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DEPARTMENT OF MANAGEMENT
SERVICES

REAL ESTATE DEVELOPMENT AND MANAGEMENT

AGREEMENT BETWEEN OWNER AND CONSTRUCTION MANAGER

PROJECT NO:

STATE FLAIR CODE:

STATE MV DESIGNATION:

PROJECT NAME AND LOCATION:

CONSTRUCTION MANAGER:

ARCHITECT-ENGINEER:

Charlie Crist
Governor

Linda H. South
Secretary

**FORM OF AGREEMENT
BETWEEN OWNER AND CONSTRUCTION MANAGER**

THIS AGREEMENT made this _____ day of _____ (*month*) _____ in the year Two Thousand Seven by and between Real Estate Development and Management, Department of Management Services, State of Florida, hereinafter called the Owner, and

(*Construction Management Firm Name and Address*)

PHONE: FEDERAL TAX I.D. NUMBER:

hereinafter called the Construction Manager.

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

The Construction Manager accepts the relationship of trust and confidence established between him and the Owner by this Agreement. He covenants with the Owner to furnish his best skill and judgment and to cooperate with the Architect-Engineer in furthering the interests of the Owner. He agrees to furnish efficient business administration and superintendence and use his 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.

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

- Section One: Summary of Work*
- Section Two: GMP Price Summary – To include Construction Authorization & Tax Savings*
- Section Three: Scope Clarifications and Assumptions*
- Section Four: Detailed Estimate*
- Section Five: Bid Tabulations and Recommendations*
- Section Six: Preliminary Construction Schedule*
- Section Seven: Contract Documents – Drawing List and Specification List*

This Agreement shall not be superseded by any provisions of the documents for construction and may be amended only by written instrument signed by both Owner and Construction Manager.

1.3 Definitions:

Architect-Engineer - _____ (*Architect-Engineer Name/Address*) _____

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

Construction Manager - _____ (*Construction Manager Name/Address*)

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

Owner - The State of Florida, Department of Management Services, Real Estate Development and Management, acting through its Secretary or those persons designated by the Secretary to act in his behalf, as Agent for the _____ (*Agency*) pursuant to the Client agreement dated _____ (*Date*). The entity that will occupy, use and own the project upon substantial completion is the «Ownerentity». The funds with which the compensation of the architects, engineers, Construction Managers, etc. will be paid are under the control of the «Ownerentity», based on approval of each payment by Real Estate Development and Management. All duties of Owner hereinafter shall be performed by Real Estate Development and Management.

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

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

Project - The Project is the total work to be performed under this Agreement. The Project consists of permitting, construction and code inspection for " _____ (*Project Name/Number*) " necessary to build the component parts of the project identified in Exhibit B.

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

1.4 Owner's Construction Budget: Owner's funds budgeted and requested for construction of the Project. The Owner's Construction Budget is _____ (*Amount*) identified in Exhibit B, including all Construction Manager fees, costs of the work and the Owner's and Construction Manager's construction and interface contingencies as defined in Articles 8 and 9. This acknowledgement of the Owner's budgeted funds is not to be construed as the Construction Manager's Guaranteed Maximum Price. A Guaranteed Maximum Price will be offered by separate documentation as outlined in Article 7.

ARTICLE 2 CONSTRUCTION MANAGER'S SERVICES

The services which the Construction Manager shall provide include, but are not limited to, those described or specified herein. The services described or specified shall not be deemed to constitute a comprehensive specification having the effect of excluding services not specifically mentioned.

2.1 PROJECT MANAGEMENT INFORMATION SYSTEM (PMIS)

2.1.1 General:

- (1) Commencing immediately after contract award, the Construction Manager shall implement and shall utilize throughout the life of this Contract 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.
- (3) If requested by the Project Director, the Construction Manager shall conduct a comprehensive workshop in Tallahassee for participants designated by the Project Director and additional seminars as required to provide instruction. This workshop and the seminars shall facilitate each participant's and the Owner's representatives' use and understanding of PMIS; shall support, in-part, the function of organizing in concert with the Architect-Engineer for the design and construction of the Project; and shall establish, with the full concurrence of the Owner and the Architect-Engineer, procedures for accomplishing the management control aspect of the Project.
- (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.

2.1.2 NARRATIVE REPORTING SUBSYSTEM

- (1) The Construction Manager shall prepare written 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 programs permits, construction problems and recommendations, and plans for the succeeding month.
 - (f) A Daily Construction Diary during the construction phase describing events and conditions on the site.
 - (g) A monthly Minority Business Enterprise report during the construction phase summarizing the participation of certified minority subcontractors/material suppliers for the current month, and project to date. The report shall include the names, addresses, and dollar amount of each certified MBE participant.
 - (h) A Contractor's Minority Business Enterprises Status Report of Partial Payment form is attached to this Agreement as Exhibit L and is to be completed and submitted with each pay request.
 - (i) 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.
- (3) The reports outlined in subsection (2)(a) through (e) above shall be bound with applicable computer reports and submitted monthly during design and construction phases and shall be current through the end of the preceding month. Copies shall be transmitted to the Owner and the Architect-Engineer and others designated by the Project Director with the monthly pay requisition.

Additional copies of the report outlined in subsection (2)(a) shall be bound separately and distributed monthly as directed by the Project Director.

- (4) The report outlined in subsection (2)(f) above shall be maintained at the site available to the Owner and Architect-Engineer. A copy, bound, of the complete diary shall be submitted to the Owner at the conclusion of the project.

2.1.3 Scheduled Control Subsystem

- (1) Master Project Schedule - Upon award of this Contract, 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.
- (2) Construction Schedule And Requirements For Overtime Work For Projects With Construction Costs In Excess of \$5,000,000.00 Within thirty (30) days after the date of the Owner's issuance of a Notice to Proceed, the Construction Manager shall prepare and submit to the Architect-Engineer a construction schedule in quadruplicate graphically depicting the activities contemplated to occur as a necessary incident to performance of the work required to complete the project, showing the sequence in which the Construction Manager proposes for each such activity to occur and duration (dates of commencement and completion, respectively) of each such activity. An example of an acceptable form of such a construction schedule is contained in Appendix I of the Corps of Engineers' Regulation ER 1-1-11 entitled "Network Analysis System", a copy of which is available to the Construction Manager from the Architect-Engineer, upon request. Another form of construction schedule

which provides the same kind of information and employs the same basic principles as illustrated in Appendix I of the Corps of Engineers' Regulation ER 1-1-11 will be acceptable to the Owner if used by the Construction Manager; provided, however, that the Architect-Engineer shall determine whether the construction schedule developed and submitted by the Construction Manager meets the requirements stated above and such determination shall be binding on the Construction Manager. Failure of the Construction Manager to develop and submit a construction schedule as aforesaid shall be sufficient grounds for the Architect-Engineer to find the Construction Manager in substantial default and certify to the Owner that sufficient cause exists to terminate the contract or to withhold any payment.

Following development and submittal of the construction schedule as aforesaid, the Construction Manager shall, at the end of each calendar month occurring thereafter during the period of time required to finally complete the subject project, or at such earlier intervals as circumstances may require, update and/or revise the construction schedule to show the actual progress of the work performed and the occurrence of all events which have affected the progress of performance of the work already performed or will affect the progress of the performance of the work yet to be performed in contrast with the planned progress of performance of such work, as depicted on the original construction schedule and all updates and/or revisions thereto as reflected in the updated and/or revised construction schedule last submitted prior to submittal of each such monthly update and revision. Each such update and/or revision to the construction schedule shall be submitted to the Architect-Engineer in duplicate. Failure of the Construction Manager to update, revise, and submit the construction schedule as aforesaid shall be sufficient grounds for the Architect-Engineer to find the Construction Manager in substantial default and certify to the Owner that sufficient cause exists to terminate the Contract or to withhold payment to the Construction Manager until a schedule or schedule update acceptable to the Architect-Engineer is submitted.

- (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. The Occupancy Schedule shall be produced and updated monthly from its inception through final Owner occupancy.

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

Estimates

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

- 2.1.5 Project Accounting Subsystem - The operation of this subsystem shall enable the Construction Team to plan effectively and to monitor and control the funds available for the project, cash flow, costs, change orders, payments, and other major financial factors by comparison of budget, estimate, total commitment, amounts invoiced, and amounts payable. This subsystem will be produced and updated monthly and includes the following reports which together will serve as a basic accounting tool and an audit trail. The Construction Manager will retain all project files in a manner consistent with proper accounting procedures that would be sufficient for an audit by the Owner for a period of 5 years after final completion of the project. This report will also provide for accounting by building and site element.
- (a) Costs Status Report presenting the budget, estimate, and base commitment (awarded contracts and purchase orders) for any given contract or budget line item. It shall show approved change orders for each contract which when added to the base commitment will become the total commitment. Pending change orders will also be shown to produce the total estimated probable cost to complete the work.
 - (b) A Payment Status Report showing the value in place (both current and cumulative), the amount invoiced (both current and cumulative), the retained, the amount payable (both current and cumulative), and the balance remaining. A summary of this report shall accompany each pay request.
 - (c) A Detailed Status Report showing the complete activity history of each item in the project accounting structure. It shall include the budget, estimate and base commitment figures for each contract. It shall give the change order history including change order numbers, description, proposed and approved dates, and the proposed and approved dollar amounts. It shall also show all pending or rejected change orders.
 - (d) A Cash Flow Spreadsheet showing the projected accumulation of cash payments against the project. Cash flow projections shall be generated for anticipated monthly payments as well as cumulative payments.
 - (e) A Detailed Schedule of Values shall be maintained as necessary to supplement the operation of the project accounting subsystem. The detailed schedule of values will be used to provide construction cost accountability for general conditions work, on-site reimbursable expenses, and costs requiring accounting needs.

