

Department of
**MANAGEMENT
SERVICES**



**REAL ESTATE DEVELOPMENT AND MANAGEMENT
CONSTRUCTION PROJECT AGREEMENT
BETWEEN OWNER AND CONSTRUCTION MANAGER**

CONTRACT NO: «ProjNum»

RFQ NO: «RFQ_NO»

STATE FLAIR CODE: «SAMAS»

FLAIR CONTRACT ID NUMBER:

PROJECT NAME AND LOCATION: «ProjName»
«ProjLocation»
«ProjCityState»

CONSTRUCTION MANAGER: «ContrName»
«StateCorp»
«ContrStreet»
«CityStateZip»
«ContrPhone»

ARCHITECT-ENGINEER: «AEName»
«AESTreet»
«AECityStateZip»
«AEPhone»

Ron DeSantis
Governor

Pedro Allende
Secretary

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For a complete list of forms, please visit:

https://www.dms.myflorida.com/business_operations/real_estate_development_and_management/building_construction/forms_and_documents

CONSTRUCTION PROJECT AGREEMENT BETWEEN OWNER AND CONSTRUCTION MANAGER

This Agreement, effective the last date of execution, by and between State of Florida, Department of Management Services, Division of Real Estate Development and Management ("Owner"), and

«CONTRNAME»
«STATECORP»
«CONTRSTREET»
«CITYSTATEZIP»
PHONE: «ContrPhone»,
FEDERAL TAX I.D. NUMBER: «FEIDNum»

hereinafter called the "Construction Manager". Owner and Construction Manager may be referred to herein individually as a "Party" or collectively as the "Parties."

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.

- 1.1 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 hereto and made a part hereof by reference.

- 1.2 EXTENT OF AGREEMENT – This Agreement is for the completion of "Project «ProjNum», «ProjName», «ProjLocation», «ProjCityState», 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 Manager. 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 an electronic set of signed, sealed, and dated drawings, specifications, and other documents upon which the GMP is based, from the Architect-Engineer. The Guaranteed Maximum Price Proposal shall include the following sections:

- Section One: Summary of Work
- Section Two: Guaranteed Maximum Price Summary – To include Preconstruction fees, any Construction Authorizations, and any proposed 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: Construction 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.

- 1.3 DEFINITIONS

Architect-Engineer – «AEName», «AESTreet», «AECityStateZip», phone: «AEPhone»

Client Agency – Client Agency is defined in Rule 60D-5.002, Florida Administrative Code, as the Agency for which the project is being constructed. The relationship between the Owner and the Client Agency is governed by Section 255.31, Florida Statutes, and by Rule 60D-5, Florida Administrative Code. If applicable to this Project, the Client Agency is «Ownerentity».

Close-Out Documents – Those documents required from the Construction Manager to complete the Project. A list of Close-Out Documents is found in Exhibit H - Final Pay Request Checklist, attached hereto and made a part hereof by reference.

Contract Documents – The Contract Documents are enumerated in this Agreement. In the event of any conflict between or among the Contract Documents, this Agreement will take precedence over all other documents.

Construction Authorization – The term Construction Authorization shall mean a written work order based on a defined scope of work prepared by the Project Manager and issued to the Construction Manager. Construction Authorizations may be used by the Owner prior to the date of the Guaranteed Maximum Price Amendment and all work performed pursuant to Construction Authorizations shall be included in the Guaranteed Maximum Price.

Construction Documents – The Construction Documents are prepared by the Architect-Engineer utilizing the approved Design Development Documents. The Construction Documents consist of the working drawings and specifications and set forth in detail the work required for the architectural, civil, structural, mechanical, electrical service-connected equipment, and civil/sitework, and the necessary bidding information. The Architect-Engineer shall submit the Construction Documents to the Owner who will supply the Construction Documents to the Construction Manager. Any changes to the Construction Documents by the Construction Manager, the Architect-Engineer, or the Owner will be shared with the other parties.

Construction Manager – «ContrName», «StateCorp», «ContrStreet», «CityStateZip», phone: «ContrPhone». 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 but not limited to its employees, contractors, and subcontractors, 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. The Construction Manager may also be referred to as the "Contractor."

Design Development Documents – The Design Development Documents consist of the plans, elevations, and other drawings including perspective sketches, and outline specifications to fix and illustrate the size and character of the entire Project in its essentials as to kinds of materials, type of structure, mechanical, electrical systems, civil/site work, and other such work as may be required. The Design Development Documents are prepared by the Architect-Engineer and submitted to the Owner who will supply the Design Development Documents to the Construction Manager. Any changes to the Design Development Documents by the Construction Manager, the Architect-Engineer, or the Owner will be shared with the other parties. The Design Development Documents are used by the Architect-Engineer to prepare the Construction Documents and the Estimate of Probable Project Construction Cost.

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

Owner – The State of Florida, Department of Management Services, Division of Real Estate Development and Management, acting through its Secretary or those persons designated by the Secretary to act in its behalf, as Agent pursuant to the Client Agency Agreement with the Department of Management Services, if applicable. The entity that will occupy, use, and own the project upon Substantial Completion. The funds with which the compensation for work performed in connection with the Project will be paid are under the control of the Owner, based on approval of each payment by the Division of Real Estate Development and Management. All duties of Owner hereinafter shall be performed by the Division of Real Estate Development and Management.

Owner's Representatives – The Project Manager and their superiors or designees.

Permitting Authorities – The authorities with jurisdiction over inspecting and permitting in the area in which the project is located and/or responsibility for the scope of the project or specific portion of the work within the project.

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 inspections necessary to fully complete "Project «ProjNum», «ProjName», «ProjLocation», «ProjCityState»," as contemplated in the Owner's Construction Budget identified in Exhibit B, attached hereto and made a part hereof by reference.

Project Manager – The person designated by the Owner to provide direct interface with the Construction Manager with respect to the Owner's responsibilities. Information identifying representatives for the Project may be found on Exhibit A - Construction Team Assigned Representatives, attached hereto and made a part hereof by reference.

Substantial Completion – Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner

can occupy or utilize the Work for its intended use. Additionally, for the Work to be Substantially Complete the Work must also meet the following conditions:

- The Work is complete in accordance with the Construction Documents to the extent required for Owner to obtain a Certificate of Occupancy and such certificate has actually been granted by the appropriate government authorities, provided that a failure to obtain the Certificate of Occupancy due to causes for which the Contractor is not responsible shall not be grounds to deny Substantial Completion status;
- All HVAC systems included in the Work are properly functioning in accordance with the Construction Documents and verified by the Test and Balance Report which shall have been delivered to the Architect and Owner;
- All life safety systems included in the Work are functioning in accordance with the Construction Documents;
- A certificate of Substantial Completion has been issued by the Architect-Engineer;
- All operating and maintenance manuals and training shall have been delivered to the Architect-Engineer and Owner; and
- All commissioned systems included in the Work are properly functioning in accordance with the Construction Documents and verified by the commissioning report delivered to the Owner provided that a failure of the Owner's commissioning agent for which the Construction Manager is not responsible shall not be grounds to deny substantial Completion status.

- 1.4 **OWNER'S CONSTRUCTION BUDGET** – Owner's funds budgeted and requested for construction of the Project. The Owner's Construction Budget is «ConstrBudget» identified in Exhibit B, attached hereto and made a part hereof by reference, including all Construction Manager fees, costs of the work, and the Owner's and Construction Manager's construction and interface contingencies as defined in Article 7. 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.

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.

It is the intent that the requirements of Article 2 can be tailored to fit the scope, size, and duration of all projects. The Project Manager and Construction Manager shall jointly review and discuss those reports listed below. Any changes to the listed reports are to be enumerated in the Guaranteed Maximum Price document. All reports not addressed as excluded or modified by the Guaranteed Maximum Price shall be considered mandatory under this Agreement.

2.1 PROJECT MANAGEMENT INFORMATION SYSTEM (PMIS)

1. 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.
2. 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.
3. If requested by the Project Manager, the Construction Manager shall conduct a comprehensive workshop in Tallahassee for participants designated by the Project Manager 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.
4. The PMIS shall be described in terms of the following major subsystems:
 - (a) Narrative Reporting, on a monthly basis,
 - (b) Schedule Control, on a monthly basis,
 - (c) Cost Control and Estimating,
 - (d) Project Accounting,

- (e) Accounting and Payment, and
- (f) Action Reports.

2.1.1 Narrative Reporting Subsystem

- (1) The Construction Manager shall prepare electronic reports as described hereunder. No other PMIS narrative reports shall be required. All reports shall be in 8 1/2" X 11" format.
- (2) The Narrative Reporting Subsystem shall include the following reports:
 - (a) 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.
 - (b) A Monthly Cost Narrative describing the current construction cost estimate status of the Project.
 - (c) A Monthly Scheduling Narrative summarizing the current status of the overall project schedule. This report shall include an analysis of the various project schedules, a description of the critical path, and other analyses as necessary to compare planned performance with actual performance.
 - (d) A Monthly Accounting Narrative describing the current cost and payment status of the entire project. This report shall relate current encumbrances and expenditures to the budget allocations.
 - (e) A Monthly Construction Progress Report during the construction phase summarizing the work of the various subcontractors. This report shall include information from the weekly job site meetings as applicable such as general conditions, long lead supplies, current deliveries, safety and labor relations, program permits, construction problems and recommendations, and plans for the following month(s).
 - (f) 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.
 - (g) Construction Manager, if requested by the Owner, 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 and will be included in the monthly reporting.
- (3) The reports outlined in subsection (2)(a) through (g) above shall be bound with applicable reports and submitted monthly during design and construction phases and shall be current through the end of the preceding month. Electronic copies shall be transmitted to the Owner and the Architect-Engineer and others designated by the Project Manager with the monthly pay requisition.

The report outlined in subsection (2)(a) above shall be distributed monthly as directed by the Project Manager.

- (4) A Construction Daily Log shall be maintained at the site available to the Owner and Architect-Engineer. An electronic copy of the complete diary shall be submitted to the Owner at the conclusion of the project.

2.1.2 Scheduled Control Subsystem

- (1) Master Project Schedule – Within thirty (30) days of 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 by the Construction Manager.
- (2) Construction Schedule – 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 and Owner a Construction Schedule graphically depicting the activities contemplated to occur as a necessary incident to performance of the work required to complete the project. The Construction Schedule must show the sequence in which the Construction Manager proposes each such activity to occur and the duration of each such activity, otherwise known as the dates of commencement and completion, respectively.

An example of an acceptable form of such a Construction Schedule is contained in the U.S. Army Corps of Engineers' Regulation ER 1-1-11 entitled "Network Analysis System", a copy of which is available on the internet. Another form of Construction Schedule which provides the same kind of information and employs the same basic principles as illustrated in will be acceptable to the Owner; provided however, 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, the Construction Manager shall submit an updated or revised Construction Schedule at the end of each calendar month until Substantial Completion is obtained. Circumstances may require the Construction Manager to update and/or revise the Construction Schedule to show the progress of the work; all events which have affected the progress of the work performed; and events which will affect the progress of the work to be performed in contrast with the planned progress of such work as depicted on the original Construction Schedule. Any updates or revisions must show all updates and/or revisions as reflected in previously submitted Construction Schedules. Each such update and/or revision to the Construction Schedule shall be submitted to the Architect-Engineer and Owner.

Failure of the Construction Manager to develop, update, revise, and submit the Construction Schedule shall be sufficient grounds for the Architect-Engineer to find the Construction Manager in substantial default and certify to the Owner sufficient cause exists to terminate the Agreement or to withhold payment to the Construction Manager.

- (3) The Construction Manager shall prepare and incorporate into the schedule data base, at the required intervals, the following schedules:
 - (a) 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.
 - (b) 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.
 - (c) 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 and for ensuring that all services are complete, satisfactory, and acceptable. The Occupancy Schedule shall be produced and updated monthly from its inception through final Owner occupancy.

- 2.1.3 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

- (1) At completion of Schematic Documents for each item or bid package, if applicable.
- (2) At completion of Design Development Documents for each item or bid package, if applicable.
- (3) At completion of fifty percent (50%) of the Construction Documents, if applicable, for each item or bid package.
- (4) At establishment of the Guaranteed Maximum Price.
- (5) 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 costs for each bid group by subcontract package.

- 2.1.4 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 five (5) years after final completion of the project. This report will also provide for accounting by building and site element.

- (1) Cost 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.
- (2) 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.
- (3) 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.
- (4) 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, if requested by the Owner.
- (5) 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.

2.2 PRECONSTRUCTION PHASE

- (1) 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. Any evaluation and recommendation 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 attention of the Project Manager and the Architect-Engineer. The Construction Manager shall prepare an estimate of the construction cost utilizing the unit quantity survey method.
- (2) Review Reports and Warranty – Within fifteen (15) working days after receiving the plans and specifications for each phase of the project, the Construction Manager shall commence a specific review focused upon factors of a nature encompassed in Paragraph (1) and on factors set out in Paragraph (5). Promptly after completion of the review, the Construction Manager shall submit to the Project Manager and 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 Article 2.2(4). The report should be submitted to the Project Manager and Architect-Engineer electronically.

