates (\$ Amount)
 - b. At Submittal of 100% Construction Documents/Estimates (\$ Amount)
 - c. At Guaranteed Maximum Pricing/Bidding (\$ Amount)
 - d. 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.
 2. Construction Phase Fee - Prior to commencement of the Construction Phase, the Owner will direct the Construction Manager in writing to proceed into the Construction Phase. The Construction Manager's compensation for work or services performed during the Construction Phase shall be a fee of (\$ Amount) (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 Director question the need for the employee or employees). The Construction Phase Fee shall be invoiced and paid in (Number) monthly payments of (Monthly Payment Amount» each and one (1) final monthly payment of (Final Payment). The first monthly payment shall become due thirty days following the issuance of the first Construction Authorization by the Project Director 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.
 - a. Adjustments in Fee - For changes in the Project as provided in Article 10, the construction phase fee shall be adjusted as follows:
 - i. The Construction Manager shall be paid an additional fee subject to negotiation if the Construction Manager is placed in charge of reconstruction of an insured or

- uninsured loss excluding any condition that may have been caused from negligent acts by the Construction Manager.
- ii. Should the duration of the construction stipulated herein for Final Completion extend beyond (Construction Time) months after the Notice-To-Proceed, receipt of final drawings and specifications, or receipt of all necessary permits, whichever is later, due to no fault of the Construction Manager, the Construction Manager's Additional Construction Phase Fee will be \$Amount per working day, for each day or portion thereof.
 - iii. The Construction Manager will not be due any additional Overhead and Profit on increases in the Guaranteed Maximum Price (GMP) that do not exceed (Timeframe). Should the GMP be increased by more than (Timeframe) under the terms of Article 10 hereinafter due to no fault of the Construction Manager, the Construction Manager's additional Overhead and Profit for the Construction Phase will be «Percent» of that portion of the accumulative increases in the GMP that exceed the GMP by more than (Timeframe).
 - iv. Construction Manager's Exclusive Remedy: In the event the construction Substantial or Final Completion date 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 above.
- b. Costs and Expenses Included in Fee - The following are included in the Construction Manager's fee for services during the Construction Phase:
- i. Salaries or other compensation of the Construction Manager's employees at their principal office and branch offices. The Construction Manager's personnel to be assigned during the construction phase, their duties and responsibilities to this project and the duration of their assignments are shown on Exhibit D.
 - ii. General operating expenses related to this project of the Construction Manager's principal and branch offices.
 - iii. The costs of all data processing staff.
 - iv. Salaries or other compensation of the Construction Manager's employees at the job site. The Construction Manager's personnel to be assigned to the site during the Construction Phase under the job site management and supervision fee, their duties and responsibilities and the duration of their assignment are shown on Exhibit D.

- v. General operating expenses incurred in the management and supervision of the project, except as expressly included in Article 9.
 - vi. Those services set forth in Article 2 Construction Phase - Job Site Requirements(A).
 - vii. Direct tax saving purchase program.
3. Overhead And Profit For Construction Phase - For overhead, profit and general expenses of any kind, except as may be expressly included in Article 9, for services provided during and related to the construction phase, the fee shall be (\$ Amount) and shall be paid proportionally to the ratio of the cost of the work in place, and less retainage (see Article 12 Monthly Statements), as it bears on the latest estimate of the total construction cost or to the GMP or to the Owner's Construction Budget, whichever is less. The balance of the fee shall be paid 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. The Construction Manager's exclusive remedy for any adjustments in the Overhead and Profit for construction phase fee is provided in Article 8, Construction Phase (Adjustment Fee).

10. ARTICLE 9

COST OF THE PROJECT

10.1. Definition

The term Cost of the Project shall mean costs necessarily incurred in the Project during the Construction Phase for Construction services and paid by the Construction Manager which are not included in Article 8. Such costs shall include the items set forth below in this Article.

The Owner agrees to pay the Construction Manager for the Cost of the Project as defined in Article 9. Such payment shall be in addition to the Construction Manager's fees stipulated in Article 8.

10.2. Direct Cost Items

- A. Wages paid for labor (as opposed to wages paid to management or supervisory personnel) in the direct employ of the Construction Manager in the performance of the work under Agreement, times a multiple of (Percent) to cover fringe benefits.
- B. Cost of all materials, supplies and equipment incorporated in the Project, including costs of transportation and storage thereof.
- C. Payments due to subcontractors from the Construction Manager or made by the Construction Manager to subcontractors for their work performed pursuant to contract under this Agreement.
- D. 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, cost on such items used but not consumed which may be turned over to the Owner at the end of the project and cost less salvage value on such items used but not consumed which remain the property of the Construction Manager. For those items to be turned over to the Owner at the end of the project, Article 2.3(6) shall apply.
- E. Rental charges 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, including 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, at rental charges consistent with those prevailing in the area.
- F. Cost of the premiums for all insurance and cost of premiums for all bonds which the Construction Manager is required to procure by this Agreement specifically for the construction project. This includes any sub-contractor bonds the Construction Manager deems appropriate.
- G. Sales, use, gross receipts or similar taxes related to allowable direct costs of the Project imposed by any governmental authority, and for which the Construction Manager is liable.