2.2 PROJECT MANUAL

- (1) Upon award of contract the Construction Manager shall develop a draft comprehensive Project Manual describing the services set forth in this Contract. This shall provide a plan for the control, direction, coordination and evaluation of work performed throughout the project organization including identification of Key personnel, responsibilities of Construction Manager, Owner and Architect-Engineer; work flow diagrams; and strategy for bidding the work. The Project Manual shall be updated as necessary throughout the design, construction and Owner occupancy phases. Five copies of the Project Manual and any updates shall be submitted to the Owner and Architect-Engineer. In developing the Project Manual, the Construction Manager shall coordinate with the Owner and the Architect-Engineer.
- (2) Contents of Project Manual - The Project Manual shall describe in detail the procedures for executing the work and the organizations participating. The Project Manual shall include as a minimum the following sections:
 - (a) Project Definition - The known characteristics of the project or subprojects shall be described in general terms which will provide the participants a basic understanding of the project or sub-projects.
 - (b) Project Goals - The schedule, budget, physical, technical and other objectives for the project shall be defined.
 - (c) Project Strategy - A narrative description of the project delivery methods shall be utilized to accomplish the project goals.
 - (d) Project Work Plan - A matrix display of the program of work to be performed by the Construction Manager, the Architect-Engineer and the Owner during each phase of the project.
 - (e) Project Organization - A summary organization chart showing the interrelationships between the Owner, the Construction Manager and the Architect-Engineer, and other supporting organizations and permitting review agencies. Detailed charts, one each for the Construction Manager, the Architect-Engineer, the Client Agency and Owner showing organizational elements participating in the project shall be included.
 - (f) Responsibility Performance Chart - A detailed chart showing the specific responsibilities and interrelationships of the Owner, the Architect-Engineer, and Construction Manager. The Responsibility Performance Chart shall indicate major responsibility, and minor responsibility, for each specific task required to deliver the project. The Construction Manager shall develop a similar chart for the personnel within his own organization who are assigned to the project, and also for the personnel of the Owner and the

Architect-Engineer from data supplied by each.

- (g) Flow Diagrams - These charts shall display the flow of information and the decision process for the review and approval of shop drawings and submittals, progress and change orders.
- (h) Written Procedures - The Construction Manager will provide written procedures for communications and coordination required between Construction Team members throughout the project. Procedures shall cover such items as correspondence, minutes, reports, inspections, team meetings, technical reviews, design reviews, and other necessary communications.

2.3 DESIGN REVIEW AND RECOMMENDATIONS

- (1) Review and Recommendations and Warranty. - The Construction Manager shall familiarize himself thoroughly 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. He shall make recommendations with respect to the selection of systems and materials, and cost reducing alternatives including assistance to the Architect-Engineer, and Owner in evaluating alternative comparisons versus long term cost effects. The evaluation shall speak to the benefits of the speed of erection and early completion of the project. He shall furnish pertinent information as to the availability of materials and labor that will be required. He shall submit to the Owner, Permitting Authority and Architect-Engineer such comments as may be appropriate concerning construction feasibility and practicality. He shall call to the Project Director's and the Architect-Engineer's attention any apparent defects in the design, drawings and specifications or other documents. He shall prepare an estimate of the construction cost utilizing the unit quantity survey method.
- (2) Review Reports and Warranty - Within 45 days after receiving the Construction Documents for each phase of the project, the Construction Manager shall perform a specific review thereof, focused upon factors of a nature encompassed in Paragraph (1) above and on factors set out in Paragraph (5). Promptly after completion of the review, he shall submit to the Project Director and Permitting Authority, with copies to the Architect-Engineer, a written report covering suggestions or recommendations previously submitted, additional suggestions or recommendations as he may deem appropriate, and all actions taken by the Architect-Engineer with respect to same, any comments he may deem to be appropriate with respect to separating the work into separate contracts, alternative materials, and all comments called for under Article 2.3(5).

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

DISCLAIMER OF WARRANTY: - THE OWNER DISCLAIMS ANY WARRANTY THAT THE PLANS AND SPECIFICATIONS FOR THE PROJECT ARE ACCURATE, PRACTICAL, CONSISTENT OR CONSTRUCTIBLE.

- (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 Director and the Architect-Engineer of the required procurement and schedule. Such information shall be included in the bid documents and made a part of all affected sub-contracts. As soon as the Architect-Engineer has completed drawings and technical specifications and the Construction Manager has obtained permitting approval, the Construction Manager shall prepare invitations for bids. The Construction Manager shall keep himself informed of the progress of the respective subcontractors or suppliers, manufacturing or fabricating such items and advise Project Director, Owner 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 sub-contracts on the current schedule while the design is being completed. He 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 provide that each bid package clearly identifies the work included in that particular separate subcontract, its schedule for start and completion and its relationship to other separate Construction Managers.
- (b) Without assuming any Design responsibilities of the Architect-Engineer, the Construction Manager shall include in the reports required under Article 2.3(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 Director 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 and the Owner's representatives and the Architect-Engineer to perform their respective duties in the management, inspection, and supervision of construction.

Tangible personal property, otherwise referred to as Job-Site facilities, include but are not limited to such things as trailers, toilets, typewriters, computers and any other equipment necessary to carry on the project. The method of acquiring such job-site facilities which are planned to become the property of the owner at the conclusion of the project shall be evaluated based on cost over the life of the project. Owning versus leasing shall be considered by the Construction Manager obtaining at least two (2) proposals for leasing and at least two (2) proposals for purchasing and then analyzing which is least expensive over the usage life of the item. The Construction Manager shall present his evaluation with recommendation to the owner for approval.

When the Construction Manager wishes to supply Job-Site Facilities from his own equipment pool, he shall first evaluate buy versus lease as discussed in the paragraph above. If leasing is found to be the least expensive approach, then he may lease such Job-Site Facilities from his own equipment pool at a price not greater than the lowest of the three (3) lease proposals obtained.

For all such facilities purchased which may become the property of the owner at the conclusion of the project, the Construction Manager shall maintain ownership responsibilities of such facilities until the project conclusion. Reimbursement for cost of such equipment will be made at the conclusion of the project at the documented purchase price. At that time, the Construction Manager shall provide the owner with a complete inventory for each unit of equipment. The inventory shall describe the equipment and identify the purchase price, serial number, model number and condition. Where said equipment has a title, said title shall be properly transferred to the Owner or to his 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, if any, of building areas should be provided for and may be provided as a practical matter, in order to assure orderly progress of the work in periods when extreme weather conditions are likely to be experienced. He shall submit to the Construction Team his 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; he shall make analysis as necessary to (1) determine and report on availability of labor, material, equipment, potential bidders, and possible impact of any shortages or surpluses of labor or material, and (2) in light of such determinations, make recommendations as may be appropriate with respect to long lead procurement, separation of construction into bid packages, sequencing of work, use of alternative materials, equipment or methods, other economics in design or construction, and other matters that will promote cost savings and completion within the scheduled time.
- (b) Within 30 days after receiving Notice to Proceed, the Construction Manager shall submit a written "Construction Market Analysis and Prospective Bidders Report" setting out recommendations and providing information as to prospective bidders. As various bid packages are prepared for bidding, the Construction Manager shall submit to the Project Director and the Architect-Engineer a list of potential bidders. The

Construction Manager shall be responsible to stimulate bidder interest in the local market place and identify and encourage bidding competition.

- (c) The Construction Manager shall carry out an active program of stimulating interest of qualified Construction Managers in bidding on the work and of familiarizing those bidders with the requirements of this project.

2.4 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 he shall provide no less than those personnel during the respective phases of construction that are set forth in Exhibit "C" to this agreement. He shall not change any of those persons named in Exhibit "C" 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 his 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 his Subcontractors, however, such attendance shall not diminish either the authority or responsibility of the Construction Manager to administer the subcontractor.
- (3) Schedule and Project Manual Provisions - The Construction Manager shall provide subcontractors and the Owner, its representatives and the Architect-Engineer with copies of the Project Manual (total number of copies not to exceed 10) developed and updated as required by Article 2.2 expanded for the Construction Phase employing their respective milestones, beginning and finishing dates, their respective responsibilities for performance and the relationships of their work with respect to subcontractors and suppliers. He shall also continue to provide current scheduling information and provide direction and coordination regarding milestones, beginning and finishing dates, responsibilities for performance and the relationships of the Construction Manager's work to the work of his subcontractors and suppliers to enable them to perform their respective tasks so that the development of construction progresses in a smooth and efficient manner in conformance with the overall project schedule. The schedule shall include all phases of the construction work, material supplies, long lease procurement, approval of shop drawings, change orders in progress, schedules for change orders, and performance testing requirements. He shall advise the Owner, its representatives and the Architect-Engineer of their required participation in any meeting or inspection giving each at least one week notice unless such notice is made impossible by conditions beyond his control. He shall hold job-site meetings at least once each month with the Construction Team and at least once each week with the subcontractors and the Architect-Engineer's Field Representative, or more frequently as required by work progress, to review progress, discuss problems and their solutions and coordinate future work with all subcontractors.
- (4) Solicitation of Bids
 - (a) Without assuming responsibilities of the Architect-Engineer, and unless waived in writing by the Owner, the Construction Manager shall prepare invitations for bids, or requests for proposal when applicable, for all procurements of long lead items, materials and services, and for Subcontractor contracts. Such invitations for bids shall be prepared in accordance with the following guidelines:
 1. Contracts over \$1,000 but not exceeding \$10,000 may be entered into by the Construction Manager with the firm which submits the lowest verbal quotation. The Construction Manager shall obtain a minimum of two (2) verbal quotations. These quotations shall be entered on a bid tabulation sheet and a copy of such tabulation sent to the Owner, Architect-Engineer and to each firm. The successful quotation shall be confirmed by written contract or purchase order to the low bid firm defining the scope and quality of work to be provided.
 2. Contracts exceeding \$10,000 but not exceeding \$200,000 may be entered into by the Construction Manager with the firm who is qualified and submits the lowest responsive proposal. The Construction Manager shall request at least three (3) firms to submit sealed written proposals based on a written drawings and/or specification. The written proposals shall all be opened publicly at the location, date and time named by the Construction Manager in his request for proposal. A tabulation of the results shall be furnished to the Owner, Architect-Engineer and to each firm.
 3. Contracts exceeding \$200,000 but not exceeding \$500,000 may be entered into by the Construction Manager with the firm who is qualified and submits the lowest responsive proposal. The Construction

Manager shall advertise these projects at least once with the last advertisement appearing at least 21 calendar days prior to the established bid opening date. 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.