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. The Construction Manager shall warrant 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.

- (3) 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 Manager, 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 Manager and Architect-Engineer of any problems or prospective delay in delivery.

- (4) 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 subcontracts 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.
- (5) Interfacing
 - (a) 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 the fact that each bid package clearly identifies the work included in that particular subcontract, its schedule for start and completion, and its relationship to other separate subcontracts.
 - (b) Without assuming any Design responsibilities of the Architect-Engineer, the Construction Manager shall include in the reports required under Article 2.1.2 comments on overlap with any other separate subcontracts, omissions, lack of correlation between drawings, and any other deficiencies noted, in order that the Project Manager and Architect-Engineer may arrange for necessary corrections.
- (6) Job-Site Facilities – The Construction Manager shall arrange for all job-site facilities necessary to enable the Construction Manager, 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 out 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, the Construction Manager 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 the 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 9.2(4) hereof.

- (7) Weather Protection – The Construction Manager shall ascertain what temporary enclosures of building areas should be provided 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.
- (8) Market Analysis and Stimulation of Bidder Interest
 - (a) 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 determine and

report on availability of labor, material, equipment, potential bidders, and possible impact of any shortages or surpluses of labor or material, and 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.

- (b) Construction Market Analysis and Prospective Bidders Report – Within thirty (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 Manager and the Architect-Engineer a list of potential bidders. The Construction Manager shall be responsible for stimulating bidder interest in the local marketplace and identifying and encouraging bidding competition.
 - (c) The Construction Manager shall carry out an active program of stimulating interest of qualified contractors and subcontractors in bidding on the work and of familiarizing those bidders with the requirements of the Project.
- (9) Scheduling - See 2.1.2(1) and 2.1.2(2)
- (10) Preconstruction Phase Staffing – 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, attached hereto and made a part hereof by reference.

2.3 CONSTRUCTION PHASE

- (1) 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 Exhibit 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.
- (2) 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) Advertisement and Competitive Bidding Procedures
 - (a) During the Project 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; requests for proposals, 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 Rule 60D-5, Florida Administrative Code (F.A.C.) and the following guidelines:

- 1. For contracts within Level One, as referenced in Rule 60D-5.002, F.A.C., 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 of 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, the 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 qualified firm which submits the lowest quotation.

- 2. For contracts within Level Two and Level Three, as referenced in Rule 60D-5.002, F.A.C., 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 written drawings and/or specifications. 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, the 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 within Level Four, as referenced in Rule 60D-5.002, F.A.C., the Construction Manager shall publicly advertise the work in a newspaper of general circulation in the county where the project is located at least twenty-one (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.
 4. For contracts within Level Five, as referenced in Rule 60D-5.002, F.A.C., the Construction Manager shall publicly advertise the work in a newspaper of general circulation in the county where the Project is located at least thirty (30) calendar days prior to the established bid opening and at least five (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.
 5. 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 the Advertisement and Competitive Bidding Procedures requirements from the Owner, to be approved or denied at the Owner's sole discretion.
 6. 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 for the purpose of evading the requirements set forth above.
 7. Site utilities may be acquired at market rates from the entity(ies) providing such in the franchise area.
 8. 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.
 9. As part of such preparation, the Construction Manager shall review the specifications and drawings prepared by the Architect-Engineer. Ambiguities, conflicts, 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 Manager and Architect-Engineer in written form.
- (b) For all contracts, the Construction Manager shall establish a pre-qualification procedure for applicable subcontract trades that is similar to or the same as those established in Rule 60D-5.004, F.A.C.

There are two (2) steps in qualifying to perform construction of State projects: Prequalification to submit a bid and Prequalification for award of the contract. Each potential bidder on contracts within Level Four and Level Five, as referenced in Rule 60D-5.002, F.A.C., 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. Contractors not governed by the requirements of Chapter 399, 455, 489, or 633, Florida Statutes, are not required to be prequalified under this section. The following information is acceptable:

1. Current State Contractor License Certification or Registration as required under Florida Statutes.
2. 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.

For projects that require a contractor with specific expertise and experience, the Construction Team 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.

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 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.

Any bidder that has submitted a bid on a contract within Level Four and Level Five, as referenced in Rule 60D-5.002, F.A.C., must satisfy the following requirements as judged by the Construction Manager in order to be eligible for award of the contract:

1. Satisfactory compliance with bid prequalification criteria, if applicable.
2. If required by the Construction Manager, the bidder must provide with the bid a good faith deposit in the amount of five percent (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 on any national or state bank.
3. If required by the Construction Manager, after being notified as the low responsive, qualified bidder, the bidder shall provide to the Construction Manager evidence of ability to provide the necessary unconditional performance and payment bonds for the project by providing a letter of intent to provide a one hundred percent (100%) unconditional performance bond and a one hundred percent (100%) unconditional 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. All bonds must meet the provisions of Article 13.4 of this agreement.
4. If required by the Construction Manager, 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.
5. Prior to bidding on contracts within Level Four and Level Five, as referenced in Rule 60D-5.004, F.A.C., the bidder must provide a list of projects and their status for a period of thirty-six (36) months prior to solicitation and a copy of the bidder's current financial statement to the Construction Manager. The bidder's financial condition must demonstrate adequate liquid assets and equipment are available to properly perform this project as follows:
 - a. The value of liquid assets must be no less than one-twentieth (1/20) of the amount of the base bid.
 - b. Liquid assets shall include cash, stocks, bonds, pre-paid expenses, and receivables, but shall not include the value of equipment.
6. Unless waived by the Construction Manager for good cause, on contracts within Level Four and Level Five, as referenced in Rule 60D-5.004(2)(b)1, F.A.C., the bidder must agree to establish, have an active office, or an ongoing project where the office or project is located within three hundred (300) road miles of the project site. Good cause shall not be the bidder's refusal to establish a project office with qualified management personnel at or within three hundred (300) miles of the project site or a finding by the agency that a bidder's office within three hundred (300) miles of the project site is not in fact an active office staffed with qualified management staff. The requirement may only be waived in writing by the Construction Manager.

On contracts within Level Five, as referenced in Rule 60D-5.004(2)(g) and (h), F.A.C., the bidder must agree to perform no less than fifteen percent (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 (3) years.

The firm determined by the Construction Manager to have submitted the lowest, responsive bid must complete and submit the above required qualification data where applicable within seven (7) working days after being notified as the low responsive bidder, unless the information was provided in a prequalification. The Construction Manager will evaluate all data submitted within seven (7) 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 lowest responsive bid will be given seven (7) working days to submit its qualification data.

- (c) For each separate construction contract within Level Three, Level Four, and Level Five, as referenced in Rule 60D-5.002, F.A.C., the Construction Manager shall, unless waived by the Owner, conduct a pre-bid conference with prospective bidders, the Architect-Engineer, and the Project Manager. 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 prospective bidders.
- (d) Except where competitive bidding is waived, the Construction Manager will publicly bid all contracts 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 valid 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 Team in any sequence so long as such acceptance out of order does not alter the designation of the lowest 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.

- (e) 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, statutory law, 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; or,
 - 9. When the Construction Manager determines that a bid is unreasonably low, at least twenty percent (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 ten (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 Manager ultimately concludes that the bid is unreasonably low, the Construction Manager shall give notice of intent 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 and reject the bid.

- (4) 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. The Construction Manager 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.
- (5) Subcontractor Interfacing – The Construction Manager shall be the single point of interface with all subcontractors for the Owner and its agents and representatives, including the Architect-Engineer. The Construction Manager shall negotiate all Change Orders, field orders, and requests 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 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. The Construction Manager 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 the shop drawings back to the Construction Manager who will then issue the shop drawings to the affected subcontractor for fabrication or revision.

The Construction Manager shall maintain a suspense control system to promote expeditious handling. The Construction Manager shall request the 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 Manager and Architect-Engineer when timely response is not occurring on any of the above.

- (6) 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.
- (7) Job Site Requirements
- (a) The Construction Manager shall provide for each of the following activities as a part of the Construction Staffing 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 the subcontractor of responsibilities to perform work in accordance with best acceptable practices.
 6. Provide a quality control program as developed under Article 2.3(4) hereinabove.
 7. Provide miscellaneous office supplies which are used by the Construction Manager's own forces to support the construction efforts.
 8. For distances greater than one hundred (100) miles from the Construction Manager's home office to the Project site as the project requires, but not exceeding the limits established by Section 112.061, Florida Statutes. Distances less than one hundred (100) miles may not be included in the Construction Staffing Fee. Mileage may be charged only by staff listed on Exhibit C – Construction Manager's Personnel to be Assigned During Preconstruction Phase, and Exhibit D – Construction Manager's Personnel to be Assigned During Construction Phase. The Construction Manager must complete the required forms necessary to be compensated for travel and provide all required documentation to the Project Manager.
- (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.
- (8) Job Site Administration – The Construction Manager shall provide as part of the Construction Staffing Fee job site administrative functions during construction to assure proper documentation, including but not limited to the following:
- (a) Job Meetings – Hold weekly progress and coordination meetings to provide for an easy flowing project. Review and implement revisions to the Construction 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 Manager.
- 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 the course for solution(s). Revisit each pending item at each subsequent meeting until resolution is achieved. Require all present to make any problems or delaying event known for appropriate attention and resolution.
- (b) Shop Drawing Submittals and 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. Implement procedures and assure timely submittals, expedite processing approvals, and the return of shop drawings and samples.
 - (c) Material and Equipment Expediting – Provide staffing to closely monitor material and equipment deliveries, critically important checking, and follow-up procedures on supplier commitments of all subcontractors. Coordinate and expedite critical ordering including but not limited to direct tax saving purchases, delivery of materials, work sequences, inspection and testing, and labor allocation.
 - (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. The Construction Manager will review and coordinate each subcontractor's work.
 - (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 and the applicable Permitting Authorities have inspected the work and issued their certificates of completion. An example of the Certificate of Substantial Completion by Contractor may be found in Exhibit E, attached hereto and made a part hereof by reference.
 - (i) Final Completion – Monitor subcontractor 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 Contractor's Affidavit of Contract Completion form shown in Exhibit F, attached hereto and made a part hereof by reference.
 - (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.
 - (k) Record Drawings (As Built 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 affect 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 Record Drawings and ascertain 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 benchmark used for the Project.

- (l) Signage – All signs and signage must be approved by the Department's Project Manager or designee prior to placement.
- (9) Administrative Records – The Construction Manager will maintain at the job site, unless agreed to otherwise by the Project Manager, on a current basis, files, and records such as, but not limited to the following ("Project Records"):
- Contracts or Purchase Orders
 - Shop Drawing Submittals and 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 / Record Drawings
 - 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

The above Project Records shall be available at all times to the Owner and Architect-Engineer for reference or review.

- (10) Owner Occupancy – The Construction Manager shall provide services during the Design Phase and the Construction Phase, 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, in such conditions as will satisfy Owner operational requirements.

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

The Construction Manager shall catalog operational and maintenance requirements of equipment to be operated by maintenance personnel and convey these to the Owner in such a manner as to promote their usability. The Construction Manager shall provide operational training in equipment use for building operators.

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

The Construction Manager shall continuously review the Record 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 have been completed and the Project has been declared substantially complete by the Architect-Engineer and the permitting authorities.

- (11) 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 the construction drawings and specifications, and that such work will be of good quality, free from improper workmanship and defective materials, and in conformance with the construction 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 construction 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 construction drawings and specifications. 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.

2.4 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:

- (1) The Owner may elect to purchase materials and equipment included in any subcontractor'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 that time the Construction Manager will provide the Owner with the bid tabulation analysis as required by Article 2.3(3)(a)1 of this Agreement, which bids shall include the cost of all potential Direct Purchase Materials, freight charges (freight-on-board) project site, and sales taxes applicable thereto. The Construction Manager shall submit to the Owner a list, prepared by applicable subcontractors, of materials and equipment appropriate for consideration by the Owner as Direct Purchase Materials.
- (2) 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 subcontracts in accordance with Article 2.3(3) of this Agreement which includes the Direct Purchase Materials. Acceptable evidence means, at a minimum, that the Construction Manager performed all advertising required by Article 2.3(3) 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 subcontracts; or provide a written explanation if any of the above criteria is not met. In addition, the Construction Manager shall reduce the applicable subcontractor's subcontract amount by the cost of the Direct Purchase Materials and sales tax related thereto.
- (3) Upon issuance of a purchase order to the material supplier, the Construction Manager shall:
 - a) Execute, in conjunction with the Owner, a deductive Change Order to this Agreement for the value of the Direct Purchase Material, excluding sales tax.
 - b) Issue and execute a deductive Change Order to the subcontractor's subcontract for the value of the Direct Purchase Material, including related sales tax.
 - c) Apply the value of the sales tax towards the pre-credit included in the Guaranteed Maximum Price.
 - d) 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.
 - e) 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.