- H. The cost of corrective work subject, however, to the GMP and except for any corrective work made necessary because of defective workmanship or other causes contributed to by the Construction Manager or their 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 to correct any deficiency or damage caused by negligent acts by the Construction Manager.
- I. Minor expenses at the site, such as telephone service, expressage, postage, and similar petty cash items in connection with the Project to be billed at cost.
- J. Costs for trash and debris control and removal from the site.
- K. Cost incurred due to an emergency affecting the safety of persons and property.
- L. 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:
 - 1. The Owner approved incurring such costs in advance, which approval shall not be unreasonably denied; and
 - 2. The legal costs were not incurred as result of the Construction Manager's own negligence or default.
 - 3. This paragraph does not provide for payment of legal costs incurred in preparing or asserting claim or requests, by Construction Manager itself, for change orders or in enforcing the obligations of this contract.
- M. All costs directly incurred in the performance of the Project for the benefit of the Project and not included in the Construction Manager's fees as set forth in Article 8.
- N. If requested by the Owner, the Construction Manager will perform all or a portion of any item in Article 9 for the cost of the work.
- O. If approved by the Owner, the Construction Manager, when qualified, may perform all or a portion of the work for any item listed on the estimate or GMP breakdown where it is deemed advantageous due to schedule or economic benefit for the direct cost of the work.
- P. Transportation greater than 100 miles from the site for those personnel employed directly for the project. Such transportation must be approved in advance by the Owner, and may be in accordance with the Construction Manager's standard personnel policy but not exceeding the limits established by Florida Statutes 112.061.
- Q. Costs of all reproductions used for bidding or information purposes required by the project to directly benefit the project.

- R. Costs of general job office supplies including paper, pencils, paper clips, file folders, staples, etc. and janitorial supplies.
- S. Costs for watchman and security services for the project.
- T. Costs for efficient logistical control of the site, including horizontal and vertical transportation of materials and personnel. Also, costs for adequate storage and parking space.
- U. Costs for such temporary facilities during construction, as approved by the Owner, including temporary water, heat, power, sanitary facilities, telephones, radios and computers with software.
- V. Costs for any 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.
- W. Cost of utilizing a computer aided design and drafting application (CADD) for record drawings as described in Article 2.4(10)(k). Upon completion of the work, the Construction Manager shall obtain two (2) paper copies and two (2) sets of disk files from the Architect-Engineer and record to scale all as-built conditions. The disk shall be submitted to the Architect-Engineer when completed, together with two sets of blue line or black line prints for certification and forwarding to the Owner/ Client Agency, at the time of final completion.

For those Construction Managers who do not have CADD capabilities, the as-built marked-up drawings will be submitted to the Architect-Engineer. The Architect-Engineer will make the electronic updates and provide two (2) paper copies and two (2) sets of CADD disk files and return them to the Construction Manager for development of the close-out documents.

11. ARTICLE 10

CHANGE IN THE PROJECT

11.1. Change Orders

The Owner, without invalidating this Agreement, may order Changes in the Project within the general scope of this Agreement consisting of additions, deletions or other revisions, the GMP, and the Construction Completion Date, being adjusted accordingly. All changes in the Project not covered by an authorized contingency shall be authorized by Change Order signed by the Owner before the change is implemented.

- A. A Change Order is a written order to the Construction Manager signed by the Owner issued after the execution of this Agreement, authorizing a Change in the Project, the Construction Manager's fee, or the Construction Completion date. Each adjustment in the GMP resulting from a change order shall clearly separate the amount attributable to the Cost of the Project.
- B. The increase or decrease in the Guaranteed Maximum Price resulting from a change in the Project shall be determined in one or more of the following ways:
 1. by mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation by the Architect-Engineer and Owner;
 2. by unit prices stated in the Agreement or subsequently agreed upon;
 3. by cost as defined in Article 9 and a mutually acceptable fixed or percentage fee; or
 4. by the method provided in Subparagraph 10 Change Orders (C).
- C. If none of the methods set forth in Article 10 Change Orders (B) is agreed upon, the Construction Manager, provided a written order signed by the Owner is received, 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 Change Order 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 Article 10 Change Orders (B) 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 9. The amount of decrease in the Guaranteed Maximum Price to be allowed by the Construction Manager to the Owner for any deletion or change which results in a net decrease in cost will be the amount of the actual net decrease.
- D. If unit prices are stated in the Agreement or subsequently agreed upon, and if the quantities originally contemplated are so changed in a proposed Change Order 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 Guaranteed Maximum Price shall be equitably adjusted.