4. Contracts exceeding \$500,000 shall be treated the same as described under 3 above except that the advertisement shall be run for at least 30 days prior to the established bid opening and at least 5 days prior to any scheduled pre-bid conference.
 5. Individual purchases of materials or rentals or leases of equipment amounting to less than \$1,000.00 each may be made without bids or quotes when reasonably necessary to expedite work on the project, however, the Construction Manager shall not divide or separate a procurement in order to avoid the requirements set forth above.
 6. Site utilities may be acquired at market rates from the entity(ies) providing such in the franchise area.
- (b) As part of such preparation, the Construction Manager shall review the specifications and drawings prepared by the Architect-Engineer. Ambiguities, conflicts or lack of clarity of language, use of illegally restrictive requirements, and any other defects in the specifications or in the drawings noted by the Construction Manager shall be brought to the attention of the Project Director and Architect-Engineer in written form.
- (c) For each separate construction contract exceeding \$25,000, the Construction Manager shall, unless waived by Owner, conduct a pre-bid conference with prospective bidders, the Architect-Engineer and Project Director. In the event questions are raised which require an interpretation of the bidding documents or otherwise indicate a need for clarification or correction of the invitation, the Construction Manager shall transmit these to the Architect-Engineer and upon receiving clarification or correction in writing shall prepare an addendum to the bidding document, and issue same to all of the prospective bidders.
- (d) For all contracts exceeding \$25,000, the Construction Manager shall establish a pre-qualification procedure for applicable subcontract trades.
- (5) Bonds - In accordance with the provisions of Section 255.05, Florida Statutes, the Construction Manager shall provide to the Owner, on forms furnished by the Owner, a 100% Performance Bond and a 100% Labor and Material Payment Bond each in an amount not less than the total construction cost as defined in Article 9 and inclusive of the Construction Manager's fees. To be acceptable to the Department of Management Services as Surety for Performance Bonds and Labor and Material Payment Bonds, a Surety Company shall comply with the following provisions:
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 Contract 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.

CONTRACT AMOUNT	POLICYHOLDER'S RATING	REQUIRED FINANCIAL RATING
\$ 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
50,000,000 TO 100,000,000	A-	CLASS VII

- B. The Surety Company shall not expose itself to any loss on any one risk in an amount exceeding ten (10) percent of its surplus to policyholders, provided:
- (a) Any risk or portion of any risk being reinsured shall be deducted in determining the limitation of the risk as prescribed in this section. These minimum requirements shall apply to the reinsuring carrier providing authorization or approval by the State of Florida, Department of Financial Services, Office of Insurance Regulation to do business in this state have been met.
 - (b) In the case of the surety insurance company, in addition to the deduction for reinsurance, the amount assumed by any co-surety, the value of any security deposited, pledged or held subject to the consent of the surety and for the protection of the surety shall be deducted.
- (6) 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. He 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 he shall continue to exert his 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.
- (7) Subcontractor Interfacing - The Construction Manager shall be the single point of interface with all subcontractors for the Owner and all of its agents and representatives including the Architect-Engineer. He shall negotiate all change orders, field orders and request for proposals, with all affected subcontractors and shall review the costs of those proposals and advise the Owner and Architect-Engineer of their validity and reasonableness, acting in the Owner's best interest prior to requesting approval of each change order from the Owner. Before any work is begun on any change order, a written authorization from the Owner must be issued. However, when health and safety are threatened, the Construction Manager shall act immediately to remove the threat to health and safety. He shall also carefully review all shop drawings and then forward the same to the Architect-Engineer for review and actions. The Architect-Engineer will transmit them back to the Construction Manager who will then issue the shop drawings to the affected subcontractor for fabrication or revision. The Construction Manager shall maintain a suspense control system to promote expeditious handling. He shall request the Architect-Engineer to make interpretations of the drawings or specifications requested of him by the subcontractors and shall maintain a suspense control system to promote timely response. He shall advise the Project Director and Architect-Engineer when timely response is not occurring on any of the above.
- (8) 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.
- (9) Job Site Requirements
- (a) The Construction Manager shall provide for each of the following activities as a part of his Construction Phase fee:
 1. Maintain a log of daily activities, including manpower records, weather, delays, major decisions, etc.
 2. Maintain a roster of companies on the project with names and telephone numbers of key personnel.
 3. Establish and enforce job rules governing parking, clean-up, use of facilities and worker discipline.
 4. Provide labor relations management for a harmonious, productive project.
 5. Provide a safety program for the project to meet OSHA requirements. Monitor for subcontractor compliance without relieving them of responsibilities to perform work in accordance with the best acceptable practice.
 6. Provide a quality control program as developed under Article 2.4(6) hereinabove.
 7. Miscellaneous office supplies that support the construction efforts which are consumed by his own forces.
 8. Travel to and from his home office to the project site and Tallahassee as the project requires.
 - (b) The Construction Manager shall provide personnel and equipment or shall arrange for separate

subcontracts to provide each of the following as a direct cost item:

1. Schedule the services of independent testing laboratories and provide the necessary testing of materials to ensure conformance to contract requirements.
2. The printing and distribution of all required bidding documents and shop drawings, including the sets required by the Permitting Authority's inspectors.

(10) Job Site Administration - The Construction Manager shall provide as part of his construction phase fee, job site administrative functions during construction to assure proper documentation, including but not limited to such things as the following:

- (a) Job Meetings - Hold weekly progress and coordination meetings to provide for an easy flowing project. Implement procedures and assure timely submittals, expedite processing approvals and return of shop drawings, samples, etc. Coordinate and expedite critical ordering including direct tax saving purchases and delivery of materials, work sequences, inspection and testing, labor allocation, etc. Review and coordinate each subcontractor's work. Review and implement revisions to the Schedule. Monitor and promote safety requirements. In addition, regular project status meetings will be held between the architect, owner and Construction Manager either biweekly or monthly, whichever is designated by the Project Director.

Use the job site meeting as a tool for preplanning of work and enforcing schedules and for establishing procedures, responsibilities, and identification of authority for all to clearly understand.

Identify party or parties responsible for follow up on any problems, delay items or questions and record course for solution. Revisit each pending item at each subsequent meeting until resolution is achieved. Require all present to make any problems or delaying event known to those present for appropriate attention and resolution.

- (b) Shop Drawing Submittals/Approvals - Provide staff to check shop drawings and to implement procedures for submittal and transmittal to the Architect-Engineer of such drawings for action, and closely monitor their submittal and approval process.
- (c) Material and Equipment Expediting - Provide staff to closely monitor material and equipment deliveries, critically important checking and follow-up procedures on supplier commitments of all subcontractors.
- (d) Payments to subcontractors - Develop and implement a procedure for review, processing, and payment of applications by subcontractors for progress and final payments.
- (e) Document Interpretation - Refer all questions for interpretation of the documents prepared by the Architect-Engineer to the Architect-Engineer.
- (f) Reports and Project Site Documents - Record the progress of the project. Submit written progress reports to the Owner and the Architect-Engineer including information on the subcontractor's work, and the percentage of completion. Keep a daily log available to the Owner, the Architect-Engineer and the Permitting Authority inspectors.
- (g) Subcontractor's Progress - Prepare periodic punch lists for subcontractor's work including unsatisfactory or incomplete items and schedules for their completion.
- (h) Substantial Completion - Ascertain when the work or designated portions thereof are ready for the Architect-Engineer's substantial completion inspection. From the Architect-Engineer's list of incomplete or unsatisfactory items, prepare a schedule for their completion indicating completion dates for the Owner's review. If the Construction Manager wishes the Architect-Engineer to conduct a pre-substantial completion inspection in conjunction with his own forces, the Architect-Engineer will prepare the presubstantial 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 his presubstantial punch list has been accomplished (See Exhibit D).
- (i) Final Completion - Monitor the Subcontractor's performance on the completion of the project and provide notice to the Owner and Architect-Engineer that the work is ready for final inspection. Secure and transmit to the Owner, through the Architect-Engineer, all required guarantees, affidavits, releases, bonds and waivers, manuals, record drawings, and maintenance books including the Final Completion form shown in Exhibit E.
- (j) Start-Up - With the Owner's personnel, direct the checkout of utilities, operations, systems and equipment for

readiness and assist in their initial start-up and testing by the trade Construction Managers.

- (k) Record Drawings - During the progress of the work, the Construction Manager shall require the plumbing, air conditioning, heating, ventilating, elevator, and electrical subcontractors to record on their field sets of drawings the exact locations, as installed, of all conduit, pipe and duct lines whether concealed or exposed which were not installed exactly as shown on the contract drawings. The Construction Manager shall also record all drawing revisions that have been authorized by change order that effect wall or partition locations, door and window locations and other template changes. The exact routing of conduit runs shall be shown on these drawings.

Each drawing shall be noted "As Built" and shall bear the date and name of the subcontractors that performed the work. Where the work was installed exactly as shown on the contract drawings the sheets shall not be disturbed except as noted above.

The Construction Manager shall review the completed As-Built drawings and ascertain that all data furnished on the drawings are accurate and truly represent the work as actually installed. When manholes, boxes, underground conduits, plumbing, hot or chilled water lines, inverts, etc. are involved as part of the work, the Construction Manager shall furnish true elevations and locations, all properly referenced by using the original bench mark used for the institution or for this project

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

- Contracts or Purchase Orders
- Shop Drawing Submittal/Approval Logs
- Equipment Purchase/Delivery Logs-
- Contract Drawings and Specifications with Addenda
- Warranties and Guarantees
- Cost Accounting Records:
 - Sales Tax Recovery Status Report
 - Labor Costs
 - Material Costs
- Subcontractor Payment Exception Report
- Equipment Costs
- Cost Proposal Requests
- Payment Request Records
- Meeting Minutes
- Cost-Estimates
- Bulletin Quotations
- Lab Test Reports
- Insurance Certificates and Bonds
- Contract Changes
- Purchase Orders
- Material Purchase Delivery Logs
- Technical Standards
- Design Handbooks
- As-Built" Marked Prints
- Operating & Maintenance Instruction
- Daily Progress Reports
- Monthly Progress Reports
- Correspondence Files
- Transmittal Records
- Inspection Reports
- Bid/Award Information
- Bid Analysis and Negotiations
- Punch Lists
- PMIS Schedule and Updates
- Suspense (Tickler) Files of Outstanding Requirements
- Project Manual

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

- (12) Owner Occupancy - The Construction Manager shall provide services during the design and construction phases, which will provide a smooth and successful Owner occupancy of the project. He shall provide consultation and project management to facilitate Owner occupancy and provide transitional services to get the work, as

completed by the Construction Managers, "on line" in such conditions as will satisfy Owner operational requirements.