- f) 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.
- (4) 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 freight-on-board to the 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.
- (5) 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.
- (6) 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.
- (7) 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 the Construction Manager.
- (8) The Construction Manager must inform potential bidders that the Owner intends to purchase Direct Purchase Materials. The following language must be included in the subcontractor's contract:

Owner Direct Purchase of Materials

"Supplier acknowledges that it is supplying the materials described in this purchase order (Direct Purchase Materials) as a direct purchase from the State of Florida, Department of Management Service, Division of Real Estate Development and Management (DMS). Though DMS is the direct purchaser, supplier is directed that Construction Manager, or its subcontractors shall accept, receive, unload, inventory, distribute, and store all Direct Purchase Materials. Supplier shall coordinate with the Construction Manager or its subcontractors in determining accurate quantities, delivery, unloading, and distribution in a timely fashion. Supplier shall coordinate with the Construction Manager or its subcontractors to deliver and store materials in such a manner to prevent damage or injury to materials, the project, personnel, or equipment. The Construction Manager and its subcontractors shall remain liable for these materials and their proper installation until full and final acceptance of the project by DMS. The Construction Manager or its subcontractors shall continue builder's risk insurance on the Direct Purchase Materials. Except to the extent modified by this section, the Construction Manager or its subcontractors shall be responsible for satisfying all their other obligations with respect to the Direct Purchase Materials pursuant to their agreement with DMS, as if the Direct Purchase Materials had been purchased by the Construction Manager."

**ARTICLE 3
OWNER'S RESPONSIBILITIES**

- 3.1 **OWNER'S INFORMATION** – The Owner shall provide full information regarding the requirements for the Project.
- 3.2 **OWNER'S REPRESENTATIVE** – The Owner shall designate a representative or Project Manager, see Section 1.3, 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. The Project Manager shall render decisions promptly and furnish information expeditiously.
- 3.3 **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.

- 3.4 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.
- 3.5 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 Guaranteed Maximum Price.
- 3.6 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.
- 3.7 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.
- 3.8 COST OF SURVEYS AND REPORTS – The services, information, surveys, and reports required by the above paragraphs shall be furnished with reasonable promptness in accordance with the approved schedule at the Owner's expense, and the Construction Manager shall be entitled to rely upon the accuracy and completeness thereof.
- 3.9 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.
- 3.10 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.
- 3.11 LINES OF COMMUNICATION – The Owner and Architect-Engineer shall communicate with the Construction Manager's subcontractors or suppliers only through the Construction Manager.
- 3.12 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.
- 3.13 PERMITTING AND CODE INSPECTIONS – The Construction Manager must recognize and fully cooperate and coordinate with the Permitting Authority during the course of the Project.
- 3.14 OWNERSHIP OF PROJECT DOCUMENTS – Drawings, specifications, all Construction Documents, and other documents including those in electronic form, prepared by the Architect-Engineer or the Construction Manager and furnished for the Project are the property of the Owner. The Owner shall retain all common law, statutory, and other reserved rights, including copyrights related to the documents for the Project. The Construction Manager shall require language in each of its subcontracts providing for the Owner's ownership of all Project documents. The Construction Manager hereby transfers, grants, conveys, assigns, and relinquishes exclusively to the Owner, all of the Construction Manager's right, title, and interest of every kind throughout the world in and to all intellectual property developed for the Owner by the Construction Manager in conjunction with this Agreement, including all United States and International copyrights or patents thereto, and any renewals or extensions thereof, together with all other interests accruing by reason of international conventions with respect to intellectual property. The Construction Manager agrees to sign any additional documents and otherwise cooperate with the Owner, as may reasonably be requested, to further evidence, perfect, protect, or enforce the transfer under this Section. For this purpose, the provisions of this Section shall survive the termination, for any reason, of this Agreement.
- 3.15 OWNER APPROVAL RIGHTS – Any approvals, certificates, or decisions of the Architect-Engineer are subject to the approval of the Owner, which approval shall not be unreasonably withheld. At the Owner's discretion, the duties of the Architect-Engineer described herein may be performed by the Owner or the Owner's representative. The Owner shall be entitled to make any decision or approval required by this Agreement to be made by the Architect-Engineer. Any decision of the Owner shall supersede any decision of the Architect-Engineer. Any time the Construction Manager shall be required to notify or report to Architect-Engineer, such notice or report shall also be made to the Owner.

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 Articles 4.1 and Article 4.2 hereinafter.

For all New Construction and Modifications to Existing State Facilities, permits are required per Section 633.022 and 633.85, Florida Statutes.

- 4.1 **BUILDING PERMITS** – The Construction Manager is obligated to obtain and pay for a building permit from the local authority for construction of this State facility with the exception of the Fire Marshal. The State Fire Marshal has jurisdiction over any new construction, renovations, or alterations to any existing state-owned building or state-leased space in order to comply with uniform fire safety standards.
- (1) In the case of building, plumbing, electrical, other internal system permits and connection permits, the Contractor is obligated to obtain such permits and pay such fees.
 - (2) The Construction Manager shall determine the permits and fees required by any entity having jurisdiction over any part of the project and shall include the cost of all such permits in its bid proposal.
 - (3) The State Fire Marshal has jurisdiction over all State Facilities. The Owner will apply for and pay for the permit by the State Fire Marshal.
- 4.2 **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 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 Construction Manager shall provide a copy of each inspection report to the Architect-Engineer in a timely fashion.

ARTICLE 5 SUBCONTRACTS

- 5.1 **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 this Agreement shall create any contractual relation between the Owner or Architect-Engineer and any subcontractor.
- 5.2 **PROPOSALS** – Subject to Article 9 and, in accordance with Article 2.3(3), the Construction Manager shall request and receive proposals from subcontractors and suppliers and will award those contracts to the qualified lowest bidder after review of each proposal and satisfaction that the subcontractor is qualified to perform the work.
- 5.3 **REQUIRED SUBCONTRACTORS' QUALIFICATIONS AND SUBCONTRACT CONDITIONS**

- 5.3.1 **Subcontractual Relations** – By an appropriate written agreement, the Construction Manager shall require each subcontractor to the extent of the work to be performed by the subcontractor, to be bound to the Construction Manager by the terms of this Agreement and to assume toward the Construction Manager all the obligations and responsibilities which the Construction Manager, by this Agreement, assumes toward the Owner and the Architect-Engineer. The Agreement shall preserve and protect the rights of the Owner and Architect-Engineer under this Agreement 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 this Agreement 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 this Agreement. Each subcontractor shall similarly make copies of such documents available to his sub-subcontractors.

- 5.3.2 **Subcontract Requirements**

- (1) For all subcontracts the requirements listed in Article 2.3(3) have been met.
- (2) **Supervision** – The subcontractor must agree to provide field (on-site) supervision through a named superintendent. 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 a substantially

equivalent level on a similar project for at least two (2) years within the last five (5) years. The subcontractor shall include a resume of experience for each employee they have identified to supervise and schedule the work.

(3) All subcontracts shall provide:

(a) **LIMITATION OF REMEDY – NO DAMAGES FOR DELAY**

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.

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

Each subcontract shall require the subcontractor to expressly agree that the foregoing 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 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. Failure to comply with the conditions for giving notice and submitting claims shall result in the waiver of such claims.

5.4 **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.

ARTICLE 6

SCHEDULE, TIME OF COMMENCEMENT, AND SUBSTANTIAL COMPLETION

6.1 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, all of which damages the Construction Manager shall be liable.

6.2 The Date of Owner Occupancy shall occur as described in Article 2.3(10) hereinabove. Warranties called for by this Agreement or by the drawings and specifications shall commence on the Date of Substantial Completion of the Project.

ARTICLE 7

GUARANTEED MAXIMUM PRICE FOR CONSTRUCTION

7.1 After completion of the Design Development Documents, or any such time as designated by the Owner, the Construction Manager shall establish and submit in writing to the Owner a Guaranteed Maximum Price guaranteeing the maximum price for the construction cost of the Project, or any designated portion thereof. When establishing the Guaranteed Maximum Price, the Design Development Documents should be sufficiently complete to establish the scope of work for the project or any portion thereof. This Agreement is to be used only as a guide in developing the specifications and plan data necessary to establish a Guaranteed Maximum Price. 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 Guaranteed Maximum Price, whichever is less when the work is complete.

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

7.3 When the Project is bid and one hundred percent (100%) of the subcontracts have been executed, the contingency within the Guaranteed Maximum Price may be decreased in proportion to the percent of the work completed. For example, if ten percent (10%) of the work has been completed and the Owner requests that the contingency within the Guaranteed Maximum Price be adjusted, then ten percent (10%) of the contingency within the Guaranteed

Maximum Price will be removed from the Guaranteed Maximum Price by Change Order.

- 7.4 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 Guaranteed Maximum Price 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 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 Guaranteed Maximum Price, the surplus will be added to the contingency.

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

If bids are not received for a portion of the work at or below the applicable line-item amount in the Guaranteed Maximum Price, 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.

All unspent contingency sums shall accrue to the benefit of the Owner. Examples of acceptable use of contingency include scope gaps, omitted items, trade contractors which fail to sign acceptable subcontracts, and unforeseen field conditions for which a change order is not authorized hereunder. Contingency funds shall not be used for expenses related to correcting defective work, legal expenses, or subcontractor defaults. At Final Completion, the GMP shall be reduced by Change Order by the amount of the unspent contingency sum. Expenditure of contingency funds by the Construction Manager shall be made only with written approval of the Owner and agreement of the Construction Team.

- 7.5 The Owner may, at its sole discretion and based upon its sole judgment, upon receipt of the Construction Manager's Guaranteed Maximum Price (GMP) Proposal, do any of the following singularly or in any combination:

- (1) Indicate its acceptance of the GMP proposal;
- (2) Reject the GMP proposal;
- (3) Negotiate the price and terms of the GMP Proposal;
- (4) Terminate the Project;
- (5) Terminate this Agreement for convenience pursuant to Article 14; and/or
- (6) Seek bids, proposals, or qualifications from other contractors and construction managers and proceed to award the Work and construct the Project using other such entities.

If the Owner rejects the Construction Manager's GMP proposal, the Owner shall have no further obligations pursuant to this Agreement; except that the Owner shall pay for preconstruction services properly performed and delivered by the Construction Manager to Owner through the date of the termination notice and in accordance with the terms of this Agreement.

ARTICLE 8 CONSTRUCTION MANAGER'S FEE

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 8.1, 8.2, and 8.3.

- 8.1 Preconstruction Phase Fee – For the performance of the services set forth under paragraphs 2.1.2, 2.1.3, 2.3(3), all of Section 2.2, and for profit and overhead related to these services, a total fee of **«DesignPhaseFee»**. The Preconstruction Fee is a lump sum and shall not be adjusted regardless of the duration of the Design Phase and Preconstruction Phase of the Project and any delays or extensions of same, unless the Construction Manager is directed by the Owner to perform additional preconstruction services not within the scope of preconstruction services set forth herein and that are authorized in writing by the Owner.

The Preconstruction Phase Fee is based on constructability review, value engineering, scheduling, advertising and bidding, and estimates of probable cost and shall be paid as tasks referenced above are completed and invoices are submitted in accordance with Article 12.

- 8.2 Construction Staffing Fee – Prior to commencement of the Construction Phase, the Owner will direct the Construction Manager in writing to proceed with the Construction Phase. The Construction Manager's compensation for work or services performed during the Construction Phase shall be a fee of **«ConPhaseFee»**.

The Construction Staffing Fee shall be invoiced and paid in **«NumMonPay1»** monthly payments of **«PaymentAmt1»**.00 each and one (1) final monthly payment of **«FinalMonPay»**.00. The first monthly payment

shall become due thirty (30) days following the date of the Notice to Proceed on Site by the Project Manager and the final monthly payment shall be paid only when construction of the Project reaches Final Completion and is 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.