- E. Should concealed conditions encountered in the performance of the work 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 Drawings, Specifications, 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 Guaranteed Maximum Price and the Construction Completion date shall be equitably adjusted by Change Order upon a request for Change Order in accordance with Article 10, Claims for Additional Cost or Time.

11.2. Claims For Additional Cost Or Time

All claims for additional cost or time shall be made by request for a change order submitted as provided in Article 16.

If the Construction Manager is delayed at any time in the progress of the work by any act or neglect of the Owner or the Architect 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 or by delay authorized by the owner pending resolution of disputes, and such delay extends the completion date, the Substantial Completion shall be extended by Change Order for such reasonable time as the Construction Team may determine.

Only delays which are determined to extend the critical path for the schedule for constructing the Project will result in a time extension. Neither the Owner nor the Construction Manager shall be considered to own the schedule float time.

11.3. Minor Changes In The Project

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

11.4. Emergencies

In any emergency affecting the safety of persons or property, the Construction Manager shall act at their 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 10.

12. ARTICLE 11

DISCOUNTS AND PENALTIES

12.1. DISCOUNTS AND PENALTIES

All discounts for prompt payment shall accrue to the Owner to the extent the Cost of the 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 the Project. All penalties incurred due to fault of the Construction Manager for late payment of cost of the project will be paid by the Construction Manager.

13. ARTICLE 12

PAYMENTS TO THE CONSTRUCTION MANAGER

13.1. Monthly Statements

The Construction Manager shall submit to the Owner a statement, sworn to if required, along with the cost reports required under Article 2, Project Accounting Subsystem, showing in detail all monies paid out, cost accumulated or costs incurred on account of the Cost of the Project during the previous period and the amount of the Construction Manager's fees due as provided in Article 8. Ten percent (10%) retainage shall be held on all payments until the contract 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. In such cases, if the Owner makes any payment of retainage to the Construction Manager which is attributable to the labor, services, or materials supplied by one or more subcontractors or suppliers, the Construction Manager shall timely remit payment of such retainage to those subcontractors and suppliers. Unless otherwise stated herein, the term "50% completion" refers to the point at which the Owner has expended 50 percent of the total cost of the construction services purchased as identified in the contract together with all costs associated with existing change orders and other additions or modifications to the construction services provided for in this agreement. At 50% completion, the Owner must reduce the retainage from 10% to 5%. Retainage shall not be withheld on services or fees set forth in Article 8. Pursuant to Section 255.078(4),

Florida Statutes, after 50% completion of the construction services purchased pursuant to this Agreement, the

Construction Manager may present to the Owner a payment request for up to one-half of the retainage held by the Owner. The Owner shall promptly make payment to the Construction Manager, unless the Owner has grounds, pursuant to Section 255.078(6), Florida Statutes for withholding the payment of retainage. If the Owner makes payment of retainage to the Construction Manager which is attributable to the labor, services, or materials supplied by one or more subcontractors or suppliers, the Construction Manager shall timely remit payment of such retainage to those subcontractors and suppliers.

The Construction Manager's Design Phase Fee, Construction Phase Fee and Overhead & Profit shall be shown as separate line items on the Schedule of Contract Values. Payment of the Construction Manager's Overhead and Profit shall be calculated based on the Construction Budget Balance or the GMP Balance whichever is applicable. The

Construction Budget Balance or GMP Balance is established by subtracting the Design Phase Fee, Construction Phase Fee and Overhead & Profit from the latest estimate of the total construction cost or to the GMP or to the Owner's Construction Budget, whichever is less. The billable Overhead and Profit is calculated by multiplying the percent complete of the Construction Budget Balance or the GMP Balance as applicable. This data shall be attached to the Partial Pay Request form shown in Exhibit G. Payments by the Owner to the Construction Manager shall be made as described in Article 17 Construction Manager's Payment Right's hereinafter.

13.2. Final Payment

Final payment constituting the unpaid balance of the Cost of the Project and the Construction Manager's fee, shall be due and payable as described in Article 17 Construction Manager's Payment Right's after the Owner has accepted occupancy of the project, provided that the Project be then finally completed, that the Construction Manager has verified by signature that all items specified on the attached Exhibit H are completed, and that this Agreement has been finally performed. However, if there should remain work to be completed, the Construction Manager and the Architect-Engineer shall list those items prior to receiving final payment and the Owner may retain a sum equal to 150% of the estimated cost of completing any unfinished work and portion of the Construction Manager's retainage, 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.