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

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

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

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

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

- (13) Warranty - Where any work is performed by the Construction Manager's own forces or by subcontractors under contract with the Construction Manager, the Construction Manager shall warrant that all materials and equipment included in such Work will be new except where indicated otherwise in Contract Documents, and that such Work will be of good quality, free from improper workmanship and defective materials and in conformance with the Drawings and specifications. With respect to the same Work, the Construction Manager further agrees to correct all work found by the Owner to be defective in material and workmanship or not in conformance with the Drawings and Specifications for a period of one year from the Date of Substantial Completion or for such longer periods of time as may be set forth with respect to specific warranties contained in the trade sections of the Specifications. The Construction Manager shall collect and deliver to the Owner any specific written warranties given by others as required by the Contract Documents. Also, the Construction Manager shall conduct, jointly with the Owner and the Architect-Engineer, a warranty inspection nine (9) months after the date of Owner Occupancy.

ARTICLE 3 OWNER'S RESPONSIBILITIES

- 3.1 Owner's Information - The Owner shall provide full information regarding his requirements for the project.
- 3.2 Owner's Representative - The Owner shall designate a representative who shall be fully acquainted with the project and shall define the lines of Owner authority to approve Project Construction Budgets, and changes in Project. He 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.
- 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 he may require.
- 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.
- 3.8 Cost of Surveys & Reports - The services, information, surveys and reports required by the above paragraphs shall be furnished with reasonable promptness in accordance with the approved schedule at the Owner's expense, and the Construction Manager shall be entitled to rely upon the accuracy and completeness thereof.

- 3.9 Project Fault Defects - If the Owner becomes aware of any fault or defect in the Project or non-conformance with the drawings and specifications, he shall give prompt written notice thereof 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 subcontractors or suppliers only through the Construction Manager while such method of communication is effective in maintaining project schedules and quality.
- 3.12 Lines of Authority - The Owner shall establish and maintain lines of authority for his personnel and shall provide this definition to the Construction Manager and all other affected parties.
- 3.13 Permitting & Code Inspections - The Owner recognizes and coordinates with the Permitting Authority and expects the Construction Manager to do the same.

ARTICLE 4 PERMITTING AND INSPECTION

Before Construction 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 through 4.2 hereinafter.

- 4.1 Building Permits - The contractor is obligated to obtain and pay for a building permit from the local authority for construction of this State facility.

In the case of plumbing, electrical, other internal system permits and connection permits, the Contractor is obligated to obtain such permits and pay such fees.

The Contractor 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 his bid proposal.

- 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 necessarily limited to, structural, mechanical, electrical, plumbing and general building. The contractor shall make all permits, drawings, specifications, previous inspection reports, and change documents available to Code Inspectors. The contractor shall provide a copy of each inspection report to the Architect/Engineer in a timely fashion.

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 the Contract Document 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 2.4(4), the Construction Manager shall request and receive proposals from subcontractors and suppliers and will award those contracts to the qualified low bidder after he has reviewed each proposal and is satisfied 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 the Contract Documents, and to assume toward the Construction Manager all the obligations and responsibilities which the Construction Manager by these Documents, assumes toward the Owner and the Architect-Engineer. Said agreements shall preserve and protect the rights of the Owner and Architect-Engineer under the Contract Documents with respect to the Work to be performed by the subcontractor so that the subcontracting thereof will not prejudice such rights. Where appropriate, the Construction Manager shall require each Subcontractor to enter into similar agreements with his Sub-subcontractor.

The Construction Manager shall make available to each proposed Subcontractor, prior to the execution of the Subcontract, copies of the Contract Documents to which the Subcontractor will be bound by this Article 5.3 and identify to the Subcontractor any terms and conditions of the proposed Subcontract which may be at variance with the Contract Documents. Each Subcontractor shall similarly make copies of such Documents available to his Sub-subcontractors.

5.3.2 Subcontract Requirements

(1) On all subcontracts where the bid exceeds \$100,000, the Construction Manager may require subcontractors to provide a 100% performance bond and a 100% labor and material payment bond from a surety company authorized to do business in the State of Florida by the Department of Financial Services, Office of Insurance Regulation. If the Construction Manager wishes to award subcontracts to Subcontractors unable to supply this bonding, he may request special authorization to do so. Upon providing justifiable background information, such authorization shall not be withheld unreasonably.

(2) On all subcontracts where the bid exceeds \$200,000.00, each subcontractor must submit a completed experience questionnaire and financial statement on the form entitled "Experience Questionnaire and Construction Manager's Financial Statement" Form #DBC-5085, incorporated herein by reference or equivalent form supplied by Construction Manager. The subcontractors' financial condition must demonstrate that adequate fixed and liquid assets and equipment are available to properly perform the subcontract.

(3) Workforce - The subcontractor must agree to perform no less than 15% of the project construction work utilizing its own employees.

(4) Subcontractor experience - The subcontractor must have successfully completed no less than two projects of similar size and complexity within the last five years.

(5) Supervision - The subcontractor must agree to provide field (on-site) supervision through a named superintendent for each trade (general concrete forming and placement, masonry, mechanical, plumbing, electrical and roofing) included in the subcontract. In addition, the subcontractor shall assign and name a qualified employee for scheduling direction for its work. The supervisory employees of the subcontractor (including field superintendent, foreman and schedulers at all levels) must have been employed in a supervisory (leadership) capacity of substantially equivalent level on a similar project for at least two years within the last five years. The subcontractor shall include a resume of experience for each employee identified by him to supervise and schedule his work.

(6) All subcontracts shall provide:

a. **LIMITATION OF REMEDY - NO DAMAGES FOR DELAY**

That the subcontractor's exclusive remedy for delays in the performance of the contract caused by events beyond its control, including delays claimed to be caused by the Owner or Architect-Engineer or attributable to the Owner or Architect-Engineer and including claims based on breach of contract or negligence, shall be an extension of its contract time.

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

Each subcontract shall require the subcontractor to expressly agree that the foregoing constitute the sole and exclusive remedies for delays and changes in the work and thus eliminate any other remedies for claim for increase in the contract price, damages, losses or additional compensation.

b. Each subcontract shall require that any claims by subcontractor for delay or additional cost must be submitted to Construction Manager within the time and in the manner in which the Construction Manager must submit such claims to the Owner, and that failure to comply with the conditions for giving notice and submitting claims shall result in the waiver of such claims.

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

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

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

- 6.2 The date of Owner Occupancy shall occur as described in Article 2.4(12) hereinabove. Warranties called for by this Agreement or by the Drawings and Specifications shall commence on the Date of Owner Occupancy of the project.

ARTICLE 7 GUARANTEED MAXIMUM PRICE FOR CONSTRUCTION

- 7.1 When the Design Development Documents are sufficiently complete to establish the scope of work for the project or any portion thereof, as generally defined by a design document listing to be provided by the Architect-Engineer and Construction Manager upon execution of this Agreement, which is to be used only as a guide in developing the specifications and plan data necessary to establish a Guaranteed Maximum Price, or at such time thereafter designated by the Owner, the Construction Manager will establish and submit in writing to the Owner for his approval a Guaranteed Maximum Price, guaranteeing the maximum price to the Owner, for the construction cost of the project or designated part thereof. Such Guaranteed Maximum Price will be subject to modification for changes in the project as provided in Article 10. However, the actual price paid for the work by the Owner shall be the actual cost of all work subcontracts, supply contracts, direct labor costs, direct supervision costs, and direct job costs as defined under Article 9, plus the Construction Manager's fees or the GMP, whichever is less when the work is complete.
- 7.2 The GMP will only include those taxes in the cost of the project which are legally enacted at the time the GMP is established.
- 7.3 When the project is bid and 100% of the Trade Contracts have been executed, the contingency within the GMP may be decreased in proportion to the percent of the work completed. In other words, if 10% of the work has been completed and the Owner requests that the contingency within the GMP be adjusted, then 10% of the contingency within the GMP will be removed from the GMP by change order.
- 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 GMP will include an agreed upon sum as the construction contingency which is included for the purpose of defraying the expenses due to unforeseen circumstances relating to construction. The Construction Manager will be required to furnish documentation evidencing expenditures charged to this contingency prior to the release of funds by the Owner. Documentation for use of the Contingency shall be determined by the Construction Team, included in the Project Manual and displayed monthly in the PMIS. The Architect-Engineer shall verify the actual costs. If bids are received below the applicable line items in the GMP, the surplus will be added to the contingency.

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

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

ARTICLE 8 CONSTRUCTION MANAGER'S FEE

- 8.1 In consideration of the performance of the contract, the Owner agrees to pay the Construction Manager as compensation for his services, fees as set forth in Subparagraphs 8.1.1, 8.1.2 and 8.1.3.
- 8.1.1 Preconstruction Phase Fee - For the performance of the services set forth under paragraphs 2.1.3(1), 2.1.4(a)(b)(c)(d), 2.3(1) and 2.3(2) and for profit and overhead related to these services, a total fee of (Amount) . The Preconstruction Phase Fees are based on constructability review, value engineering and estimates of probably cost and shall be paid as follows:

(at agreed upon submittals)

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 is shown on Exhibit F.

8.1.2 Construction Phase Fee - Prior to commencement of the Construction Phase, the Owner will direct the Construction Manager in writing to proceed into the Construction Phase. The Construction Manager's compensation for work or services performed during the Construction Phase shall be a fee of (Amount). (However, the Owner retains the right to review the need and effectiveness of any employee or employees assigned by the Construction Manager, should the Project Director question the need for the employee or employees). The Construction Phase Fee shall be invoiced and paid in (No. months) monthly payments of (Amount) each and one final monthly payment of (Amount). The first monthly payment shall become due thirty days following the issuance of the first Construction Authorization by the Project Director and the final monthly payment shall be paid only when construction of the project is finally completed and occupancy of the project accepted by the Owner. If construction is authorized only for a part of the project, the fee paid shall be proportionate to the amount of work authorized by the Owner.