(1) Adjustments in Fee - For changes in the Project as provided in Article 10, the Construction Staffing Fee shall be adjusted as follows:

- (a) 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.
- (b) The Construction Staffing Fee commences when the Owner issues the Notice to Proceed on Site. Should the duration of the construction stipulated herein for Final Completion extend beyond «FinalCompMonths» 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 Staffing Fee shall not exceed and will be «AddConPhaseFee» per working day, for each day or portion thereof, subject to negotiation. Exhibit J, Notice to Proceed, attached hereto and made a part hereof by reference, is shown as an example.
- (c) Should the Guaranteed Maximum Price be increased under the terms of Article 10, referenced 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 Guaranteed Maximum Price that exceed the Guaranteed Maximum Price.
- (d) Construction Manager's Exclusive Remedy – In the event the Substantial Completion Date 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 Substantial Completion Date and/or the Final Completion Date and payment of additional Construction Staffing Fees and Overhead and Profit for Construction Phase as provided above. If the delay is caused by an act or neglect of the Construction Manager, no additional Construction Staffing Fees will be due to the Construction Manager.
- (e) If the Construction Manager is thirty (30) days or more behind schedule, without the approval of the Owner, the invoice may be disputed by the Owner, which may delay the monthly payment of the Construction Staffing Fee until the schedule is resumed and maintained. The Construction Manager acknowledges that it will not be entitled to invoice the monthly fee until such time as the Construction Manager receives approval of the Owner of the updated schedule.

(2) Costs and Expenses Included in Fee – The following are included in the Construction Manager's fee for services during the Construction Phase:

- (a) 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, attached hereto and made a part hereof by reference. 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 Manager question the need for the employee or employees.

- (b) 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, attached hereto and made a part hereof by reference.
- (c) Those services set forth in Article 2.3(7)(a).
- (d) Direct tax saving purchase program.

8.3 Overhead and Profit for Construction Phase – For overhead, profit, and general expenses of any kind, except as may be expressly included in Article 9 or excluded in Article 9.3, for services provided during and related to the Construction Phase, the fee shall be «OPamt» and shall be paid proportionally to the ratio of the cost of the work in place, and less retainage (see Article 12.1), as it bears on the latest estimate of the total construction cost or to the Guaranteed Maximum Price or to the Owner's Construction Budget, whichever is less. The balance of the fee shall be paid when construction of the Project reaches Final Completion and is 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 Staffing Fee is provided in Article 8.2(1).

ARTICLE 9 COST OF THE PROJECT

- 9.1 **DEFINITION** – The term Cost of the Project shall mean costs necessarily incurred in the Project during the Construction Phase 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 9.1 and listed as a Direct Cost Item in Article 9.2. Such payment shall be in addition to the Construction Manager's Fees stipulated in Article 8.

9.2 **DIRECT COST ITEMS**

- (1) 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 _____ to cover fringe benefits**. The multiplier must be provided by the Construction Manager in a proposal and approved by the Project Manager prior to work commencing.
- (2) Cost of all materials, supplies, and equipment incorporated in the Project, including costs of transportation and storage thereof.
- (3) 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.
- (4) Cost including transportation and maintenance of all materials, supplies, equipment, temporary facilities, and hand tools not owned by the workmen, which are employed or consumed in the performance of the work; 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 2.2(6) shall apply.
- (5) 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 others, including installation, repairs and replacements, dismantling, removal, costs of lubrication, transportation, and delivery costs thereof, which are used in the support of a subcontractor or the Construction Manager's own forces in the performance of the work, at rental charges consistent with those prevailing in the area. See Article 2.2(6).
- (6) 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 subcontractor bonds the Construction Manager deems appropriate.
- (7) 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.
- (8) The cost of corrective work subject, however, to the Guaranteed Maximum Price 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. If procedures for testing, inspection, or approval reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by the correction of such failure, including those of repeated procedures or testing thereafter and compensation for the Architect-Engineer's services and expenses, shall be at the Construction Manager's expense without increase in the Guaranteed Maximum Price.

- (9) 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.
- (10) Costs for trash and debris control and removal from the site.
- (11) Cost incurred due to an emergency affecting the safety of persons and property.

- (12) 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 Guaranteed Maximum Price breakdown where it is deemed advantageous due to schedule or economic benefit for the direct cost of the work.
- (13) 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 Section 112.061, Florida Statutes.
- (14) Costs of all reproductions used for bidding or informational purposes required by the project to directly benefit the project.
- (15) Costs of general job office supplies including paper, pencils, paper clips, file folders, staples, and janitorial supplies.
- (16) Costs for watchman and security services for the project.
- (17) 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.
- (18) Costs for such temporary facilities during construction, as approved by the Owner, including temporary water, heat, power, sanitary facilities, and data and/or voice landlines.
- (19) Cost of utilizing a computer aided design and drafting application (CADD) for Record Drawings as described in Article 2.3(8)(k). Upon completion of the work, the Construction Manager shall obtain two (2) sets of disc files from the Architect-Engineer and record to scale all as-built conditions. When completed, the two (2) discs shall be submitted to the Architect-Engineer, together with two (2) sets of blue line or black line prints for certification and forwarding to the Owner and the Client Agency, at the time of final completion.

For those Construction Managers who do not have CADD capabilities, the marked-up Record 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 disc files and return them to the Construction Manager for development of the Close-Out Documents.

- (20) Other 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, if approved by the Owner in writing and that do not cause the GMP, as adjusted by Change Order, to be exceeded.
- (21) Costs for job site items not referenced herein, that are not normally provided by the subcontractors, which are provided by the Construction Manager as required to complete the Work, if approved by the Owner in writing and that do not cause the GMP, as adjusted by Change Order, to be exceeded.

9.3 **COSTS NOT TO BE REIMBURSED** – The Cost of the Project shall not include any cost not specifically and expressly described in Article 9.2, unless approved in writing by the Owner. Direct costs do not include telephones, personal vehicles, laptops or tablets, software licensing, accounting staff, any other staff not agreed to in Article 8, or any other general home office expenses. This list is a not an exclusive list.

ARTICLE 10 CHANGES IN THE PROJECT

10.1 **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 Guaranteed Maximum Price, and the Final 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.

10.1.1 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 Final Completion date. Each adjustment in the Guaranteed Maximum Price resulting from a Change Order shall clearly separate the amount attributable to the Cost of the Project.

10.1.2 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 Article 10.1.3.

10.1.3 If none of the methods set forth in Article 10.1.2 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 under Article 10.1.2 above, the Construction Manager shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data of the increase in the Cost of the Project as outlined in Article 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.

10.1.4 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.

10.1.5 The Guaranteed Maximum Price and the Final Completion Date shall be equitably adjusted by Change Order upon a request for Change Order in accordance with Article 10.2. under the following:

- Should concealed conditions encountered in the performance of the work below the surface of the ground be at variance with the conditions indicated by the drawings, specifications, or Owner furnished information;
- Should concealed or unknown conditions in an existing structure be at variance with the conditions indicated by the drawings, specifications, or Owner furnished information;
- Should unknown physical conditions below the surface of the ground differ materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Agreement; or
- Should concealed or unknown conditions in an existing structure of an unusual nature differ materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Agreement.

10.2 CLAIMS FOR ADDITIONAL COST OR TIME – All claims for additional cost or time shall be made by request 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-Engineer or of any employee of either or by any separate Construction Manager employed by the Owner or by any changes ordered in the work by labor disputes, fire, or unusual delays 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; however the Guaranteed Maximum Price shall not be increased except for the additional fees set forth in Article 8.2. It is the express and bargained for intent of the Parties that the risk of any monetary damages caused by any delays from any cause are accepted and assumed entirely by Contractor, and in no event shall any claim relating thereto for an increase in the Contract Sum be made or recognized, except for the additional fees set forth in Article 8.2.

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.

10.3 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 Final Completion Date and not inconsistent with the intent of the drawings and specifications. Such changes shall be in writing. Documentation of changes shall be determined by the Construction Team and displayed monthly in the PMIS. Changes shall be approved by the Project Manager and Architect-Engineer.

10.4 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.

ARTICLE 11 DISCOUNTS AND PENALTIES

All discounts for prompt payment shall accrue to the Owner. All trade discounts, rebates, commissions, and refunds, and all returns from sale of surplus materials and equipment, shall accrue to the Owner and 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.

ARTICLE 12 PAYMENTS TO THE CONSTRUCTION MANAGER

- 12.1 **MONTHLY PAYMENTS** – The Construction Manager shall submit to the Owner a notarized monthly pay request, along with the cost reports required under Article 2.1.2, showing in detail all monies paid out, costs accumulated, or costs incurred on account of the Cost of the Project during the previous monthly period, and the amount of the Construction Manager's fees due as provided in Article 8.3.

Five percent (5%) retainage shall be held on all payments, 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 that 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.

Retainage shall not be withheld on services or fees set forth in Article 8.1 and Article 8.2. The Owner shall promptly make payment to the Construction Manager, unless the Owner has grounds, pursuant to Section 255.078(3), Florida Statutes, for withholding the payment of retainage. If the Owner makes payment of retainage to the Construction Manager that 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 Pre-Construction Phase Fee, Construction Staffing Fee, and Overhead and 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 Guaranteed Maximum Price balance, whichever is applicable. The Construction Budget balance or the Guaranteed Maximum Price balance is established by subtracting the Pre-Construction Phase Fee, Construction Staffing Fee and Overhead and Profit from the latest estimate of the total construction cost or to the Guaranteed Maximum Price or to the Owner's Construction Budget, whichever is less. The billable Overhead and Profit is calculated by multiplying the percentage complete of the Construction Budget balance or the Guaranteed Maximum Price balance, as applicable. This data shall be attached to the partial pay request form shown in Exhibit D, attached hereto and made a part hereof by reference. Payments by the Owner to the Construction Manager shall be made as described in Article 17.6.

- 12.2 **SUPPORTING DOCUMENTATION** – The following documents are required to be submitted with each invoice:
- (1) The Contractor's Partial Payment Routing Transmittal, an example of which is attached as Exhibit K, attached hereto and made a part hereof by reference;
 - (2) The Owner's Certificate of Partial Payment, an example of which is attached as Exhibit G, attached hereto and made a part hereof by reference;
 - (3) The Construction Manager's Schedule of Values for the Project; and,
 - (4) The Construction Manager's Status Report of Certified Business Enterprise (CBE) Form, an example of which is attached as Exhibit I, attached hereto and made a part hereof by reference. This form must be included even if no Certified Business Enterprise firms were utilized.

Any required forms may be accessed at:

https://www.dms.myflorida.com/business_operations/real_estate_development_and_management/building_constuction/forms_and_documents

- 12.3 **FINAL PAYMENT** – The Construction Manager shall submit its Final Pay Request within forty-five (45) days of Final Completion of the Project. 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 17.6 after the Owner has accepted occupancy of the Project, provided the Project is completed, that the Construction Manager has verified by its signature that all items specified on Exhibit H - Final Payment Request Checklist, attached hereto and made a part hereof by reference, have been completed, and that this Agreement has been fully 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 one hundred fifty percent (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, the Owner shall pay monthly to the Construction Manager the amount retained for each incomplete item after each of said items is completed.

- 12.4 PAYMENTS TO SUBCONTRACTORS – The Construction Manager shall promptly, within ten (10) days after receipt of payment from the Owner, pay all the amounts due to subcontractors and suppliers less a retainage of five 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. If there should remain items to be completed, the Construction Manager and the Architect-Engineer shall list those items required for completion and the Construction Manager shall require the retainage of a sum equal to one hundred fifty percent (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 instructions 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.

- 12.5 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 fourteen (14) days after receipt of an approvable payment request. If the Owner should fail to pay the Construction Manager within forty (40) 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.
- 12.6 PAYMENTS FOR MATERIALS AND EQUIPMENT – Payments will be made for materials 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.
- 12.7 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 Owner, adjusting pay requests and Project bookkeeping as required.
- 12.8 FLORIDA STATUTES REGARDING PROMPT PAYMENT REQUIREMENTS – The Construction Manager must be familiar with and follow Chapter 489, Chapter 713, Section 255.071, and Section 255.073, Florida Statutes, regarding payment for construction services, materials, and supplies, and payments to subcontractors, sub-subcontractors, materialmen, and suppliers. Failure to do so may result in termination of this Agreement.

ARTICLE 13 INDEMNITY, INSURANCE, and BONDS

- 13.1 INDEMNITY – To the fullest extent permitted by law, the Construction Manager shall indemnify and hold harmless the Owner and its officers and employees from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the Construction Manager and persons employed or utilized by the Construction Manager in the performance of this Agreement.
- 13.2 CONSTRUCTION MANAGER'S INSURANCE
- (1) The Construction Manager shall not commence any construction work in connection with this Agreement until they have obtained all 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.
 - (2) 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 the subcontractor'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 Agreement 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.

- (3) 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:

- | | |
|---|--|
| (a) Construction Manager's Comprehensive General Liability Coverages, Bodily Injury & Property Damage | \$1,000,000 Each Occurrence, Combined Single Limit |
| (b) Automobile Liability Coverages, Bodily Injury & Property Damage | \$500,000 Each Occurrence, Combined Single Limit |
| (c) Excess Liability, Umbrella Form | \$4,000,000 Each Occurrence, Combined Single Limit |

Insurance clauses for both BODILY INJURY AND PROPERTY DAMAGE shall be amended to provide coverage on an occurrence basis.

- (4) 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 the subcontract, insurance of the type specified above or insure the activities of their subcontractors in their policy, as specified above, except Excess Liability, Umbrella Form for subcontractors may be reduced upon written consent of the Owner.

