Meeting Date
September 16, 2014

AGENDA	
Section	Consent
Item No.	II.C.2

AGENDA REPORT

BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

SUBJECT:	PERMISSION TO ISSUE ANNUAL SUPPLY BIDS, PROPOSALS AND REQUEST FOR QUALIFICATIONS (FY 2014/2015) AND/OR NEGOTIATE COMPETITIVE AGREEMENTS
DEPT/OFFICE:	CENTRAL SERVICES DEPARTMENT/PURCHASING SERVICES

Requested Action:

It is requested the Board grant Purchasing Services approval to perform the following actions regarding the attached list of commodities and services for fiscal year 2014/2015.

1. Solicit competitive bids, quotes and/or negotiate competitive agreements and award to lowest, responsive and most qualified supplier.
2. Solicit competitive proposals and requests for qualifications, establish selection/negotiation committees approved by the County Manager, or designee; and award contracts and/or open purchase orders with the best-ranked proposer.
3. Exercise renewal options upon evaluation of supplier performance, and recommendation from user departments/offices. This establishes the continuance of the contract is favorable prior to extension of the agreement.
4. Authorize the Chairman to execute contracts and contract renewals over $100,000 in annual value.

Summary Explanation & Background:

Purchasing Services estimates the annual needs of the County for items or groups of items where there is an opportunity to achieve savings by using formal competitive processes (formal bids, quotes proposals, and request for qualifications). Annual competitions establish a source, a firm price and a performance period on high-volume, repetitive materials and continuing services.

Approval of this action will eliminate repetitive Board action granting permission to purchase routinely used items and services and will eliminate an estimated several thousand individual purchase order transactions. Also to expedite the award process, the County Manager currently has Board authorization to solicit, award and execute contracts up to $100,000. Award recommendations will be made by a selection committee consisting of user agency representatives approved by the County Manager, or designee, for evaluation of proposals; and Purchasing and user agency staff members for determining responsive and responsible bids.

The competitive procurement method (competitive bid vs. competitive proposal) will be determined by the individual services or commodity requirements. Acquisition of services for recurring continuing professional consultant contracts will be solicited in accordance with Policy BCC-27 and Florida Statutes §287.055, "Consultants' Competitive Negotiation Act". Florida Statute §287.055 allows the County to enter into

Continued, Page 2

Clerk to the Board instruction: Return one copy to Department

Exhibits Attached: Annual Procurement Commodity and Services List (FY 2014/2015)

Contract /Agreement (If attached): Reviewed by County Attorney	Yes ☐	No ☐	PR ☐

County Manager	Assistant County Manager Mel Scott	Department Director / Extension
Stockton Whitten	Assistant County Manager Venetta Valdengo	Teresa Camarata/ext.5-5492

SUBJECT: PERMISSION TO ISSUE ANNUAL SUPPLY BIDS, QUOTES AND PROPOSALS (FY 2014/2015) AND/OR NEGOTIATE COMPETITIVE AGREEMENTS

SUMMARY EXPLAINATION & BACKGROUND, CONTINUED

continuing contracts for professional services for projects in which the estimated construction cost of each individual project under the contract does not exceed $2 million, if the professional services under the contract does not exceed $200,000. Firms providing professional services under continuing contracts shall not be required to bid against one another.

Annual negotiated competitive agreements/discounts establish a firm source period, and price on high volume materials and services, significantly reducing the number of repetitive, expensive daily purchase transactions through the utilization of open purchase orders or purchase card.

The evaluation of renewal options utilizes factors such as market data, level of competition available, inflation and vendor performance. The using agencies and the Purchasing Manager or designee will document recommendations of exercising renewal options in the official bid or proposal files.

Formal contract renewals will be in accordance with AO-29, Contract Administration.

Fiscal Impact FY 14/15: Minimizing administrative costs by reducing and consolidating Board actions for competitive annual procurement of commodities and services insures efficient use of available funds and the timely provision of commodities and services necessary to provide for the health, education, social needs and enhance the quality of life of the residents of Brevard County. Establishment of costs associated with these commodities/services is allocated to individual agencies' funding sources. Funds will be encumbered through user initiated blanket purchase orders.