(1) Adjustments in Fee - For changes in the project as provided in Article 10, the construction phase 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) Should the duration of the construction stipulated herein for Final Completion extend beyond (Number) months after the Notice-To-Proceed, receipt of final drawings and specifications, or receipt of all necessary permits, whichever is later, due to no fault of the Construction Manager, the Construction Manager's Additional Construction Phase Fee will be (Amount) per working day, for each day or portion thereof. The Construction Manager's staff during such time extensions shall be that shown in Exhibit G.
- (c) The Construction Manager will not be due any additional Overhead and Profit on increases in the Guaranteed Maximum Price (GMP) that do not exceed (Amount). Should the GMP be increased by more than (Amount) under the terms of Article 10 hereinafter due to no fault of the Construction Manager, the Construction Manager's additional Overhead and Profit for the Construction Phase will be (Percent) of that portion of the accumulative increases in the GMP that exceed the GMP by more than (Amount).

Construction Manager's Exclusive Remedy: In the event the construction Substantial or Final Completion date is extended, regardless of whether delay is caused by any act or neglect of the Owner or the Architect-Engineer, or is attributable to the Owner or the Architect-Engineer, the Construction Manager's sole and exclusive remedy is an extension of the construction completion date and payment of additional Construction Phase fees and Overhead and Profit for Construction Phase as provided above.

(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 his 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 Exhibits H and I.
- (b) General operating expenses related to this project of the Construction Manager's principal and branch offices.
- (c) The costs of all data processing staff.
- (d) 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 I.
- (e) General operating expenses incurred in the management and supervision of the project, except as expressly included in Article 9.
- (f) Those services set forth in Article 2.4(9)(a).
- (g) Job office supplies - includes paper, pencils, paper clips, file folders, staples, etc., and janitorial supplies (photo copy or blue print paper not included).

(h) Direct tax saving purchase program.

8.1.3 Overhead And Profit For Construction Phase - For overhead, profit and general expenses of any kind, except as may be expressly included in Article 9, for services provided during and related to the construction phase, the fee shall be _____ (Amount) and shall be paid proportionally to the ratio of the cost of the work in place, and less retainage (see Article 12.1), as it bears on the latest estimate of the total construction cost or to the GMP or to the Owner's Construction Budget, whichever is less. The balance of the fee shall be paid when construction of the project is finally completed and occupancy of the project accepted by the Owner. If construction is authorized only for a part of the project, the fee paid shall be proportionate to the amount of work authorized by the Owner. The Construction Manager's exclusive remedy for any adjustments in the Overhead and Profit for construction phase fee is provided in Article 8.1.2(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 for Construction services and paid by the Construction Manager which are not included in Article 8. Such costs shall include the items set forth below in this Article.

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

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 his work under Agreement, times a multiple of _____ (Percent) to cover fringe benefits.
- (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 2.3(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 other, including installation, repairs and replacements, dismantling, removal, costs of lubrication, transportation and delivery costs thereof, which are used in the support of a sub-contractor or the Construction Manager's own forces in the performance of the work, at rental charges consistent with those prevailing in the area.
- (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 sub-contractor 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 GMP and except for any corrective work made necessary because of defective workmanship or other causes contributed to by the Construction Manager or his 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.

- (9) Minor expenses at the site, such as telegrams, long distance telephone calls, telephone service, expressage, postage, and similar petty cash items in connection with the Project to be billed at cost.
- (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) Legal costs reasonably and properly resulting from prosecution of the Project for the Owner, including handling claims for changes by Subcontractors and Vendors, subject to the following limitations:
 - (a) The Owner approved incurring such costs in advance, which approval shall not be unreasonably denied; and
 - (b) The legal costs were not incurred as result of the Construction Manager's own negligence or default.

This paragraph does not provide for payment of legal costs incurred in preparing or asserting claim or requests, by Construction Manager itself, for change orders or in enforcing the obligations of this contract.
- (13) All costs directly incurred in the performance of the Project for the benefit of the Project and not included in the Construction Manager's fees as set forth in Article 8.
- (14) If requested by the Owner, the Construction Manager will perform all or a portion of any item in Article 9 for the cost of the work.
- (15) If approved by the Owner, the Construction Manager, when qualified, may perform all or a portion of the work for any item listed on the estimate or GMP breakdown where it is deemed advantageous due to schedule or economic benefit for the direct cost of the work.
- (16) Transportation greater than 100 miles from the site for those personnel employed directly for the project. Such transportation must be approved in advance by the Owner, and may be in accordance with the Construction Manager's standard personnel policy but not exceeding the limits established by Florida Statutes 112.061.
- (17) Costs of all reproductions used for bidding or information purposes required by the project to directly benefit the project.
- (18) Costs for watchman and security services for the project.
- (19) 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.
- (20) Costs for such temporary facilities during construction, as approved by the Owner, including temporary water, heat, power, sanitary facilities, telephones, radios and computers with software.
- (21) Costs for any job site items not referenced herein, not normally provided by the subcontractors, which will be provided by the Construction Manager as required to complete the work.
- (22) Cost of utilizing a computer aided design and drafting application (CADD) for record drawings as described in Article 2.4(10)(k). Upon completion of the work, the Construction Manager shall obtain two (2) paper copies and two (2) sets of disk files from the Architect-Engineer and record to scale all as-built conditions. The disk shall be submitted to the Architect-Engineer when completed, together with two sets of blue line or black line prints for certification and forwarding to the Owner/ Client Agency, at the time of final completion.

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

ARTICLE 10 CHANGE 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 GMP, and the Construction Completion Date, being adjusted accordingly. All changes in the Project not covered by an authorized contingency shall be authorized by Change Order signed by the Owner before the change is implemented.
- 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 Construction Completion date. Each adjustment in the GMP resulting from a change order shall clearly separate the amount attributable to the Cost of the Project.

- 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 Subparagraph 10.1.3.
- 10.1.3 If none of the methods set forth in Clause 10.1.2 is agreed upon, the Construction Manager, provided he receives a written order signed by the Owner, shall promptly proceed with the work involved. The cost of such work shall then be determined on the basis of the reasonable expenditures and savings of those performing the work attributed to the change. However, in the event a Change Order is issued under these conditions, the Architect-Engineer will establish an estimated cost of the work and the Construction Manager shall not perform any work whose cost exceeds that estimate without prior written approval by the Owner. In such case, and also under Article 10.1.2 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 Should concealed conditions encountered in the performance of the work below the surface of the ground or should concealed or unknown conditions in an existing structure be at variance with the conditions indicated by the Drawings, Specifications, or Owner furnished information or should unknown physical conditions below the surface of the ground or should concealed or unknown conditions in an existing structure of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Agreement, be encountered, the Guaranteed Maximum Price and the Construction Completion date shall be equitably adjusted by Change Order upon a request for Change Order in accordance with Article 10.2.
- 10.2 Claims For Additional Cost Or Time
- All claims for additional cost or time shall be made by request for a change order submitted as provided in Article 16.
- If the Construction Manager is delayed at any time in the progress of the work by any act or neglect of the Owner or the Architect or of any employee of either or by any separate Construction Manager employed by the Owner or by any changes ordered in the work by labor disputes, fire, or unusual delay in transportation, unavoidable casualties or any causes beyond the Construction Manager's control or by delay authorized by the owner pending resolution of disputes, and such delay extends the completion date, the Substantial Completion shall be extended by Change Order for such reasonable time as the Construction Team may determine.
- Only delays which are determined to extend the critical path for the schedule for constructing the project will result in a time extension. Neither the Owner nor the Construction Manager shall be considered to own the schedule float time.
- 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 Construction Completion Date and not inconsistent with the intent of the Drawings and Specifications. Such changes shall be effected by written order. Documentation of changes shall be determined by the Construction Team, included in the Project Manual and displayed monthly in the PMIS. Changes shall be approved by the Project Director, Architect-Engineer.
- 10.4 Emergencies
- In any emergency affecting the safety of persons or property, the Construction Manager shall act at his 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**

- 11.1 All discounts for prompt payment shall accrue to the Owner to the extent the Cost of the project is paid directly by the Owner or from a fund made available by the Owner to the Construction Manager for such payments. To the extent the Cost of the Project is paid with funds of the Construction Manager, all cash discounts shall accrue to the Construction Manager. All trade discounts, rebates and refunds, and all returns from sale of surplus materials and equipment, shall be credited to the Cost of the Project. All penalties incurred due to fault of the Construction Manager for late payment of cost of the project will be paid by the Construction Manager.

**ARTICLE 12
PAYMENTS TO THE CONSTRUCTION MANAGER**

- 12.1 Monthly Statements - The Construction Manager shall submit to the Owner a statement, sworn to if required, along with the cost reports required under Article 2.1.5, showing in detail all monies paid out, cost accumulated or costs incurred on account of the Cost of the Project during the previous period and the amount of the Construction Manager's fees due as provided in Article 8. Ten percent (10%) retainage shall be held on all payments until the contract is fifty percent (50%) complete, except when approved by the Owner certain suppliers and subcontractors may be paid the entire amount due when such payment is generally the practice of the industry. In such cases, if the Owner makes any payment of retainage to the Construction Manager which is attributable to the labor, services, or materials supplied by one or more subcontractors or suppliers, the Construction Manager shall timely remit payment of such retainage to those subcontractors and suppliers. Unless otherwise stated herein, the term "50% completion" refers to the point at which the Owner has expended 50 percent of the total cost of the construction services purchased as identified in the contract together with all costs associated with existing change orders and other additions or modifications to the construction services provided for in this agreement. At 50% completion, the Owner must reduce the retainage from 10% to 5%. Retainage shall not be withheld on services or fees set forth in Article 8. Pursuant to Section 255.078(4), Florida Statutes, after 50% completion of the construction services purchased pursuant to this Agreement, the Construction Manager may present to the Owner a payment request for up to one-half of the retainage held by the Owner. The Owner shall promptly make payment to the Construction Manager, unless the Owner has grounds, pursuant to Section 255.078(6), Florida Statutes for withholding the payment of retainage. If the Owner makes payment of retainage to the Construction Manager which is attributable to the labor, services, or materials supplied by one or more subcontractors or suppliers, the Construction Manager shall timely remit payment of such retainage to those subcontractors and suppliers.