- (5) 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:

- | | |
|---|---|
| (a) Bodily Injury Liability & Property Damage Liability | \$1,000,000 Each Occurrence Combined Single Limit |
|---|---|

- (6) Explosion, Collapse, Underground Damage (XCU) – The Construction Manager's Liability Policy shall provide "XCU" coverage for those classifications in which they are excluded.

- (7) Broad Form Property Damage Coverage, Products, and Completed Operations Coverages – The Construction Manager's Liability Policy shall include Broad Form Property Damage Coverage, Products, and Completed Operations Coverages.

- (8) 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.

- (9) 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 coverage on an All-Risk basis, including theft. This coverage shall not be lapsed or cancelled because of partial occupancy by the Owner prior to final acceptance of the Project.

- (10) Certificate of Insurance – Certificate of Insurance form will be furnished to the Owner along with the Construction Documents. These shall be completed and signed by the authorized Florida Resident Agent and returned to the office of Real Estate Development and Management. The Owner shall be furnished proof of coverage of Insurance as follows:

- (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, the policy effective date, and the policy 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 any policy.
- (c) 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 Article 13.2 and ending with Article 13.3.4.

- (d) 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.

13.3 INSURANCE WAIVER OF SUBROGATION

- 13.3.1 The Owner and the Construction Manager waive all rights against each other, for damages caused by perils covered by insurance provided under Article 13.2 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.
- 13.3.2 The Owner and Construction Manager waive all rights against each other for loss or damage to any equipment used in connection with the Project and covered by any property insurance. The Construction Manager shall require similar waivers from all subcontractors and their sub-subcontractors.
- 13.3.3 The Owner waives subrogation against the Construction Manager on all property and consequential loss policies carried by the Owner on adjacent properties and under property and consequential loss policies purchased for the Project after its completion.
- 13.3.4 If the policies of insurance referred to in this Article require an endorsement to provide for continued coverage where there is a waiver of subrogation, the Owner of such policies will cause them to be so endorsed. Failure to obtain proper endorsement nullifies the waiver of subrogation.

- 13.4 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 one hundred percent (100%) unconditional Performance Bond and a one hundred percent (100%) unconditional Labor and Material Payment Bond each in an amount not less than the total Cost of the Project 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:

- (1) 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.
- (2) 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.
- (3) The Surety Company shall be in full compliance with the provisions of the Florida Insurance Code.
- (4) The Surety Company shall have at least twice the minimum surplus and capital required by the Florida Insurance Code at the time the invitation to bid is issued.
- (5) If the Agreement Award Amount exceeds \$500,000, the Surety Company shall also comply with the following provisions:
 - (a) The Surety Company shall have at least the following minimum ratings in the latest issue of Best's Key Rating Guide.

<u>AGREEMENT AMOUNT</u>	<u>POLICYHOLDER'S RATING</u>	<u>REQUIRED FINANCIAL RATING</u>
\$500,000 TO \$1,000,000	A-	CLASS I
\$1,000,000 TO \$2,000,000	A-	CLASS II
\$2,000,000 TO \$5,000,000	A-	CLASS III
\$5,000,000 TO \$10,000,000	A-	CLASS IV
\$10,000,000 TO \$25,000,000	A-	CLASS V
\$25,000,000 TO \$50,000,000	A-	CLASS VI
\$50,000,000 TO \$100,000,000	A-	CLASS VII
\$100,000,000 TO \$250,000,000	A-	CLASS VIII
\$250,000,000 TO \$500,000,000	A-	CLASS IX

- (b) The Surety Company shall not expose itself to any loss on any one risk in an amount exceeding ten percent (10%) of its surplus to policyholders, provided:
1. 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.
 2. 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.

ARTICLE 14
TERMINATION OF THE AGREEMENT AND OWNER'S RIGHT TO PERFORM
CONSTRUCTION MANAGER'S OBLIGATION

14.1 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 (7) days written notice to the Owner, terminate the Agreement and request payment for all work executed, plus the unpaid pro-rata portion of the Construction Manager's Fee on the completed Work as of the date of termination. This payment shall be the Construction Manager's sole remedy for any termination, whether for convenience or caused by either Party.

14.2 OWNER'S RIGHT TO PERFORM CONSTRUCTION MANAGER'S OBLIGATIONS AND TERMINATION BY OWNER FOR CAUSE

- (1) 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 Guaranteed Maximum Price, 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 Staffing Fee shall be reduced by an amount required to manage the making good of such deficiencies.
- (2) Agreement Termination – Termination of this Agreement may occur if during the construction process the Construction Manager:
- is adjudged bankrupt,
 - makes a general assignment for the benefit of Construction Manager's creditors,
 - has a receiver appointed on account of Construction Manager insolvency,
 - persistently or repeatedly refuses or fails, except in case for which extension of time is provided, to supply enough properly skilled workmen or proper materials,
 - fails to maintain an established schedule. Failure to maintain schedule shall be defined as any activity on the critical path that falls forty-five (45) days or more behind schedule, which has been adopted by the Construction Team,
 - fails to make prompt payment to subcontractors for materials or labor,
 - persistently disregards laws, rules, ordinances, regulations, or orders of any public authority having jurisdiction, or
 - is guilty of a substantial violation of a provision of the Agreement.

Under any of the above referenced circumstances, the Owner may, without prejudice to any right or remedy, 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. The Owner must give the Construction Manager and their surety, if any, seven (7) days written notice, during which period the Construction Manager must commence correction of the violation or violations.

In such case, the Construction Manager shall not be entitled to receive any further payment until the Project is finished nor shall the Construction Manager be relieved from obligations assumed under Article 7. If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect-Engineer's services and expenses made necessary thereby, and other damages incurred by the Owner, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner.

- (3) 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.
- (4) If any termination by Owner is later determined to have been improper or unjustified, such termination shall nonetheless be deemed and considered for all purposes a termination without cause and treated as a termination under Article 14.3.

14.3 TERMINATION BY OWNER WITHOUT CAUSE

- (1) If the Owner terminates this Agreement other than pursuant to Article 14.2(2) or Article 14.2(3), 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 Staffing 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 Staffing 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 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. This payment shall be the Construction Manager's sole remedy for any termination under this Section. 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.
- (2) 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.

ARTICLE 15 ASSIGNMENT AND GOVERNING LAW

- 15.1 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.
- 15.2 This Agreement shall be governed by the Laws of the State of Florida. Disputes shall be adjudicated exclusively in Leon County, Florida.

ARTICLE 16 NOTICE OF CLAIM; WAIVER OF REMEDIES; NO DAMAGES FOR DELAY

- 16.1 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 twenty (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 ten (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.
- (5) In the event of a material change in the scope of work, the Construction Manager's claim for adjustments in the contract price is limited exclusively to its actual costs for such changes plus profit as identified in Article 8.

- 16.2 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 and including claims based on breach of contract or negligence, shall be a claim submitted in compliance with Article 16.1 above, for an extension of the scheduled construction time, however the contract price shall not be increased, except for the additional fees set forth in Article 8.2. It is the express and bargained for intent of the Parties that the risk of any monetary damages caused by any delays from any cause are accepted and assumed entirely by Contractor and in no event shall any claim relating thereto for an increase in the contract price be made or recognized, except for the additional fees set forth in Article 8.2.
- 16.3 **DISPUTE RESOLUTION** - Any dispute concerning performance of this Agreement shall be decided by the Owner, who will reduce the decision to writing and serve a copy on the Construction Manager. The decision of the Owner shall be final and conclusive. Exhaustion of this administrative remedy is an absolute condition precedent to the Construction Manager's ability to pursue legal action related to the Agreement or any other form of dispute resolution.
- 16.4 **EXCLUSIVE REMEDY FOR DELAYS** – Except for the fee 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 and including claims based on breach of contract or negligence, shall be a claim submitted in compliance with Article 16.1 above for an extension of the scheduled construction time. The Construction Manager expressly agrees that the foregoing constitutes its sole and exclusive remedy for delays and changes in such work and eliminates any other remedies for claim for increase in the contract price, delays, changes in the work, damages, losses, or additional compensation.
- 16.5 The Construction Manager and Owner waive Claims against each other for consequential damages arising out of or relating to this Agreement. This mutual waiver includes:
- (1) Damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
 - (2) Damages incurred by the Construction Manager for principal office expenses including the compensation of personnel stationed there, for loss of use, for rental expenses, for losses of financing, business and reputation, loss of employee productivity or the services of such persons, and for loss of profit, except anticipated profit arising directly from the Work actually performed.

This mutual waiver is applicable, without limitation, to all consequential damages due to either Party's termination in accordance with Article 14. Nothing contained in this Article 16.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Construction Documents. The Parties agree that costs to repair, correct, or remedy defective Work are not considered consequential damages.

- 16.6 **VENUE AND MEDIATION** – The venue for all civil and administrative actions against the Owner shall be in Leon County, Florida, unless otherwise agreed by the Parties. The Parties shall endeavor to resolve their Claims by non-binding mediation which, unless the Parties mutually agree otherwise, shall be administered in accordance with Section 44.102, Florida Statutes, in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other Party to the Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of sixty (60) days from the date of filing, unless stayed for a longer period by agreement of the Parties or court order.

ARTICLE 17 MISCELLANEOUS

- 17.1 **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 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.

- 17.2 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.
- 17.3 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, Florida Statutes, governing payments by the State for travel expenses. A Vendor Ombudsman has been established within the Department of Financial Services. The duties of this office are found in section 215.422, F.S., which include disseminating information relative to prompt payment and assisting contractors in receiving their payments in a timely manner from a Customer. The Vendor Ombudsman may be contacted at (850) 413-5516.
- 17.4 CONSTRUCTION MANAGER'S PROJECT RECORDS – Pursuant to Section 216.1366, Florida Statutes, 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.
- 17.5 CERTIFIED BUSINESS ENTERPRISE PARTICIPATION
- 17.5.1 Office of Supplier Development – The State of Florida supports its business community by creating opportunities for business enterprises to participate in procurements and contracts. The Department encourages supplier development through certain certifications and provides advocacy, outreach, and networking through regional business events. For additional information, please contact the Office of Supplier Development (OSD) at OSDHelp@dms.fl.gov.
- 17.5.2 Reporting Certified Business Enterprises – Upon request, the Contractor will report to the Department its spend with business enterprises certified by the OSD. These reports must include the time period covered, the name and vendor identification information of each business enterprise utilized during the period, commodities and contractual services provided by the business enterprise, and the amount paid to the business enterprise on behalf of each agency purchasing under this Agreement.
- 17.6 CONSTRUCTION MANAGER'S PAYMENT RIGHTS – Upon receipt, the Owner has twenty (20) days to inspect and approve the goods and services. The Owner has fourteen (14) days to deliver a request for payment (voucher) to the Department of Financial Services. The fourteen (14) days are 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 forty (40) 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 Department of Financial Service, Fiscal Section through the Department of Financial Service website. The forty (40) 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 must 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. Contact information for the Vendor Ombudsman may be found on the Department of Financial Services website.
- 17.7 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, Florida Statutes, for CATEGORY TWO for a period of thirty-six (36) months from the date of being placed on the convicted vendor list. In accordance with section 287.133, Florida Statutes, the

Construction Manager is hereby informed of the provisions of section 287.133(2)(a), Florida Statutes.

- 17.7.1 CRIMINAL HISTORY BACKGROUND CHECKS – The Owner may require the Construction Manager to conduct background checks of its employees, agents, representatives, and subcontractors as directed by the Owner's representatives. The cost of the background checks will be borne by the Construction Manager. The Owner may require the Construction Manager to exclude the Construction Manager's employees, agents, representatives, or subcontractors based on the background check results. In addition, the Construction Manager must ensure that all persons have a responsibility to self-report to the Construction Manager within three (3) calendar days any arrest for any disqualifying offense. The Construction Manager must notify the Project Manager within twenty-four (24) hours of all details concerning any reported arrest. Upon the request of the Owner, the Construction Manager will re-screen any of its employees, agents, representatives, and subcontractors during the term of the Agreement.
- 17.8 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.
- 17.8.1 Unauthorized Aliens Checks Through E-Verify – Pursuant to Section 448.095, Florida Statutes, the Construction Manager will utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of: all persons employed during the term of this Agreement by the Construction Manager to perform employment duties within Florida within three (3) business days after the date of hire; and all persons (including subcontractors) assigned by the Construction Manager to perform work pursuant to this Agreement within ninety (90) calendar days after the date this Agreement is executed or within thirty (30) days after such persons are assigned to perform work pursuant to this Agreement, whichever is later.
- 17.9 DISCRIMINATION; DENIAL OR REVOCATION FOR THE RIGHT TO TRANSACT BUSINESS WITH PUBLIC ENTITIES – The Contractor affirms that it is aware of the provisions of Section 287.134(2)(a), Florida Statutes. 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.
- The Construction Manager and its Subcontractors shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, or national origin. The Construction Manager shall take affirmative action to ensure qualified applicants are employed if work is available and employees are treated during employment without regard to their race, religion, color, sex, or national origin. The Construction Manager and the Construction Manager's Subcontractors shall, in all solicitations or advertisements for employees placed by them or on their behalf, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex or national origin. Construction Manager agrees to post in places available to all employees and applicants for employment, notices setting forth the policies of non-discrimination.
- 17.10 APPROPRIATION CONTINGENCY – The State's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Florida Legislature.
- 17.11 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.
- 17.12 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 (2) or more persons among whom the employer cannot make a reasonable determination that the qualifications held by one (1) person are better suited for the position than the qualifications held by the other person or persons.
- 17.13 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.
- 17.14 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, Florida Statutes, and all applicable law.