13.3. Payments to Subcontractors

The Construction Manager shall promptly, within 10 days after receipt of payment from the Owner, pay all the amount due subcontractors and suppliers less a retainage of ten percent (10%) until the project is fifty percent (50%) complete. After the project is fifty percent (50%) complete, the Construction Manager may elect to withhold retainage from payments to its subcontractors at a rate higher than 5 percent (5%). The specific amount to be

withheld must be determined on a case-by-case basis and must be based on the contractor's assessment of the subcontractor's past performance, the likelihood that such performance will continue, and the Construction Manager's ability to rely on other safeguards. The Construction Manager shall notify the subcontractor, in writing, of its determination to withhold more than 5% of the progress payments and the reasons for making that determination, and the Construction Manager may not request the release of such retained funds from the Owner. If there should remain items to be completed, the Construction Manager and Architect-Engineer shall list those items required for completion and the Construction Manager shall require the retainage of a sum equal to 150% of the estimated cost of completing any unfinished items, provided that said unfinished items are listed separately and the estimated cost of completing any unfinished items likewise listed separately. Thereafter, the Construction Manager shall pay to the subcontractors, monthly, the amount retained for each incomplete item after each of said items is completed. Before issuance of final payment without any retainage, the subcontractor shall submit satisfactory evidence that all payrolls, material bills and other indebtedness connected with the Project have been paid or otherwise satisfied, warranty information is complete, as-built markups have been submitted and instruction for the Owner's operating and maintenance personnel is complete.

Final payment may be made to certain select subcontractors whose work is satisfactorily completed prior to the total completion of the Project but only upon approval of the Owner.

13.4. Delayed Payments by Owner

The Owner shall submit a payment request for all undisputed amounts to the Chief Financial Officer for payment no more than twenty (20) days after receipt of an approvable payment request. If the Owner should fail to pay the Construction Manager within thirty (30) days after the receipt of an approvable

payment request from the Construction Manager, then the Construction Manager may, upon seven (7) additional days written notice to the Owner and the Architect-Engineer stop the Project until payment of the Amount owing has been received.

13.5. Payments for Materials and Equipment

Payments will be made for material and equipment not incorporated in the work but delivered and suitably stored at the site or another location subject to prior approval and acceptance by the Owner on each occasion.

13.6. Withholding Payments To Subcontractors

The Construction Manager shall not withhold payments to subcontractors if such payments have been made to the Construction Manager. Should this occur for any reason, the Construction Manager shall immediately return such monies to the Owners, adjusting pay requests and project bookkeeping as required.

14. ARTICLE 13

INSURANCE, INDEMNITY AND WAIVER OF SUBROGATION

14.1. Indemnity

The Construction Manager agrees to indemnify and hold the Owner and Architect-Engineer harmless from all claims for bodily injury and property damage (other than the work itself and other property insured under section Construction Managers Insurance (C) that may arise from the Construction Manager's operations under this Agreement.

- A. The Owner shall cause any other construction manager who may have a contract with the Owner to perform construction or installation work in the area where work will be performed under this Agreement, to agree to indemnify the Owner and the Construction Manager and hold them harmless from all claims for bodily injury and property damage (other than property insured under section Construction Managers Insurance (C) that may arise from the Construction Manager's operations. Such provisions shall be in a form satisfactory to the construction manager.

14.2. Construction Manager's Insurance

- A. The Construction Manager shall not commence any construction work in connection with this Agreement until they have obtained all of the following types of insurance and such insurance has been approved by the Owner, nor shall the Construction Manager allow any subcontractor to commence work on their subcontract until all similar insurance required of the subcontractor has been so obtained and approved. All insurance policies shall be with insurers qualified and doing business in Florida.
- B. Worker's Compensation Insurance - The Construction Manager shall take out and maintain during the life of this Agreement Worker's Compensation Insurance for all its employees connected with the work of this Project and, in case any work is sublet, the Construction Manager shall require the subcontractor similarly to provide Worker's Compensation Insurance for all of the latter's employees unless such employees are covered by the protection afforded by the Construction Manager. Such insurance shall comply with the Florida Worker's Compensation Law. In case any class of employees engaged in hazardous work under this contract at the site of the Project is not protected under the Worker's Compensation statute, the Construction Manager shall provide adequate insurance, satisfactory to the Owner, for the protection of employees not otherwise protected.
- C. Construction Manager's Public Liability and Property Damage Insurance-The Construction Manager shall take out and maintain during the life of this Agreement Comprehensive General Liability and Comprehensive Automobile Liability Insurance as shall protect them from claims for damage for personal injury, including accidental death, as well as claims for property damages which may arise from operating under this Agreement whether such operations are by the