The Construction Manager's Design Phase Fee, Construction Phase Fee and Overhead & Profit shall be shown as separate line items on the Schedule of Contract Values. Payment of the Construction Manager's Overhead and Profit shall be calculated based on the Construction Budget Balance or the GMP Balance whichever is applicable. The Construction Budget Balance or GMP Balance is established by subtracting the Design Phase Fee, Construction Phase Fee and Overhead & Profit from the latest estimate of the total construction cost or to the GMP or to the Owner's Construction Budget, whichever is less. The billable Overhead and Profit is calculated by multiplying the percent complete of the Construction Budget Balance or the GMP Balance as applicable. This data shall be attached to the Partial Pay Request form shown in Exhibit J. Payments by the Owner to the Construction Manager shall be made as described in Article 17.6 hereinafter.

- 12.2 Final Payment - Final payment constituting the unpaid balance of the Cost of the Project and the Construction Manager's fee, shall be due and payable as described in Article 17.6 after the Owner has accepted occupancy of the project, provided that the Project be then finally completed, that the Construction Manager has verified by his signature that he has completed all items specified on the attached K, and that this Agreement has been finally performed. However, if there should remain work to be completed, the Construction Manager and the Architect-Engineer shall list those items prior to receiving final payment and the Owner may retain a sum equal to 150% of the estimated cost of completing any unfinished work and portion of the Construction Manager's retainage, provided that said unfinished items are listed separately and the estimated cost of completing any unfinished items are likewise listed separately. Thereafter, Owner shall pay to Construction Manager, monthly, the amount retained for each incomplete item after each of said items is completed.
- 12.3 Payments to Subcontractors - The Construction Manager shall promptly, within 10 days after receipt of payment from the Owner, pay all the amount due subcontractors and suppliers less a retainage of ten percent (10%) until the project is fifty percent (50%) complete. After the project is fifty percent (50%) complete, the Construction Manager may elect to withhold retainage from payments to its subcontractors at a rate higher than 5 percent (5%). The specific amount to be withheld must be determined on a case-by-case basis and must be based on the contractor's assessment of the subcontractor's past performance, the likelihood that such performance will continue, and the Construction Manager's ability to rely on other safeguards. The Construction Manager shall notify the subcontractor, in writing, of its determination to withhold more than 5% of the progress payments and the reasons for making that determination, and the Construction Manager may not request the release of such retained funds from the Owner. If there should remain

items to be completed, the Construction Manager and Architect-Engineer shall list those items required for completion and the Construction Manager shall require the retainage of a sum equal to 150% of the estimated cost of completing any unfinished items, provided that said unfinished items are listed separately and the estimated cost of completing any unfinished items likewise listed separately. Thereafter, the Construction Manager shall pay to the subcontractors, monthly, the amount retained for each incomplete item after each of said items is completed. Before issuance of final payment without any retainage, the subcontractor shall submit satisfactory evidence that all payrolls, material bills and other indebtedness connected with the Project have been paid or otherwise satisfied, warranty information is complete, as-built markups have been submitted and instruction for the Owner's operating and maintenance personnel is complete.

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

- 12.4 Delayed Payments by Owner - The Owner shall submit a payment request for all undisputed amounts to the Chief Financial Officer for payment no more than twenty (20) days after receipt of an approvable payment request. If the Owner should fail to pay the Construction Manager within thirty (30) days after the receipt of an approvable payment request from the Construction Manager, then the Construction Manager may, upon seven (7) additional days written notice to the Owner and the Architect-Engineer stop the Project until payment of the Amount owing has been received.
- 12.5 Payments for Materials and Equipment - Payments will be made for material and equipment not incorporated in the work but delivered and suitably stored at the site or another location subject to prior approval and acceptance by the Owner on each occasion.
- 12.6 Withholding Payments To Subcontractors - The Construction Manager shall not withhold payments to subcontractors if such payments have been made to the Construction Manager. Should this occur for any reason, the Construction Manager shall immediately return such monies to the Owners, adjusting pay requests and project bookkeeping as required.

ARTICLE 13 INSURANCE, INDEMNITY AND WAIVER OF SUBROGATION

- 13.1 Indemnity
- (1) The Construction Manager agrees to indemnify and hold the Owner and Architect-Engineer harmless from all claims for bodily injury and property damage (other than the work itself and other property insured under Paragraph 13.2(3)) that may arise from the Construction Manager's operations under this Agreement.
 - (2) The Owner shall cause any other Construction Manager who may have a contract with the Owner to perform construction or installation work in the area where work will be performed under this Agreement, to agree to indemnify the Owner and the Construction Manager and hold them harmless from all claims for bodily injury and property damage (other than property insured under Paragraph 13.2(3)) that may arise from the Construction Manager's operations. Such provisions shall be in a form satisfactory to the Construction Manager.
- 13.2 Construction Manager's Insurance
- (1) The Construction Manager shall not commence any construction work in connection with this Agreement until he has obtained all of the following types of insurance and such insurance has been approved by the Owner, nor shall the Construction Manager allow any subcontractor to commence work on his 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 his employees connected with the work of this Project and, in case any work is sublet, the Construction Manager shall require the subcontractor similarly to provide Worker's Compensation Insurance for all of the latter's employees unless such employees are covered by the protection afforded by the Construction Manager. Such insurance shall comply with the Florida Worker's Compensation Law. In case any class of employees engaged in hazardous work under this contract at the site of the Project is not protected under the Worker's Compensation statute, the Construction Manager shall provide adequate insurance, satisfactory to the Owner, for the protection of employees not otherwise protected.
 - (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 him 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 himself or by anyone directly or indirectly employed by him, and the amount of such insurance shall be minimum limits as follows:

- | | |
|---|---|
| (a) Construction Manager's Comprehensive General Liability Coverages, Bodily Injury & Property Damage | \$500,000 Each Occurrence,
Combined Single Limit |
| (b) Automobile Liability Coverages,
Bodily Injury & Property Damage | \$100,000 Each Occurrence,
Combined Single Limit |
| (c) Excess Liability, Umbrella Form | \$4,000,000 Each Occurrence,
Combined Single Limit |

Insurance clause 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 his subcontractors to procure and maintain during the life of this subcontract, insurance of the type specified above or insure the activities of his subcontractors in his policy, as specified above.
- (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 | \$500,000 Each Occurrence
Combined Single Limit |
|--|--|
- (6) "XCU" (Explosion, Collapse, Underground Damage - 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 & 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) Indemnification Rider
- (a) To cover to the fullest extent permitted by law, the Construction Manager shall indemnify and hold harmless the Owner and the Architect-Engineer and their agents and employees from and against all claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from the performance of the Work, provided that any such claim, damage, loss or expense (1) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom, and (2) is caused in whole or in part by any negligent act or omission of the Construction Manager, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right to obligation of indemnity which would otherwise exist as to any party or person described in this Article.
- (b) In any and all claims against the Owner or the Architect-Engineer or any of their agents or employees by any employee of the Construction Manager, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligations under this Paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Construction Manager or any subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.
- (c) The obligations of the Construction Manager under this Article 13.2(9) shall not extend to the liability of Architect-Engineer, his agents or employees, arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications, or (2) the giving of or the failure to give directions or instruction by Architect-Engineer, his agents or employees providing such giving or failure to give is the primary cause of the injury or damage.
- (d) The Construction Manager hereby acknowledges receipt of one hundred dollars and other good and valuable consideration as part of his fee in exchange for giving the Owner and Architect-Engineer, respectively, the indemnification provided above in Article 13.2(9). The limit of such indemnification shall be \$1,000,000.00 per occurrence.

(10) Builder's Risk Coverage - The Construction Manager shall take out and maintain during the life of this Agreement a "Builder's Risk Policy" completed value form as a cost of the Project, issued to provide coverages on an "all risk" basis including theft. This coverage shall not be lapsed or cancelled because of partial occupancy by the Owner prior to final acceptance of the Project.

(11) Certificate of Insurance - The Owner shall be furnished proof of coverage of Insurance as follows:

Certificate of Insurance form will be furnished to the Owner along with the Contract Documents. These shall be completed and signed by the authorized Florida Resident Agent, and returned to the office of Real Estate Development and Management. This Certificate shall be dated and show:

- (a) The name of the insured Construction Manager, the specific job by name and job number, the name of the insurer, the number of the policy, its effective date, and its termination date.
- (b) Statement that the Insurer will mail notice to the Owner and a copy to the Architect-Engineer at least fifteen (15) days prior to any material changes in provisions or cancellation of the policy.
- (c) Certificate of Insurance shall be in the form as approved by Insurance Standards Office (ISO) and such Certificate shall clearly state all the coverages required in this Section commencing at 13.2 and ending with 13.3.4.
- (d) Certificate of Insurance shall state that the Owner is listed as additional insured on all appropriate policies.
- (e) Copy of the endorsement or additional insured rider to the General Liability Policy.
- (f) Date of Birth of authorized Resident Agent.

13.3 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.

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 days written notice to the Owner, request payment for all work executed, the Construction Manager's fees earned to date, and for any proven loss sustained upon any materials, equipment, tools, construction equipment, and machinery, including reasonable profit, damages and terminal expenses incurred by the Construction Manager.

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 his obligations under this Agreement including any obligation he assumes to perform work with his own forces, the Owner may, after seven (7) days written notice during which period the Construction Manager fails to commence correction of such obligation, make good such

deficiencies. The GMP, or the actual cost of the Project, whichever is less, shall be reduced by the cost to the Owner of making good such deficiencies and the Construction Manager's Construction Phase Fee shall be reduced by an amount required to manage the making good of such deficiencies.