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

- 17.15 CURRENT FUNDING LIMITATIONS – The Owner's current funding only allows for an expenditure of «FundLimit» towards the Owner's Construction Budget shown in Article 1.4 hereinabove. Any further services and/or construction requires additional funding and are only to be commenced upon receipt of a specific written authorization from the Owner's Contracts Administrator. The effectiveness of that part of this Agreement that applies to work beyond a construction amount of «FundLimit» is contingent upon receiving additional funds from the Legislature. If the Legislature does not furnish funds for work beyond an expenditure of «FundLimit» towards the Owner's Construction Budget, the Owner may terminate this Agreement except that part thereof pertaining to an expenditure of «FundLimit» toward construction, by written notice to the Construction Manager. In the event of such termination, the Owner shall not be liable for any payment to the Construction Manager other than that required for an expenditure of «FundLimit» towards construction.
- 17.16 ELECTRONIC EXECUTION – This Agreement may be executed in two (2) or more counterparts, each of which together shall be deemed an original, but all of which together shall constitute one and the same instrument. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a .pdf format data file, such signature shall create a valid and binding obligation of the Party executing, or on whose behalf such signature is executed, with the same force and effect as if such facsimile or .pdf signature page were an original thereof, and the transmitting Party shall deliver the inked original to the Department, upon the Department's request.
- 17.17 NOTICES AND ELECTRONIC MAIL CAPABILITES – Where the Contract Documents require one Party to notify or give notice to the other Party, such notice shall be provided in writing to the designated representative of the Party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic mail. Electronic mail (e-mail) may be used by the Parties using the e-mail addresses set forth in the Agreement with a reply e-mail confirming delivery of the email. 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.
- 17.18 PUBLIC INQUIRIES – All inquiries, in person, writing, or electronic correspondence received from elected officials, staff of elected officials, registered lobbyists, or members of community organizations shall be directed to the DMS Office of Legislative Affairs at 850-921-5266 or may be forwarded to Communications@dms.myflorida.com.
- 17.19 PUBLIC RECORDS
- (1) To the extent Construction Manager is acting on behalf of Owner as provided under Subsection 119.011(2), Florida Statutes, Construction Manager shall:
 - a. Keep and maintain public records required by Owner to perform the services under this Agreement.
 - b. Upon request from Owner's custodian of public records, provide Owner with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the costs provided in Chapter 119, Florida Statutes or otherwise provided by law.
 - c. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the Agreement if the Construction Manager does not transfer the records to Owner.
 - d. Upon completion of the Agreement, transfer, at no cost, to Owner all public records in possession of Construction Manager or keep and maintain public records required by Owner to perform the service. If the Construction Manager transfers all public records to Owner upon completion of the Agreement, the Construction Manager shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Construction Manager keeps and maintains public records upon completion of the Agreement, the Construction Manager shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to Owner, upon request from Owner's custodian of public records, in a format that is compatible with the information technology systems of Owner.
 - (2) If the Construction Manager fails to provide the public records to Owner within a reasonable time the Construction Manager may be subject to penalties under Section 119.10, Florida Statutes. Further, Owner may exercise any remedies at law or in equity, including, without limitation, the right to (i) impose sanctions and assess financial consequences, (ii) withhold and/or reduce payment, and (iii) terminate this Agreement in accordance with the terms hereof. Construction Manager shall defend, at its own cost, indemnify, and hold harmless Owner, their officers, directors, and employees from and against all claims, damages, losses, and

expenses, (including but not limited to fees and charges of attorneys or other professionals and court and arbitration or other dispute resolution costs) arising out of or resulting from Construction Manager's failure to comply with the terms of this Section.

- (3) IF THE CONSTRUCTION MANAGER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSTRUCTION MANAGER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT OWNER'S CUSTODIAN OF PUBLIC RECORDS, either through the Project Manager; by e-mailing REDMProcurement@dms.fl.gov; or by letter to DMS Division of Real Estate Development and Management, 4050 Esplanade Way, Tallahassee, Florida 32399.

Any knowing violation of Chapter 119, Florida Statutes, may be sufficient grounds for immediate termination of the Agreement by the Owner.

- 17.20 COOPERATION WITH THE INSPECTOR GENERAL AND AUDIT – The Owner may require an audit of the Construction Manager's records and books related to the Project. The audit shall be conducted by the Owner's personnel or authorized representative. The Owner reserves the right to audit at any time during construction and within five (5) years after the Substantial Completion of the Work. Construction Manager agrees to reimburse Owner and the State for the reasonable costs of investigation incurred by Owner, the Inspector General, State Auditor General, or other authorized State official or agent for investigations of Construction Manager's compliance with the terms of this Agreement which results in disallowed costs. Such reasonable costs shall include but shall not be limited to salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. Construction Manager understands and will comply with the requirements of Section 20.055(5), Florida Statutes, including but not necessarily limited to, the duty of Construction Manager and any of Construction Manager's subcontractors or subconsultants to cooperate with the inspector general in any investigation, audit, inspection, review, or hearing pursuant to Section 20.055, Florida Statutes.
- 17.21 SOVEREIGN IMMUNITY – Owner's limits of liability are set forth in Section 768.28, Florida Statutes, and nothing herein shall be construed to extend the liabilities of Owner beyond that provided in Section 768.28, Florida Statutes. Nothing herein is intended as a waiver of Owner's sovereign immunity under Section 768.28, Florida Statutes. Nothing hereby shall inure to the benefit of any third party for any purpose, including but not limited to anything which might allow claims otherwise barred by sovereign immunity or operation of law. Furthermore, all of Owner's obligations under this Agreement are limited to the payment of no more than the per person amount limitation and the aggregate contained in Section 768.28, Florida Statutes, even if the sovereign immunity limitations of that statute are not otherwise applicable to the matters as set forth herein. For the avoidance of doubt, the Contractor's liability hereunder is not limited and the amounts and types of insurance and bonds required hereunder is not intended to reflect a limitation.
- 17.22 PROHIBITION AGAINST CONTINGENT FEES – Construction Manager warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Construction Manager to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for Construction Manager any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement.
- 17.23 SCRUTINIZED COMPANIES
- (1) By executing this Agreement, Construction Manager certifies that it is not:
- Listed on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, Florida Statutes,
 - Engaged in a boycott of Israel,
 - Listed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to section 215.473 of the Florida Statutes, or
 - Engaged in business operations in Cuba or Syria.
- Pursuant to Section 287.135, Florida Statutes, Owner may immediately terminate this Agreement for cause if the Construction Manager is found to have submitted a false certification as to the above or if Construction Manager is placed on the Scrutinized Companies that Boycott Israel List, is engaged in a boycott of Israel, has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with

Activities in the Iran Petroleum Energy Sector List, or has been engaged in business operations in Cuba or Syria, during the term of the Agreement.

If Owner determines that Construction Manager has submitted a false certification, Owner will provide written notice to the Construction Manager. Unless the Construction Manager demonstrates in writing, within 90 calendar days of receipt of the notice, that the Owner's determination of false certification was made in error, the Owner shall bring a civil action against the Construction Manager. If Owner's determination is upheld, a civil penalty equal to the greater of \$2 million or twice the amount of this Agreement shall be imposed on the Construction Manager, and the Construction Manager will be ineligible to bid on any Agreement with a Florida agency or local governmental entity for three (3) years after the date of Owner's determination of false certification by the Construction Manager.

- (2) If federal law ceases to authorize the states to adopt and enforce the contracting prohibition in this Section, this Section shall be null and void without further action of the Parties.

- 17.24 SUSPENDED VENDOR LISTS – The Construction Manager is not on the Suspended Vendor List; it and its suppliers, subcontractors, or consultants to be utilized under this Agreement are not on the Convicted Vendor, Discriminatory Vendor, Antitrust Violator Vendor, or Forced Labor Vendor Lists; and there is no pending or threatened action, proceeding, or investigation, or any other legal or financial condition, that would in any way prohibit, restrain, or diminish the Construction Manager's ability to satisfy the contract obligations. Placement on any of the identified lists herein may result in termination of the Agreement at the discretion of the Department.

The Construction Manager is hereby informed of the provisions of Sections 287.133(2)(a), 287.134(2)(a), 287.137(2)(a), 287.1346, and 787.06, F.S., that identify the impacts to the Construction Manager's ability or its affiliates' ability to respond to the competitive solicitations of a public entity; to be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with a public entity; or to transact business with a public entity if it, or its affiliates, are placed on the Convicted Vendor, Discriminatory Vendor, Antitrust Violator Vendor, or Forced Labor Vendor Lists of the Department of Management Services. The Construction Manager is hereby further informed of the provisions of Section 287.1351, F.S., that identify the impacts to the Construction Manager's ability to enter into or renew a contract with an agency, as defined in Section 287.012, F.S., if it is placed on the Suspended Vendor List of the Department of Management Services.

- 17.25 COVID19 – The Contract Sum includes all amounts necessary to comply with all regulations, ordinances, and laws concerning COVID19, including personal protection equipment, sanitation, and social distancing requirements.
- 17.26 RESPECT - Subject to the agency determination provided for in Section 413.036, Florida Statutes, the following statement applies:

IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT ANY ARTICLES THAT ARE THE SUBJECT OF, OR REQUIRED TO CARRY OUT, THIS AGREEMENT SHALL BE PURCHASED FROM A NONPROFIT AGENCY FOR THE BLIND OR FOR THE SEVERELY HANDICAPPED THAT IS QUALIFIED PURSUANT TO CHAPTER 413, FLORIDA STATUTES, IN THE SAME MANNER AND UNDER THE SAME PROCEDURES SET FORTH IN SECTION 413.036(1) AND (2), FLORIDA STATUTES;

AND FOR PURPOSES OF THIS AGREEMENT THE PERSON, FIRM, OR OTHER BUSINESS ENTITY CARRYING OUT THE PROVISIONS OF THIS AGREEMENT SHALL BE DEEMED TO BE SUBSTITUTED FOR THE STATE AGENCY INsofar AS DEALINGS WITH SUCH QUALIFIED NONPROFIT AGENCY ARE CONCERNED.

Additional information about RESPECT and the commodities or contractual services it offers is available at <https://www.respectofflorida.org>.

- 17.27 PRIDE - Subject to the agency determination provided for in Sections 287.042(1) and 946.515, Florida Statutes, the following statement applies:

IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT ANY ARTICLES WHICH ARE THE SUBJECT OF, OR REQUIRED TO CARRY OUT, THIS AGREEMENT SHALL BE PURCHASED FROM THE CORPORATION IDENTIFIED UNDER CHAPTER 946, F.S., IN THE SAME MANNER AND UNDER THE SAME PROCEDURES SET FORTH IN SECTION 946.515(2) AND (4), F.S.; AND FOR PURPOSES OF THIS AGREEMENT THE PERSON, FIRM, OR OTHER BUSINESS ENTITY CARRYING OUT THE PROVISIONS OF THIS AGREEMENT SHALL BE DEEMED TO BE SUBSTITUTED FOR THIS AGENCY INsofar AS DEALINGS WITH SUCH CORPORATION ARE CONCERNED.

Additional information about PRIDE and the commodities or contractual services it offers is available at <https://www.pride-enterprises.org>.

- 17.28 The Contractor must comply with all laws, rules, codes, ordinances, and licensing requirements that are applicable to the conduct of its business, including those of federal, state, and local agencies having jurisdiction and authority.
- 17.29 Unless waived in accordance with subsection 60D-16.002(3), F.A.C., Contractor shall ensure that any Iron or Steel Product Permanently Incorporated in the Project be Produced in the United States, as provided in section 255.0993, F.S., and Chapter 60D-16, F.A.C.

ARTICLE 18 CONTINUING CONTRACTUAL SERVICES

Article 18 refers to Continuing Contractual Services. This Article may be disregarded if this is not an Agreement for Continuing Services.