Construction Manager or by anyone directly or indirectly employed by them, and the amount of such insurance shall be minimum limits as follows:

1. Construction Manager's Comprehensive General Liability:
 - a. \$500,000 Each Occurrence,
 - b. Coverages, Bodily Injury & Property Damage: Combined Single Limit
 2. Automobile Liability Coverages:
 - a. \$100,000 Each Occurrence:
 - b. Bodily Injury & Property Damage: Combined Single Limit
 3. Excess Liability, Umbrella Form:
 - a. \$4,000,000 Each Occurrence,
 - b. Combined Single Limit
 4. Insurance clause for both BODILY INJURY AND PROPERTY DAMAGE shall be amended to provide coverage on an occurrence basis.
- D. Subcontractor's Public Liability and Property Damage Insurance - The Construction Manager shall require each of their subcontractors to procure and maintain during the life of this subcontract, insurance of the type specified above or insure the activities of their subcontractors in their policy, as specified above.
- E. Owner's and Construction Manager's Protective Liability Insurance - The Construction Manager shall procure as a cost of the project and furnish an Owner's and Construction Manager's Protective Liability Insurance Policy with the following minimum limits:
1. Bodily Injury Liability & Property Damage Liability
 - a. \$500,000 Each Occurrence
 - b. Combined Single Limit
- F. "XCU" (Explosion, Collapse, Underground Damage) - The Construction Manager's Liability Policy shall provide "XCU" coverage for those classifications in which they are excluded.
- G. Broad Form Property Damage Coverage, Products & Completed Operations Coverages - The Construction Manager's Liability Policy shall include Broad Form Property Damage Coverage, Products and Completed Operations Coverages.
- H. Contractual Liability Work Contracts - The Construction Manager's Liability Policy shall include Contractual Liability Coverage designed to protect the Construction Manager for contractual liabilities assumed by the Construction Manager in the performance of this Agreement.
- I. Indemnification Rider

1. To cover to the fullest extent permitted by law, the Construction Manager shall indemnify and hold harmless the Owner and the Architect-Engineer and their agents and employees from and against all claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from the performance of the work, provided that any such claim, damage, loss or expense (1) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom, and (2) is caused in whole or in part by any negligent act or omission of the Construction Manager, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right to obligation of indemnity which would otherwise exist as to any party or person described in this Article.
 2. In any and all claims against the Owner or the Architect-Engineer or any of their agents or employees by any employee of the Construction Manager, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligations under this Paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Construction Manager or any subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.
 3. The obligations of the Construction Manager under this section Construction Managers Insurance (C)(Indemnification Rider) shall not extend to the liability of the Architect-Engineer, their agents or employees, arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications, or (2) the giving of or the failure to give directions or instruction by the Architect-Engineer, their agents or employees providing such giving or failure to give is the primary cause of the injury or damage.
 4. The Construction Manager hereby acknowledges receipt of one hundred dollars and other good and valuable consideration as part of its fee in exchange for giving the Owner and Architect-Engineer, respectively, the indemnification provided above in section Construction Managers Insurance (C)(Indemnification Rider)
- J. 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 Project, issued to provide coverages 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 the Project.
- K. Certificate of Insurance - The Owner shall be furnished proof of coverage of Insurance as follows:

1. Certificate of Insurance form will be furnished to the Owner along with the Contract Documents. These shall be completed and signed by the authorized Florida Resident Agent, and returned to the office of Real Estate Development and Management. This Certificate shall be dated and show:
 - a. The name of the insured Construction Manager, the specific job by name and job 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 Architect-Engineer 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 Construction Managers Insurance and ending with Waiver of Subrogation.
 - d. Certificate of Insurance shall state that the Owner is listed as additional insured on all appropriate policies.
 - e. Copy of the endorsement or additional insured rider to the General Liability Policy.
 - f. License/Registration Number of authorized Resident Agent.

14.3. Waiver of Subrogation

- A. The Owner and the Construction Manager waive all rights against each other, for damages caused by perils covered by insurance provided under Article 13 Construction Manager's Insurance to the extent covered by such insurance except such rights as they may have to the proceeds of such insurance held by the Owner and Construction Manager as trustees. The Construction Manager shall require similar waivers from all subcontractors and their sub-subcontractors.
- B. 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.
- C. 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.
- D. 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.