- (2) If the Construction Manager is adjudged a bankrupt, or if he makes a general assignment for the benefit of his creditors, or if a receiver is appointed on account of his insolvency, or if he 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 and fails to maintain an established schedule (failure to maintain schedule shall be defined as any activity on the critical path that falls 45 days or more behind schedule) which has been adopted by the Construction Team, or if he fails to make prompt payment to subcontractors for materials or labor, or persistently disregards laws, rules, ordinances, regulations, or orders of any public authority having jurisdiction, or otherwise is guilty of a substantial violation of a provision of the Agreement, then the Owner may, without prejudice to any right or remedy and after giving the Construction Manager and his surety, if any, seven (7) days written notice, during which period Construction Manager fails to commence correction of the violation, terminate the employment of the Construction Manager and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Construction Manager, and may finish the Project by whatever method he may deem expedient. In such case, the Construction Manager shall not be entitled to receive any further payment until the Project is finished nor shall he be relieved from his 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).
- (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 his 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 he may deem expedient. In such case, the Construction Manager shall not be entitled to receive any further payment until the Project is finished nor shall he be relieved from his 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).

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), he shall reimburse the Construction Manager for any unpaid Cost of the Project due him under Article 9, plus that part of the unpaid balance of the Construction Phase Fee in an amount as will increase the payment on account of his fee to a sum which bears the same ratio to the Construction Phase Fee as the Cost of the Project at the time of termination bears to the Guaranteed Maximum Price, if established, otherwise to the Owner's Construction Budget. The Owner shall also pay to the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment retained. In case of such termination of Agreement the Owner shall further assume and become liable for obligations, commitments and unsettled contractual claims that the Construction Manager has previously undertaken or incurred in good faith in connection with said Project. The Construction Manager shall, as a condition of receiving the payments referred to in this Article 14, execute and deliver all such papers and take all such steps including the legal assignment of his contractual rights, as the Owner may require for the purpose of fully vesting in him the rights and benefits of the Construction Manager under such obligations or commitments.
- (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 his proportionate fee due in accordance with Article 8.1 plus any costs incurred pursuant to Articles 9 and 10.

ARTICLE 15 ASSIGNMENT AND GOVERNING LAW

- 15.1 Neither the Owner nor the Construction Manager shall assign his interest in this Agreement without the 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.

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

16.1 The Owner's liability to Construction Manager for any claims arising out of or related to the subject matter of this contract, whether in contract or tort, including, but not limited to, claims for extension of construction time, for payment by the Owner of the costs, damages or losses because of changed conditions under which the work is to be performed, or for additional work, shall be governed by the following provisions:

- (a) All claims must be submitted as a Request for Change Order in the manner as provided herein;
- (b) The Construction Manager must submit a Notice of Claim to Owner and to the Architect-Engineer within 20 days of when the Construction Manager was or should have been aware of the occurrence of the event giving rise to the claim; and
- (c) Within 10 days of submitting its Notice of Claim, the Construction Manager shall submit to the Owner its Request for Change Order, which shall include a written statement of all details of the claim, including a description of the work affected.

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.

16.2 After receipt of a Request for Change Order, the Owner, in consultation with the Architect-Engineer, shall deliver to the Construction Manager its written determination of the claim. As to matters subject to the determination by final agency action (not actions for breach of contract or tort) the Owner's written decision shall be final agency action unless the Construction Manager requests an administrative proceeding pursuant to Section 120.57, Florida Statutes, by filing a petition in compliance with Rule Chapter 28-106, F.A.C. within twenty-one (21) days of the Construction Manager's receipt of the Owner's determination.

The venue for all civil and administrative actions against the department shall be in Leon County, unless otherwise agreed by the parties.

16.3 For work the Construction Manager performs with its own forces, and in addition to the adjustments provided for in Article 8, the Construction Manager's exclusive remedy for delays in performance of the construction caused by events beyond its control, including delays claimed to be caused by or attributable to the Owner or the Architect-Engineer, including claims based on breach of contract or negligence, shall be a claim submitted in compliance with 16.1 above, for an extension of the scheduled construction time. In the event of a change in such work, the Construction Manager's claim for adjustments in the contract sum are limited exclusively to its actual costs for such changes plus (Percent) for profit. The Construction Manager expressly agrees that the foregoing constitute its sole and exclusive remedies for delays and changes in such work, and eliminate any other remedies for claim for increase in the contract price, delays, changes in the work, damages, losses or additional compensation.

ARTICLE 17
MISCELLANEOUS

17.1 Harmony - Construction Manager is advised and hereby agrees that he will exert every reasonable and diligent effort to assure that all labor employed by Construction Manager and his 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.

Construction Manager further agrees that this provision will be included in all subcontracts of the Subcontractors as well as the Construction Manager's own contract; provided, however, that this provision shall not be interpreted or enforced so as to deny or abridge, on account of membership or non-membership in any labor union or labor organization, the right of any person to work as guaranteed by Article 1, Section 6 of the Florida Constitution.

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 Division of Labor of the State of Florida Department of Labor and Employment Security. 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 postaudit thereof. Invoices for any travel expenses shall be submitted in accordance with procedures specified in Section 112.061 of the Florida Statutes governing payments by the State for travel expenses.

17.4 Construction Manager's Project Records - The Construction Manager's Project Records shall be maintained as prescribed hereinabove in accordance with the State of Florida General Records Schedule for State Agencies A-1 and shall be made available to the Owner or his authorized representative at mutually convenient times.

17.5 Construction Manager's Payment Rights - Construction Managers providing goods and services to the Owner should be aware of the following time frames. Upon receipt, the Owner has thirty (30) days to inspect and approve the goods and services. The Owner has twenty (20) days to deliver a request for payment (voucher) to the Department of Banking and Finance. The 20 days area measured from the latter of the date the Pay Request is received or the goods or services are received, inspected and approved.

If payment is not available to the Owner for transmittal to the Construction Manager within 30 days, a separate interest penalty set by the Comptroller pursuant to Section 55.03, Florida Statutes, will be due and payable in addition to the invoice amount. To obtain the applicable interest rate, please contact the agency's Fiscal Section at (850) 487-9891. The 30 days are also measured from the latter of the date the invoice is received or the goods or services are received, inspected and approved. Interest penalties of less than one (1) dollar will not be enforced unless the Construction Manager requests payment. Pay Requests which have to be returned to a Construction Manager because of Construction Manager preparation errors will result in a delay in the payment. 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 Banking and Finance. The duties of this individual include acting as an advocate for vendors who may be experiencing problems in obtaining timely payment(s) from a state agency. The Vendor Ombudsman may be contacted at (850) 410-9354 or by calling the State Comptroller's Hotline, 1-800-848-3792.

17.6 Public Entity Crime Information Statement - "A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a Construction Manager, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list."

17.7 Criminal Background Checks-Criminal History Background Checks shall be obtained for all employees and agents of the Contractor and his subcontractors, their agents and employees, and all other persons performing any of the work under a contract to the Contractor working within buildings or facilities either owned or managed by the Department of Management Services. The Contractor may also be required to perform Criminal History Background Checks for all employees and agents of the Contractor and his subcontractors, their agents and employees, and all other persons performing any of the work under a contract to the Contractor working within buildings or facilities owned or managed by other State Agencies.

The Contractor is obligated to obtain and pay for each Criminal History Background Report ("Report"), which may be obtained by accessing the Florida Department of Law Enforcement online at <http://www.fdle.state.fl.us/criminalhistory>. This Report can be obtained within minutes via the Internet. The cost per individual check is \$23 and can be paid for by major credit card. For assistance, the FDLE help desk is 850-410-8109.

The Contractor must supply FDLE with the employee's complete social security number to allow FDLE to run the Report. However, there is no need for either the Inspector General or DMS office to have this number in its entirety. Therefore, prior to sending reports to DMS, and to maintain confidentiality, the Contractor must blacken out all but the last four digits of the individual's social security number.

The Contractor shall forward the Report to the Regional Superintendent. The Office of Inspector General will make a recommendation regarding whether or not to allow entry/occupation of the buildings/facilities. If the Inspector General's office denies an individual access to the facilities, additional information will be required in order to reconsider an individual for access. The Office of the Inspector General shall keep the records on file for a minimum of three years.

17.8 Discrimination; Denial Or Revocation For The Right To Transact Business With Public Entities - An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity.

17.9 Unauthorized Aliens - The Department shall consider the employment by any Construction Manager of unauthorized

alien a violation of section 274A(e) of the Immigration and Nationalization Act. Such violation shall be cause for unilateral cancellation of this contract.

- 17.10 Electronic Mail Capabilities - The Construction Manager must have electronic mail capabilities through the World Wide Web. It is the intention of the Department of Management Services to use electronic communication for all projects whenever possible. The Construction Manager shall provide their electronic mail address and the name of a contact person responsible for their electronic communications.
- 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 the State of Florida pursuant to this Agreement.
- 17.12 Contingency Statement - The State of Florida's performance and obligation to pay under this contract is contingent upon an annual appropriation by the Legislature.