- 18.1 The Owner intends to periodically implement specific designated Projects in the [REDACTED] Region. Projects implemented under this Agreement shall be those having estimated construction costs not exceeding the threshold provided in Section 287.055(2)(g), Florida Statutes.
- 18.2 The Construction Manager agrees to provide professional services for each specific designated Project as set forth when activated in writing by the Owner's Contracts Administrator.
- 18.3 **SCOPE OF CONTRACT** – This Agreement is entered into pursuant to Section 255.32, Florida Statutes, for the coordination and supervision of construction projects at any location in the State of Florida. This Agreement is not an exclusive contract and no amount of work is guaranteed as a result of this Agreement. The assignment of Projects to the Construction Manager will be at the Owner's discretion.
- 18.4 **FEES AND ACTIVATION** – Once the Owner identifies a Project to present to the Construction Manager under this Agreement, the Parties will conduct negotiations for fees and other conditions for the designated Project. The Construction Manager shall provide the Owner with a written proposal containing the negotiated fee and contract conditions. If accepted, the Owner will issue an Activation Letter to the Construction Manager.
- 18.5 **ACTIVATION LETTER** – A written document issued by the Owner's Contracts Administrator authorizing the Construction Manager to proceed with a specific Project. The Activation Letter will identify the Construction Manager's negotiated fees and the Owner's Construction Budget. The Activation Letter may not conflict with the terms of this Agreement. An example of the Activation Letter is attached hereto and made a part hereof by reference as Exhibit L.
- 18.6 **TERM OF AGREEMENT** – Unless terminated pursuant to Article 14, this Agreement shall remain in force from [REDACTED] through [REDACTED], or for a period following [REDACTED] which may be reasonably required to complete any Projects activated prior to [REDACTED]. This Agreement may be renewed at the Owner's discretion for an additional two-year period from [REDACTED] to [REDACTED]. If this Agreement is renewed, any Project activated prior to [REDACTED] will follow the same terms as shown above.
- 18.7 **SUPPORTING DOCUMENTATION FOR INVOICES** – In addition to the documents required in Article 12.2, the Construction Manager must submit with each invoice a copy of the Activation Letter or select pages from an individual project contract that shows the title sheet, the contract amount, and the signature page.

The remainder of this page is intentionally left blank.

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

«CONTRNAME»

Attest:

Approved:

By _____
Corporate Secretary

By _____
«CorpPres», Corporate President

As Witnessed:

By _____

(Corporate Seal)

**STATE OF FLORIDA
DEPARTMENT OF MANAGEMENT SERVICES**

Attest:

Approved:

By _____
«ContractMgr», Contracts Administrator
Division of Real Estate Development and Management

By _____
Pedro Allende, Secretary Date Signed

As Witnessed:

Approved:

By _____
Jennifer Reed, Financial Procurement Administrator
Division of Real Estate Development and Management

By _____
Brian Fienemann, Director
Division of Real Estate Development and Management

Exhibit A

CONSTRUCTION TEAM ASSIGNED REPRESENTATIVES

<u>Owner – Department of Management Services</u>	<u>Title</u>
«ProjDir»	Project Manager
«ContractsManager»	Contracts Administrator
Brian Fienemann	Director
<u>Client Agency - «Ownerentity»</u>	
«CAProjDir»	Agency Project Manager
<u>Architect-Engineer</u>	
«AEName»	Architect-Engineer Representative
<u>Construction Manager</u>	
«ContrName»	Construction Manager Representative

Exhibit B

OWNER'S CONSTRUCTION BUDGET

<u>ITEM DESCRIPTION</u>	<u>CONSTRUCTION BUDGET</u>
CONSTRUCTION MANAGER'S PRECONSTRUCTION PHASE FEE	\$«DesignPhaseFee».00
CONSTRUCTION MANAGER'S CONSTRUCTION PHASE FEE	\$«ConPhaseFee».00
CONSTRUCTION MANAGER'S OVERHEAD & PROFIT	\$«OPamt».00
CONSTRUCTION BUDGET BALANCE	\$«ConstrBudgetBal»00
OWNER'S TOTAL CONSTRUCTION BUDGET	\$«ConstrBudget».00

Exhibit C

CONSTRUCTION MANAGER'S PERSONNEL TO BE ASSIGNED DURING PRECONSTRUCTION PHASE

[illegible]

Exhibit D

**CONSTRUCTION MANAGERS'S PERSONNEL TO BE
ASSIGNED DURING CONSTRUCTION PHASE**

OFF-SITE SUPPORT STAFF

<u>Individual</u>	<u>Title</u>	<u>Duration In Months</u>	<u>Percentage of Time Available</u>

ON-SITE SUPPORT STAFF

<u>Individual</u>	<u>Title</u>	<u>Duration In Months</u>	<u>Percentage of Time Available</u>

Exhibit E

CERTIFICATE OF SUBSTANTIAL COMPLETION BY CONTRACTOR (Example)



CERTIFICATE OF SUBSTANTIAL COMPLETION

PROJECT NAME:	_____	CONTRACT FOR:	_____
PROJECT NUMBER:	_____	CONTRACT DATE:	_____
OWNER:	Department of Management Services	DATE OF ISSUANCE	_____
Attention:	_____		
ARCHITECT/ENGINEER:	_____	CONTRACTOR:	_____
ADDRESS:	_____	ADDRESS:	_____
CITY, STATE, ZIP:	_____	CITY, STATE, ZIP:	_____
PHONE & FAX:	_____	PHONE & FAX:	_____
CERTIFICATE OF OCCUPANCY ISSUED:	_____	BUILDING PERMIT JURISDICTION:	_____

(Date and Attach Document)

STATE FIRE MARSHAL APPROVAL ISSUED:

(Date and Attach Document)

PROJECT OR DESIGNATED PORTION SHALL INCLUDE:

The work performed under this Contract has been reviewed and found to be substantially complete. The Date of Substantial Completion of the project or portion thereof designated above is hereby established as which is also the date of commencement of applicable warranties required by the Contract Documents, except as stated below.

DEFINITION OF DATE OF SUBSTANTIAL COMPLETION

The Date of Substantial Completion of the work or designated portion thereof is the date certified by the Architect-Engineer when construction is sufficiently complete, in accordance with the Contract Documents, so the owner can occupy or utilize the work or designated portion thereof for the use for which it is intended as expressed in the Contract Documents. Also, substantial completion can not be issued prior to issuance of a "Certificate of Occupancy" as well as State Fire Marshal approval.

A list of items to be completed or corrected is attached hereto. The failure to include any items on such list does not alter the responsibility of the Contractor to complete all work in accordance with the Contract Documents. The date of commencement of warranties for items on the attached list will be the date of final payment unless otherwise agreed to in writing.

ARCHITECT-ENGINEER SIGNATURE	PRINTED NAME	DATE
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The Contractor will complete or correct the work on the list of items attached hereto within the time prescribed in the contract from the above Date of Substantial Completion.

CONTRACTOR SIGNATURE	PRINTED NAME	DATE
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The Owner accepts the work or designated portion thereof as substantially complete.

Department of Management Services
Division of Real Estate Development
and Management

OWNER SIGNATURE	PRINTED NAME	DATE
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Distribution to: DMS Contracts Administrator, DMS Project Director, Architect-Engineer, Contractor, Client Agency

DMS Form AE09 Revised 8/2024

Form on website: http://dms.myflorida.com/business_operations/real_estate_development_management/building_construction/forms_and_documents

Exhibit F

CONTRACTOR'S AFFIDAVIT OF CONTRACT COMPLETION (Example)



CONTRACTOR'S AFFIDAVIT OF CONTRACT COMPLETION

AGENCY: _____
PROJECT NUMBER: _____
PROJECT NAME: _____
CONTRACTOR: _____
CONTRACT FOR: _____
CONTRACT DATE: _____ CONTRACT AMOUNT: _____
DATE ISSUED FOR SUBSTANTIAL COMPLETION: _____
DATE ISSUED FOR FINAL COMPLETION: _____

CONTRACTOR'S AFFIDAVIT

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

CONTRACTOR: _____

(SEAL)

(Contractor must sign in the presence of a Notary)

Title: _____

Date: _____

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledge before me by means of

☐ physical presence or ☐ online notarization this

(date)

by _____ of _____
(name & title of officer or agent) (name of corporation acknowledging)

a _____ corporation, on behalf of the corporation. He/She is personally
(state/place incorporated)

known to me or has produced _____ as identification.
(type of identification)

(Signature of Notary)

(Name typed printed or stamped)

DMS Form CM07 Revised 8/2024

Form on website: http://dms.myflorida.com/business_operations/real_estate_development_management/building_construction/forms_and_documents

EXHIBIT F (CONT'D)



CERTIFICATE OF CONTRACT COMPLETION BY CONTRACTOR

PROJECT NO.: _____
 PROJECT TITLE: _____
 CONTRACTOR: _____
 CONTRACT DATE: _____ DATE OF FINAL COMPLETION: _____

CERTIFICATE OF ARCHITECT-ENGINEER

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

Architect-Engineer Firm Name _____ Architect-Engineer Signature _____ Architect-Engineer Name Printed _____ Date _____

TO BE COMPLETED BY ARCHITECT-ENGINEER THROUGH (DATE)

SUBSTANTIAL COMPLETION PHASE	DATE	DAYS	LIQUIDATED DAMAGES		
1. Notice to Proceed (N.T.P.)					
2. Days Specified in Original Contract for Substantial Completion (S.C.)		0			
3. Extension Granted by Change Orders (Days Between Original Contract S.C. and Final Contract S.C.)		0			
4. Total Days Allowable to Substantial Completion (Add Lines 2 and 3)		0			
5. Project Substantially Completed as Certified by Architect-Engineer (Total Days from N.T.P. through Date Certified by AE)		0			
6. Substantial Completion Overrun (Subtract Line 4 from 5 and Enter Overrun. If Line 5 is less than Line 4 enter 0.)		0	@ \$	Per Day =	0.00
FINAL COMPLETION PHASE					
1. Time Specified in Contract, Between Substantial Completion & Final Completion					
2. Extensions Granted by Change Orders (Days Between Substantial Completion & Final Completion)					
3. Total Days Allowable Between Substantial Completion & Final Completion (Add Lines 1 & 2)		0			
4. Date Actually Completed and Total Days Between Actual S.C. & Date Certified by Architect-Engineer as Finally Completed.		0			
5. Final Completion Overrun (Subtract Line 3 from 4 and Enter Overrun. If Line 4 is less than Line 3 enter 0.)			@ \$	Per Day =	0.00
TOTAL LIQUIDATED					\$0.00

Project Manager _____ Date _____

cc: DMS Contracts, Project Director, Architect/Engineer, Contractor, Client Agency

Exhibit G

OWNER'S CERTIFICATE OF PARTIAL PAYMENT (Example)



OWNER'S CERTIFICATE OF PARTIAL PAYMENT

Contractor Name: _____
Address: _____

Contractor Federal I.D. No: _____
Architect-Engineer Name: _____

Base Contract Calendar Days: _____
Adjusted Days by Change Order: _____
Revised Contract Days: _____
Elapsed Days to Date: _____
Net Days Remaining: _____
Estimated Days Ahead (+) or Behind (-): _____

Approved Change Orders (Attach additional pages if required)			
CO#	\$ AMOUNT	CO#	\$ AMOUNT
01	\$ 0.00	11	\$ 0.00
02	\$ 0.00	12	\$ 0.00
03	\$ 0.00	13	\$ 0.00
04	\$ 0.00	14	\$ 0.00
05	\$ 0.00	15	\$ 0.00
06	\$ 0.00	16	\$ 0.00
07	\$ 0.00	17	\$ 0.00
08	\$ 0.00	18	\$ 0.00
09	\$ 0.00	19	\$ 0.00
10	\$ 0.00	20	\$ 0.00
Total Net Change Orders \$		\$ 0.00	

Request No: _____
For Period Starting: _____ Ending: _____

DMS Project No: _____
DMS Project Name: _____

Federal Unique Identifier (ARPA): _____

Original Contract Sum:	
Change Orders (Net):	
Contract Sum to Date:	\$ 0.00
Work Completed to Date:	
Materials Stored:	
Total Completed & Stored:	\$ 0.00
Less Retainage: %	
TOTAL:	
Less Previous Certificates:	
Balance to Finish:	
THIS CERTIFICATE PAY THIS AMOUNT \$	
Attached to this Certificate of Partial Payment the separate required Form CM05- "CM's Certified Business Enterprises Monthly Status Report of Partial Payment"	
TOTAL PAID THIS CERTIFICATE TO MBE: \$	

CERTIFICATION BY THE CONTRACTOR: According to the best of my knowledge and belief, I certify that all items and amounts shown on the face of this Application are correct, that all work has been performed and material supplied in full accordance with the terms and conditions of the Contract, and that all materialmen, laborers and subcontractors, as defined in Chapter 713.01, Florida Statutes, have been paid the amounts due them out of any previous payments made to the contractor by the Owner. Further, I agree to promptly pay each materialman, laborer and subcontractor, as defined in Chapter 713.01, Florida Statutes, upon receipt of payment from the Owner, out of the amount paid to me on account of such materialman's laborer's or subcontractor's work, the amount to which said materialman, laborer and subcontractor is entitled, reflecting the percentage actually retained, if any, from payments to myself on account of such materialman's, laborer's and subcontractor's work.