15. ARTICLE 14

TERMINATION OF THE AGREEMENT AND OWNER'S RIGHT TO PERFORM CONSTRUCTION MANAGER'S OBLIGATION

15.1. Termination by the Construction Manager

If the Project is stopped for a period of thirty (30) days under an order of any court or other public authority having jurisdiction or as a result of an act of government, such as a declaration of a national emergency making materials unavailable, through no act or fault of the Construction Manager, or if the Project should be stopped for a period of sixty (60) days by the Construction Manager, for the Owner's failure to make payments thereon, then the Construction Manager may, upon seven days written notice to the Owner, request payment for all work executed, the Construction Manager's fees earned to date, and for any proven loss, injury or damage sustained or incurred by the Construction Manager that is recoverable under Florida law.

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

- A. If the Construction Manager fails to perform any of their obligations under this Agreement including any obligation they assume to perform work with their own forces or those of a subcontractor, the Owner may, after seven (7) days written notice during which period the Construction Manager fails to commence and sufficiently pursue correction of such obligation, make good such deficiencies. The GMP, or the actual cost of the Project, whichever is less, shall be reduced by the cost to the Owner of making good such deficiencies and the Construction Manager's Construction Phase Fee shall be reduced by an amount required to manage the making good of such deficiencies.
- B. If the Construction Manager is adjudged a bankrupt, or if they make a general assignment for the benefit of their creditors, or if a receiver is appointed on account of their insolvency, or if they persistently or repeatedly refuse or fail, except in case for which extension of time is provided, to supply enough properly skilled workmen or proper materials and fails to maintain an established 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 Construction Team, or if the 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 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 their 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 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 Project by whatever method deemed expedient. In such case, the Construction Manager shall not be entitled to receive any further

payment until the Project is finished nor shall they be relieved from obligations assumed under Article 7. Reasonable termination 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).

- C. If the Construction Manager refuses to allow public access to all documents, papers, letters, or other material subject to the 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 site and of all materials, equipment, tools, construction equipment and machinery thereon, owned by the Construction Manager, and may finish the Project by whatever method may be deemed expedient. In such case, the Construction Manager shall not be entitled to receive any further payment until the Project is finished nor shall they be relieved from their obligations assumed under Article 7. 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).

15.3. Termination by Owner Without Cause

- A. If the Owner terminates this Agreement other than pursuant to Article 14, Owner's Right to Perform Construction Manager's Obligations and Termination by Owner for Cause(B) or (C), the Owner shall reimburse the Construction Manager for any unpaid Cost of the Project due under Article 9, plus that part of the unpaid balance of the Construction Phase Fee in an amount as will increase the payment on account of their 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 Guaranteed Maximum Price, if established, otherwise to the Owner's Construction Budget. 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. In case of such termination of Agreement the Owner may further assume and become liable for obligations, commitments and unsettled contractual claims that the Construction Manager has previously undertaken or incurred in good faith in connection with said Project. The Construction Manager shall, as a condition of receiving the payments referred to in this Article 14, execute and deliver all such papers and take all such steps including the legal assignment of their contractual rights, as the Owner may request or require for the purpose of fully vesting in them the rights and benefits of the Construction Manager.
- B. After the establishment of the Guaranteed Maximum Price or at the completion of the Preconstruction Phase, if the final cost estimates or lack of legislative funding make the Project no longer feasible from the standpoint of the Owner, the Owner may terminate this Agreement

and pay the Construction Manager their proportionate fee due in accordance with Article 8, Construction Manager's Fee.

16. ARTICLE 15

ASSIGNMENT AND GOVERNING LAW

16.1. ASSIGNMENT AND GOVERNING LAW

- A. Neither the Owner nor the Construction Manager shall assign its interest in this Agreement without the prior written consent of the other except as to the assignment of proceeds.
- B. This Agreement shall be governed by the Laws of the State of Florida. The venue of any litigation shall be in, as appropriate, the Fifth Judicial Circuit, in and for Hernando County, Florida, or the United States District Court, Middle District of Florida, Tampa Division.
- C. Litigation. All claims, disputes, or other matters in question between the Owner and the Contract Manager, arising under the terms of this Agreement and performance hereunder shall be decided by a court of competent jurisdiction, and shall not be the subject of arbitration. The parties agree that with respect to any Agreements executed by and between themselves relating to the Project and any other persons or entities performing work on the Project, that such agreements will contain a provision such that any disputes shall be resolved in a court of competent jurisdiction, it being the intention of all parties that any dispute be resolved in one consistent forum.
- D. Attorney's Fees. Each party shall be responsible for its own costs and attorney's fees in the event of any dispute, claim, action or appeal arising from or related to this Agreement or the transactions contemplated herein.
- E. Waiver of Right to Jury Trial. Each party hereto hereby irrevocably waives any and all rights it may have to demand that any action, proceeding or counterclaim arising out of or in any way related to this Agreement or the relationships of the parties hereto be tried by jury. This waiver extends to any and all rights to demand a trial by jury arising from any source including, but not limited to, the Constitution of the United States or any state therein, the common law, or any applicable statute or regulations. Each party hereto acknowledges that it is knowingly and voluntarily waiving its right to demand trial by jury.