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

(CONTRACTORS NAME)

Attest:

APPROVED:

By XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
Corporate Secretary

By XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
Corporate President

As Witnessed:

By XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

(Corporate Seal)

DEPARTMENT OF MANAGEMENT SERVICES

Reviewed By:

Approved As To Form And Legality:

By XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
Mary Lynn Shearer, Administrator
Contracts Section

By XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
Office of General Counsel, Date
Department of Management Services

As Witnessed:

APPROVED:

By XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

By XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
Dean M. Izzo, Director Date
Real Estate Development and Management

EXHIBIT A

CONSTRUCTION TEAM ASSIGNED REPRESENTATIVES

Owner

Mary Lynn Shearer
Dean M. Izzo

Project Director
Contracts Administrator
Director

Client

Project Director

Architect-Engineer

(Names)

(Titles)

Construction Manager

(Names)

(Titles)

EXHIBIT B

OWNER'S CONSTRUCTION BUDGET

<u>ITEM DESCRIPTION</u>	<u>CONSTRUCTION BUDGET</u>
CONSTRUCTION MANAGER'S PRECONSTRUCTION PHASE FEE.....	<i>(Dollar Amount)</i>
CONSTRUCTION MANAGER'S CONSTRUCTION PHASE FEE.....	<i>(Dollar Amount)</i>
CONSTRUCTION MANAGER'S OVERHEAD & PROFIT.....	<i>(Dollar Amount)</i>
CONSTRUCTION BUDGET BALANCE	<i>(Dollar Amount)</i>
OWNER'S TOTAL CONSTRUCTION BUDGET	<i>(Dollar Amount)</i>

EXHIBIT C
CONSTRUCTION MANAGERS'S PERSONNEL
OFF-SITE SUPPORT STAFF

Individual

(Names)

Title

(Titles)

ON-SITE SUPPORT STAFF

Individual

(Names)

Title

(Titles)

EXHIBIT D

CERTIFICATE OF SUBSTANTIAL COMPLETION BY CONTRACTOR

PROJECT NAME: _____

PROJECT NUMBER: _____ CONTRACT FOR: _____

OWNER: Department of Management Services CONTRACT DATE: _____

Attention: _____ DATE OF ISSUANCE: _____

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 MARSHALL 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

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 o

ARCHITECT/ENGINEER SIGNATURE PRINTED NAME DATE

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

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

Distribution to: DMS Contracts Administrator, DMS Project Director, Architect/Engineer, Contractor, Client Agency

EXHIBIT E

DEPARTMENT OF MANAGEMENT SERVICES

CONTRACTOR'S AFFIDAVIT OF CONTRACT COMPLETION

AGENCY: _____

PROJECT: _____

CONTRACTOR: _____

CONTRACT FOR: _____

CONTRACT DATE: _____

CONTRACT AMOUNT: _____

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 Workmen's Compensation insurance as required by law; that all public liability claims are adequately covered by insurance, and that the Contractor shall save, protect, defend, indemnify, and hold 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.

By: _____

Name and Title: _____

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me on _____, by _____, on behalf of the above-named Contractor. He/she is personally known to me or has produced _____ as identification.

Notary Signature: _____

[Notary Stamp or Seal]

Name typed printed or stamped: _____

EXHIBIT E (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: That the work under the above contract has been satisfactorily completed on the date set forth in accordance with the terms of the contract; that the contractor has submitted his sworn affidavit as evidence that he has paid all labor, material

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

TO BE COMPLETED BY ARCHITECT/ENGINEER THROUGH

THE SUBSTANTIAL COMPLETION PHASE	DATE	DAYS	Liquidated Damages
1. Notice to Proceed (N.T.P)			
2. Time Specified in Original Contract for Substantial Completion (S.C.)			
3. Extension Granted by Change Orders (Days Between Original Contract S.C. and Final Contract S.C.)			
4. Total Days Allowable to Substantial completion (Add Lines 2 and 3)			
5. Project Substantially Completed as Certified by A/E (Total Days from N.T.P. through Date certified by A/E)			
6. Substantial Completion overrun (Subtract Line 4 from 5 and Enter Overrun. If line 5 less than 4 enter 0.)			@\$ <input type="text"/> Per Day=\$ <input type="text"/>
THE FINAL COMPLETION PHASE			
1. Time Specified in Contract, Between Substantial & Final Completion			
2. Extensions Granted by Change Orders (Days Between S.C.& Final Completion)			
3. Total Days Allowable Between Substantial & Final Completion (Add Lines 1 & 2)			
4. Date Actually Completed and Total Days Between Actual S.C. & Date Certified by A/E as Actually being Finally Completed.			
5. Final Completion Overrun (Subtract Line 3 from 4 and Enter Overrun. If line 4 less than 3 enter 0.)			@\$ <input type="text"/> Per Day=\$ <input type="text"/>
TOTAL LIQUIDATED DAMAGES			<input type="text"/>

Project Director _____ Date _____

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

EXHIBIT F

**CONSTRUCTION MANAGER'S PERSONNEL TO BE
ASSIGNED DURING PRECONSTRUCTION PHASE**

<u>Individual</u>	<u>Title</u>	<u>Duration In Months</u>	<u>Percentage of Time Available</u>
<i>(Names)</i>	<i>(Titles)</i>	<i>(Number)</i>	<i>(Percent)</i>

EXHIBIT G
CONSTRUCTION MANAGER'S PER DIEM STAFF FOR TIME
EXTENSIONS PER 8.1.2(1)(b)

<u>Individual</u>	<u>Title</u>	<u>Percentage of Time Available</u>
<i>(Names)</i>	<i>(Titles)</i>	<i>(Percent)</i>

EXHIBIT H

**CONSTRUCTION MANAGER'S PERSONNEL TO BE
ASSIGNED DURING CONSTRUCTION OFF-SITE**

<u>Individual</u>	<u>Title</u>	<u>Duration In Months</u>	<u>Percentage of Time Available</u>
<i>(Names)</i>	<i>(Titles)</i>	<i>(Number)</i>	<i>(Percent)</i>

EXHIBIT I

**CONSTRUCTION MANAGER'S PERSONNEL TO BE
ASSIGNED DURING CONSTRUCTION ON-SITE**

<u>Individual</u>	<u>Title</u>	<u>Duration In Months</u>	<u>Percentage of Time Available</u>
<i>(Names)</i>	<i>(Titles)</i>	<i>(Number)</i>	<i>(Percent)</i>

EXHIBIT J

OWNER'S CERTIFICATE OF PARTIAL PAYMENT

Contractor (Name and Address): _____
 Contractor Federal I.D. No: _____
 Architect-Engineer Name: _____

Request No: _____
 For Period Ending: _____
 State Project No _____
 Project Name: _____

Base Contract Calendar Days:	0
Adjusted Days by Change Order:	0
Revised Contract Days:	0
Elapsed Days to Date:	0
Net Days Remaining:	0
Estimated Days Ahead (+) or Behind (-):	0

Approved Change Orders (Attach additional pages if required)			
CO#	\$ AMOUNT	CO#	\$ AMOUNT
001	\$0.00	011	\$0.00
002	\$0.00	012	\$0.00
003	\$0.00	013	\$0.00
004	\$0.00	014	\$0.00
005	\$0.00	015	\$0.00
006	\$0.00	016	\$0.00
007	\$0.00	017	\$0.00
008	\$0.00	018	\$0.00
009	\$0.00	019	\$0.00
010	\$0.00	020	\$0.00
Subtotal	\$0.00	Subtotal	\$0.00
Total Net Change Orders \$	0.00		

Original Contract Sum.....	\$	0.00
Change Orders (Net).....	\$	0.00
Contract Sum To Date.....	\$	0.00
Completed To Date.....	\$	0.00
Materials Stored.....	\$	0.00
Total Completed & Stored.....	\$	0.00
Less Retainage 0 %..	\$	0.00
TOTAL.....	\$	0.00
Less Previous Certificates.....	\$	0.00
Less Materials Purchased		
Directly By Owner.....	\$	0.00
Balance To Finish.....	\$	0.00

THIS CERTIFICATE		
PAY THIS AMOUNT		\$ 0.00
Attached to this Certificate of Partial Payment the separate required Form CM05- "CM's Minority Business Enterprises Monthly Status Report of Partial Payment"		
TOTAL PAID THIS CERTIFICATE TO MBE:		\$0.00

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 materialmen, 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: _____

STATE OF _____
 COUNTY OF _____ The foregoing instrument was acknowledged before me 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 person taking acknowledgement)

(Name typed printed or stamped)

(Title or Vendor)

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 inspected 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.

 Architect-Engineer

Date: _____

REVIEWED AND RECOMMENDED FOR PAYMENT:

Date: _____

 Owner's Project Director

APPROVED FOR SERVICES, PERFORMED AS STATED BY:

Date: _____

EXHIBIT K

ITEMS TO BE SUBMITTED WITH GENERAL CONSTRUCTION MANAGER'S REQUEST FOR FINAL PAYMENT

- _____ 1. Rush Requisition Routing Slip
- _____ 2. Pay Request (4 copies with original signatures and original seals, noted as Final)
- _____ 3. Final Schedule of Contract Values
- _____ 4. Consent of Surety to make final Payment (signed and sealed)
- _____ 5. Power of Attorney from Surety for Release of Final Payment (Signed and sealed and dated same as Consent of Surety)
- _____ 6. Certificate of Contract Completion
 - _____ a. page one completed by the general Construction Manager (original plus three copies)
 - _____ b. page two completed by Architect-Engineer (original plus three copies)
- _____ 7. Satisfactory Conclusion or Release of Lien from all subcontractors or laborers who have filed Intent to Liens or have indicated non-payment from the general Construction Manager (especially if attorneys are involved)
- _____ 8. Construction Manager's Guarantee of Construction for one year from the date of substantial completion
- _____ 9. Copy of the approval by the Architect-Engineer and the transmittal to the using agency of manuals, shop drawings, as-builts (two sets of disk files and two sets of blue line or black line prints), brochures, warranties, and List of Subcontractors, with telephone numbers and addresses
- _____ 10. Verification that Using Agency personnel have been trained in the operation of their new equipment (per system: HVAC, controls, fire alarm, etc.), attendance lists and preferred
- _____ 11. Fully executed Roof Warranty (if applicable) in the name of the Using Agency
- _____ 12. Other special warranties as required by specifications, in the name of the Using Agency
- _____ 13. Architect's Certificate of Specification of Asbestos Containing Materials
- _____ 14. Construction Manager's Certificate of Asbestos Use
- _____ 15. Copy of Certificate of Occupancy

NOTE: The Project Director shall verify the math of all Pay Requests prior to signing Final Pay Request to assure correct payment.

Project Number: _____

Project Name and Location: _____

Project Director Signature: _____

Exhibit L

CONTRACTOR'S MINORITY BUSINESS ENTERPRISES STATUS REPORT OF PARTIAL PAYMENT

Contractor's Name:
 Address:
 City, State:

DMS Project Name:
 DMS Project #:

Contract Amount:
 MBE Participation Amount
 MBE Percent:

Draw Request#:
 Date:

Full Name of Minority Business Enterprise: Business Address Business Phone # Business Fax #	Description of Trade or Service	MBE Status (Hispanic/Woman/ African American/ Asian/Other)	State Certified MBE (Yes or No)	MBE Contract Amount	Amount Req. This Draw	Total Paid To Date	Balance Due	Project Type Local Government or State Project
TOTALS:								