CONTRACTOR _____ By: _____
(Contractor must sign in the presence of a Notary) (Type Name)

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me by means of

☐ physical presence or ☐ online notarization this:

(date)

by _____ of _____
(name of officer or agent, title of officer or agent) (name of corporation acknowledging)

a _____ corporation, on behalf of the corporation. He/she is personally known to me or has produced

(state or place of incorporation)

as identification.

(type of identification)

(Signature of Notary)

(Name typed printed or stamped)

CERTIFICATION BY THE ARCHITECT- ENGINEER: I certify that I have checked and verified this Progress Payment Application; that to the best of my knowledge and belief, the above application is a true statement of the value of the work performed and the materials suitable stored on the site; that all work and materials included in this Certificate have been observed by me or by my authorized assistants; that all work has been performed and material supplied in full accordance with the terms of this Contract; and I approved for payment the amount noted above.

REVIEWED AND RECOMMENDED FOR PAYMENT:

Architect-Engineer _____

Date: _____

APPROVED FOR SERVICES, PERFORMED AS STATED BY:

Per CFO Memorandum No. 01 (2012-2013) dated July 26, 2012, Building Construction is exempt from Contract Summary Form requirements.

CERTIFICATION STATEMENT: "I _____ certify that I am the Contract Manager and the provided information is true and correct; the goods and services have been satisfactorily received and payment is now due. I understand that the office of the State Chief Financial Officer reserves the right to require additional documentation and/or to conduct periodic post-audits of any agreements."

Owner's Project Manager _____

Date: _____

DMS Form CM03 Revised 8/2024

Exhibit H

FINAL PAY REQUEST CHECKLIST (Example)



Real Estate Development and Management

4050 Esplanade Way
Tallahassee, FL 32399-0950
850-488-2074

Ron DeSantis, Governor
Pedro Allende, Secretary

FINAL PAY REQUEST CHECKLIST

Project Number: _____
Project Name: _____
Substantial Completion Date: _____
Final Punch List Inspection Date: _____

The following items need to be submitted with the Contractor's request for Final Payment:

- ☐ Form CM02 – RUSH Contractor's Payment Routing Submittal (revised 8/24)
- ☐ Form CM03 – Pay Request - 1 electronic copy (Revised 8/24)
- ☐ Final Schedule of Contract Values
- ☐ Consent of Surety to Final Payment (bonded projects only)
- ☐ Power of Attorney from Surety for Release of Final Payment (bonded projects only)
- ☐ Notice of Release of Lien from each subcontractor who has filed Notices to Owner
- ☐ Form CM07 - Contractor's Affidavit of Contract Completion - 1 electronic copy (Revised 8/24)
- ☐ Form AE11 - Certificate of Contract Completion 1 completed by A/E - 1 electronic copy (Revised 8/24)
- ☐ Contractor's Guarantee of Construction for one year from the date of Substantial Completion
- ☐ List of Subcontractors, with addresses, telephone numbers and email addresses
- ☐ Manufacturer's warranties as required by specifications in the name of the State or Client Agency
- ☐ Fully executed Roof Warranty, if applicable, in the name of the State or Client Agency
- ☐ Shop drawings and brochures
- ☐ Attendance lists of training of State Agency personnel in the operation of new equipment for each system: HVAC, controls, fire alarm, etc.
- ☐ Submission of all Operation & Maintenance Manuals (1 hard copy; 1 electronic copy)
- ☐ Certificate of Occupancy from Building Permit Authority
- ☐ Form AE14 - Certificate of Specification No Prohibited Hazardous Materials (Revised 8/24)
- ☐ Form AE18 - ADA Compliance Certificate (Revised 8/24)
- ☐ Submission of all contractually required attic stock and spare parts.
- ☐ Submission of "As-built" plans and specifications (1 electronic copy)
- ☐ Submission of CAD and PDF files of "As-Built" Documents
- ☐ Submission of Construction Documents (1 electronic copy) – Verify if Facility Manager or Client Agency request a hard copy.
- ☐ Form PD27 - Sustainable Design Confirmation (1 electronic copy) (Revised 8/24)

Please submit an electronic copy of all close-out documents, in addition to the hard copies.

Contractor's Signature: _____ Date: _____

Project Architect/Engineer's Signature: _____ Date: _____

DMS Project Manager's Signature: _____ Date: _____

DMS Form AE10 Revised 8/2024

Form on website: http://dms.myflorida.com/business_operations/real_estate_development_management/building_construction/forms_and_documents

Exhibit J

NOTICE TO PROCEED (Example)



Real Estate Development and Management

4050 Esplanade Way
Tallahassee, FL 32399-0950
850-488-2074

Ron DeSantis, Governor

Date

Contact
Company
Address
City, FL 32312

RE: (Project Number)
(Project Name)
Notice to Mobilize on Site and to Proceed with Construction

(Insert Mr. or Ms and Name):

Based upon issuance of the following project related permits: (NOTE: Include all permits needed for NTP. Complete each column before tabbing to next one. Example: Enter permit name, hit enter, add another permit name. When done with permit names, tab to Jurisdiction column and complete as before).

PERMIT	JURISDICTION	NUMBER	DATE
(Type)	Location	(Permit #)	(Permit Date)

Your firm may mobilize the site and proceed with construction.

This establishes the contract commencement date as (Insert Commencement Date) and (Insert Substantial Completion Date) as the required date of substantial completion based upon (Insert Contract Days) contract calendar days.

The State's Project Manager, (Name), will represent the Owner in matters pertaining to the project.
(Delete or change the following if not needed) An Initial Construction Conference will be scheduled by the Architect/Engineer. The conference is not a prerequisite to commencing work on the project.
We look forward to a pleasant association.

Sincerely,

(Name)
Project Manager
Real Estate Development and Management
(Insert Street Address & Suite #)
(Insert City, State & Zip Code)
Tel: _____ Fax: _____

cc:
DMS Contracts Section, (DMS-Facility Manager Name)
(Architect-Engineer Name), (Client Agency Name)

DMS Form PD10 Revised 8-19

Exhibit K

CONTRACTOR'S PARTIAL PAYMENT ROUTING TRANSMITTAL (Example)



RUSH

Contractor's Partial Payment Routing Transmittal

Payment Request # _____

Payment Request Date: _____

Contractor (Company Name, Address, Phone, Fax) _____

DMS Project Number: _____

DMS Project Name: _____

ALL RECIPIENTS

The attached payment requisition represents a sizable sum of money which is due and payable. Therefore, in order to comply with Florida Law, each recipient must act promptly in handling the attached payment requisition, recording dates, amount approved for payment, voucher number(s), and warrant number(s), as applicable and in initialing and retaining copy.

CONTRACTOR			ARCHITECT-ENGINEER			
<p>Complete this RUSH Contractor's Partial Payment Routing Transmittal Form (CM02), Certificate of Partial Payment Form (CM03) and Pay Application Audit Summary (CM03a). The pay application will be submitted electronically. Forward ONE (1) COMPLETE SET, of the following, to the Project ARCHITECT/ENGINEER (A/E). If no A/E, then forward directly to DMS Project Manager.</p> <ul style="list-style-type: none"> <input type="checkbox"/> One (1) original Routing Transmittal (CM02) <input type="checkbox"/> One (1) original Certificates of Partial Payment (Form CM03) <input type="checkbox"/> One (1) original Pay Application Audit Summaries (Form CM03a) <input type="checkbox"/> One (1) Schedule of Values <input type="checkbox"/> One (1) complete sets of support documentation <input type="checkbox"/> One (1) CM Status Report of Certified Business Enterprise (CBE) (CM05) <input type="checkbox"/> One (1) copy of your Activation Letter or the payment portion of your Contract (including GMP Contract) <p>Note: Payment Requests not properly prepared as to form, content, or back-up data will be returned for correction and resubmission. If you have any questions contact the DMS Project Manager.</p>			<p>Review, approve, and sign if everything is in order and the services have been approved and backup is complete. This should not take longer than two to three days.</p> <p>Forward ONE (1) COMPLETE SET, of the following, to the DMS Project Manager for final review and approval.</p> <ul style="list-style-type: none"> <input type="checkbox"/> One (1) original Routing Transmittal (CM02) <input type="checkbox"/> One (1) original Certificates of Partial Payment (Form CM03) <input type="checkbox"/> One (1) original Pay Application Audit Summaries (Form CM03a) <input type="checkbox"/> One (1) Schedule of Values <input type="checkbox"/> One (1) complete sets of support documentation <input type="checkbox"/> One (1) CM Status Report of Certified Business Enterprise (CBE) (CM05) <input type="checkbox"/> One (1) copy of your Activation Letter or the payment portion of your Contract (including GMP Contract) <p>Note: Approval should not take longer than two to three days before forwarding to the DMS Project Manager for final review and approval or a percentage of interest may be paid to the Contractor.</p>			
CONTRACTOR INITIALS	DATE FORWARDED	REQUESTED PARTIAL PAYMENT \$ AMOUNT	DATE RECEIVED	DATE FORWARDED	ARCHITECT-ENGINEER'S INITIALS	REVIEWED & APPROVED REQUESTED PARTIAL PAYMENT \$ AMOUNT

DMS PROJECT MANAGER			
<p>Review, approve and sign this payment request promptly. If everything is in order and the services have been approved, approval should not take longer than two to three days before forwarding to the Client Agency (CA) for vouchering or a percentage of interest may be paid to the Contractor. Forward to CA for vouchering (one (1) complete set) as follows: Routing Transmittal, Certificate of Partial Payment with a Schedule of Values and support documentation, and Pay Application Audit Summary. Retain one (1) complete set in DMS project files.</p>			
DATE RECEIVED	DATE FORWARDED	PROJECT DIRECTOR'S INITIALS	APPROVED PARTIAL PAYMENT \$ AMOUNT

CLIENT AGENCY						
<p>Client Agency: This payment request has been reviewed and approved by the DMS Project Manager for payment. After vouchering is complete, forward to Division of Financial Services for payment. The time period for processing and payment of this invoice is usually 15-20 calendar days, including mailing time or a percentage of interest may be paid to the Contractor. Upon receiving warrant from Financial Services, mail warrant to Contractor and mail a copy of this completed Routing Transmittal to the DMS Project Manager and retain a copy for your files. If the invoice is altered during auditing by the Vouchering Agency or Financial Services, completed copies of the invoice and support documentation as altered should be sent to the Contractor and Project Manager. Please call the DMS Project Manager if you have any questions or comments concerning this partial payment request.</p>						
Date Client Agency Received				Date Financial Services Received		
FOR VOUCHER			FOR WARRANT			
VOUCHER NUMBER	TRANSACTION DATE	\$ AMOUNT	DATE WARRANT FORWARDED	WARRANT NUMBER	WARRANT DATE	\$ AMOUNT

DMS Form CM02 Revised 8/2024

Form on website: http://dms.myflorida.com/business_operations/real_estate_development_management/building_construction/forms_and_documents

Exhibit L

ACTIVATION LETTER FOR CONTINUING CONTRACTS (Example)



Real Estate Development and Management

4050 Esplanade Way
Tallahassee, FL 32399-0950
850-488-2074

Ron DeSantis, Governor
Pedro Allende, Secretary

January XX, 2025

ABC Construction Corporation
James Jones, President
1234 Main Street
Tallahassee, Florida 32333

RE: MSFM-XXXXXXX
DMS Building, Design and Build Elevator Modernization
Capitol City, Florida

Continuing Contract Identifier: CM-XXXX
Activation No.: XX
FEID: 59-XXXXXXX
State FLAIR Code: XXXX

Dear Mr. Jones:

Under the terms of Article 2.2 of the above referenced Continuing Contract, we accept your proposal dated January XX, 2024, for services on the above referenced Project.

You are hereby authorized to commence Preconstruction Phase services in the amount of \$XX,XXX.00. A separate construction authorization or a Guaranteed Maximum Price activation must be issued prior to the commencement of the Construction Phase services.

The scheduled completion date for all Preconstruction Phase services is XX calendar days.

Monthly invoices shall be rendered in accordance with the approved Schedule of Contract Values. *Each invoice must be accompanied by a copy of this activation letter.*

Please continue your work under the direction of our Project Manager, Tom Smith. Thank you in advance for your services.

Sincerely,

Approved

XXX, Contracts Administrator
Contracts Section

Brian Fienemann, Director
Real Estate Development and Management

cc Tom Smith – DMS Project Manager
Fiscal - - DMS

12/2025