17. ARTICLE 16

NOTICE OF CLAIM: WAIVER OF REMEDIES; NO DAMAGES FOR DELAY

17.1. NOTICE OF CLAIM: WAIVER OF REMEDIES; NO DAMAGES FOR DELAY

- A. The Construction Manager's right to make 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:
1. All claims must be submitted as a Request for Change Order in the manner as provided herein;
 2. The Construction Manager must submit a Notice of Claim to Owner and to the Architect-Engineer within 20 days of when the Construction Manager was or should have been aware of the occurrence of the event giving rise to the claim; and
 3. Within 10 days of submitting its Notice of Claim, the Construction Manager shall submit to the Owner its Request for Change Order, which shall include a written statement of all details of the claim, including a description of the work affected.
 4. The Construction Manager agrees that the Owner shall not be liable for any claim that the Construction Manager fails to submit as a Request for Change Order as provided in this paragraph.
- B. After receipt of a Request for Change Order, the Owner, in consultation with the Architect-Engineer, shall deliver to the Construction Manager its written determination of the claim. 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, F.A.C. within twenty-one (21) days of the Construction Manager's receipt of the Owner's determination. The venue for all civil and administrative actions against the Owner shall be in Leon County, Florida, unless otherwise agreed by the parties.
- C. For work the Construction Manager performs with its own forces, and in addition to the adjustments provided for in Article 8, 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 or the Architect-Engineer, including claims based on breach of contract or negligence, shall be a claim submitted in compliance with 16(A) above, for an extension of the scheduled construction time. In the event of a material change in such work, the Construction Manager's claim for adjustments in the contract sum are limited

exclusively to its actual costs for such changes plus profit as identified in Article 8, Construction Manager's Fee, Construction Phase Fee (a)(iii). The Construction Manager expressly agrees that the foregoing constitute its sole and exclusive remedies for delays and changes in such work, and eliminate any other remedies for claim for increase in the contract price, delays, changes in the work, damages, losses or additional compensation.

18. ARTICLE 17

MISCELLANEOUS

18.1. Harmony

The 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 their subcontractors for work on the Project shall work in harmony with and be compatible with all other labor being used by building and construction managers now or hereafter on the site of the Project.

The Construction Manager further agrees that this provision will be included in all subcontracts of the subcontractors as well as the Construction Manager's own subcontracts; 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.

18.2. 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 programs and agreements established by the State of Florida, Department of Business and Professional Regulation. The Construction Manager will include a provision similar to the foregoing sentence in each subcontract.

18.3. Invoices

Invoices shall be submitted in detail sufficient for a proper preaudit and post audit thereof. Invoices for any travel expenses shall be submitted in accordance with procedures specified in Section 112.061 of the Florida Statutes governing payments by the State for travel expenses.

18.4. 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.

18.5. Minority Participation

The Construction Manager shall diligently attempt to award some portion of its material contracts and subcontracts to qualified minority-owned businesses. The Florida Office of Supplier Diversity, Department of Management Services will assist in furnishing names of certified minority-owned businesses.

18.6. Construction Manager's Payment Rights

Upon receipt, the Owner has thirty (30) days to inspect and approve the goods and services. The Owner has twenty (20) days to deliver a request for payment (voucher) to the Department of Financial Services. The 20 days area measured from the latter of the date the Pay Request is received or the goods or services are received, inspected and approved.

If payment is not available to the Owner for transmittal to the Construction Manager within 30 days, a separate interest penalty set by the Chief Financial Officer pursuant to Section 55.03, Florida Statutes, will be due and payable in addition to the invoice amount. To obtain the applicable interest rate, please contact the agency's Fiscal Section on their website. The 30 days are also measured from the latter of the date the invoice is received or the goods or services are received, inspected and approved. Interest penalties of less than one (1) dollar will not be enforced unless the Construction Manager requests payment. Pay Requests which have to be returned to the Construction Manager because Construction Manager preparation errors will result in a delay in the payment, and will incur interest. The Pay Requests payment requirements do not start until a properly completed Pay Request is provided to the Owner.

A Vendor Ombudsman has been established within the Department of Financial Services. 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 the Department of Financial Services website.

18.7. 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.

- A. Criminal Background Checks: Criminal History Background Checks shall be obtained for all employees and agents of the Construction Manager and their subcontractors, their agents and employees, and all other persons performing any of the work under a contract to the Construction Manager working within buildings or facilities either owned or managed by the Department of Management Services. The Construction Manager may also be required to perform Criminal History Background Checks for all employees and agents of the Construction Manager and their subcontractors, their agents and employees, and all other persons performing any of the work under a contract to the Construction Manager working within buildings or facilities owned or managed by other government entities.
- B. The Construction Manager is obligated to obtain and pay for each Criminal History Background Report ("Report"), which may be obtained by accessing the website of the Florida Department of Law Enforcement online at <https://web.fdle.state.fl.us/search/app/default> The Construction Manager must supply FDLE with the employee's complete social security number to allow FDLE to run the Report. However, there is no need for either the Inspector General or the Department of Management Services office to have this number in its entirety. Therefore, prior to sending reports to Department of Management Services, and to maintain confidentiality, the

Construction Manager must blacken out all but the last four digits of the individual's social security number.

18.8. Unauthorized Aliens

The Owner shall consider the employment by the Construction Manager of an unauthorized or undocumented alien to be a prima facie violation of section 274A(e) of the Immigration and Nationalization Act. Such violation shall be grounds for immediate, unilateral termination of this Agreement.

- A. Unauthorized Aliens Checks Through E-Verify – Pursuant to the State of Florida, Office of the Governor, Executive Order Number 11-116, Contractor will utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of: (a) all persons employed during the term of the Contract by Contractor to perform employment duties within Florida within 3 business days after the date of hire; and (b) all persons (including subcontractors) assigned by Contractor to perform work pursuant to the Contract with the Department within 90 calendar days after the date the Contract is executed or within 30 days after such persons are assigned to perform work pursuant to the Contract, whichever is later.

18.9. 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.

18.10. Electronic Mail Capabilities

The Construction Manager must have e-mail capabilities through the Internet. It is the intention of the Department of Management Services to use e-mail communication for all projects whenever possible. The Construction Manager shall provide and update their e-mail address and the name of a contact person responsible for their electronic communications.

18.11. Appropriation Contingency

The State's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Florida Legislature.

18.12. Assignment

For and in recognition of good and valuable consideration, receipt of which is hereby acknowledged, the Construction Manager hereby conveys, sells, assigns and transfers to the State of Florida all rights, title and interest in and to all causes to action it may now or hereafter acquire under the antitrust laws of the United States and the State of Florida for price fixing, relating to the particular goods or services purchased or acquired by or on behalf of the State of Florida pursuant to this Agreement

18.13. Davis-Bacon Act Requirements

If any portion of this Project is paid for with federal funds, then all applicable federal labor standards clauses are incorporated into the Contract Documents. The Construction Manager agrees to familiarize him/herself with “Making Davis-Bacon Work – A Contractor’s Guide to Prevailing Wage Requirements for Federally Assisted Construction Projects” and to comply with all applicable regulations.

18.14. Employment of State Residents

To the extent permitted by federal law, Construction Manager shall give preference to the employment of state residents in the performance of the work on the project if state residents have substantially equal qualifications to those of nonresidents. The term “substantially equal qualifications” means the qualifications of two or more persons among whom the employer cannot make a reasonable determination that the qualifications held by one person are better suited for the position than the qualifications held by the other person or persons.

18.15. Posting of Job Openings

The Construction Manager will contact the Florida Agency for Workforce Innovation to post its employment needs in the state’s job bank system.

18.16. Confidentiality of Building Plans

Pursuant to Section 119.071(3)(b), Florida Statutes, all building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the internal layout and structural elements of a building, arena, stadium, water treatment facility, or other structure owned or operated by an agency are exempt from inspection or disclosure under Florida’s Sunshine laws. The Contractor agrees to protect and ensure the confidentiality of such documents under its custody or control in conformance with the requirements of Section 119.071(3), Florida Statutes, and all applicable law.

Any knowing violation of Chapter 119, Florida Statutes, may be sufficient grounds for immediate termination of the Contract by the Department of Management Services.

18.17. Cooperation with the Inspector General

Pursuant to section 20.055(5), Florida Statutes, the Construction Manager who and its subcontractors understand and will comply with their duty to cooperate with the inspector general in any investigation, audit, inspection, review, or hearing.

19. SIGNATURES

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

The signatures below of the Chairman of Hernando County Board of County Commissioners and an authorized representative of Charles Perry Partners, Inc., indicate concurrence with this AGREEMENT.

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT in Hernando County, Florida on this ____ day of 20__.

Board of County Commissioners
Hernando County, Florida

By: _____
Chairman

ATTEST: _____
Douglas A. Chorvat,
Clerk of Circuit Court and Comptroller

Approved as to Form and Legal Sufficiency

By: _____
County Attorney's Office Date

Charles Perry Partners, Inc.
Firm Name
By: _____
Title: _____

ATTEST: _____