Name: Contact: Leslie. Rothering, Purchasing Services
Phone: x5-6038, leslie.rothering@brevardcounty.us

BREVARD County
BOARD OF COUNTY COMMISSIONERS

FLORIDA'S SPACE COAST

Tammy Etheridge, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001
Fax: (321) 264-6972

September 17, 2014

MEMORANDUM

TO: Teresa Camarata, Central Services Director Attn: Leslie Rothering

RE: Item II.C.2., Permission to Issue Annual Supply Bids, Proposals, and Request for Qualifications (FY 2014-2015) and/or Negotiate Competitive Agreements

The Board of County Commissioners, in regular session on September 16, 2014, granted Purchasing Services approval to perform the following actions regarding the attached list of commodities and services for fiscal year 2014-2015, as follows: approved soliciting for competitive bids, quotes, and/or negotiate competitive agreements and award to lowest, responsive and most qualified supplier; approved soliciting for competitive proposals and requests for qualifications, establishing selection/negotiation committees as approved by the County Manager, or designee, and awarding contracts and/or open purchase orders with the best-ranked proposer; approved exercising renewal options upon evaluation of supplier performance, and recommendation from user department/offices, which establishes the continuance of the contract is favorable prior to extension of the agreement; and authorized the Chairman to execute contracts and contract renewals over $100,000 in annual value. Enclosed is a copy of the list.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Etheridge

Tammy Etheridge, Deputy Clerk

Encl. (1)

cc: Finance
Budget

ANNUAL BID/QUOTE/PROPOSAL LIST
FY 2014/2015

BIDS	RENEWAL OPTIONS	ESTIMATED ANNUAL EXPENDITURES
PAINT SUPPLIES AND /OR SERVICES	1 YR W/ 1 YR OPTION.	$150,000.00
PERSONAL PROTECTION EQUIPMENT	1 YR W/2 (1YR) OPTIONS	$200,000.00
PIPE - CURED IN PLACE	3 YR W/1-YR OPTION	$400,000.00
PLUMBING SERVICES (HOURLY RATES)	1 YR W/ 1 YR OPTION.	$100,000.00
POLYMER	1 YR W/ 2 YR OPTION.	$200,000.00
PUMP AND COMPRESSOR REPAIR	1 YR W/ 1 YR OPTION.	$200,000.00
RECYCLING ELECTRONICS	1 YR W/ 2-1 YR OPTION.	$285,000.00
ROAD & SHOULDER EXCAVATION	1 YR W/ 1 YR OPTION.	$50,000.00
ROAD CONSTRUCTION --MISC. MATERIALS	1 YR W/ 1 YR OPTION.	$300,000.00
ROAD STRIPING PAINT AND THERMOPLASTIC	1 YR W/ 2 YR OPTION.	$200,000.00
ROOFING/GUTTER MATERIALS AND SERVICES	1 YR W/ 1 YR OPTION.	$300,000.00
SCRAP METAL	2 YR W 1- 2 YR OPTION	$340,000.00
SECURITY SERVICES* (VARIOUS DEPTS)	1 YR W/4-1 YR OPTION	$600,000.00
SELF CONTAINED BREATHING APPARATUS CYLINDERS AND PACKS	1 YR	$250,000.00
SEPTAGE TREATMENT & DISPOSAL	1 YR W/2-1 YR OPTIONS	$200,000.00
SOIL CEMENT PUG-MILL MIX	1 YR W/ 1 YR OPTION.	$90,000.00
SUMMER FOOD SERVICE PROGRAM	1 YR W/4-1 YR RENEWALS PER FDOA GUIDELINES	$78,000.00
TEMPORARY SERVICES	1 YR W/ 1 YR OPTION.	$300,000.00
TIRE REMOVAL AND DISPOSAL (SHREDDING)	1 YR W/ 1 YR OPTION.	$138,000.00
TRAFFIC SIGN MATERIALS	1 YR W 1YR OPTION	$100,000.00
TRAFFIC SIGNAL/STREET LIGHTING MAINT.&CONST.	3 YR W/ 2-1 YR OPTION.	$200,000.00
TRAINING - FIRE RESCUE	1 YR W/ 1 YR OPTION.	$178,000.00
TREATMENT AND DISPOSAL OF DE-WATERED BIOSOLIDS	1 YR W/ 2-1 YR OPTION.	$370,000.00
TREE REMOVALS	1 YR W/ 1 YR OPTION.	$100,000.00
TRUCKING SERVICES (MATERIAL PER YD/PER MILE)	1 YR W/ 1 YR OPTION.	$92,000.00
UNIFORM PURCHASE (FIRE RESCUE)	1 YR W/ 1 YR OPTION.	$157,000.00
VETERINARY SUPPLIES*	1YR W/ 1YR OPTION	$200,000.00
WATER RESOURCES CHEMICALS	1 YR W/1 YR OPTION	$100,000.00
ADVERTISING SERVICES FOR TD0	2 YR W/ 3-1 YR OPTIONS	$250,000.00
ANTENNA AND TOWER MAINTENANCE	1 YR W/4-1 YR OPTIONS	$300,000.00
AUCTIONEER SERVICES	2 YR W/ 1 YR OPTION	% OF SALES
BILLING & MAILING SERVICE	3YR W/3-1YR OPTION	$980,000.00

BREVARD COUNTY
BOARD OF COUNTY COMMISSIONERS

INITIAL CONTRACT FORM

SECTION I

The following information must be completed on all new contracts submitted to the Board.

1. Contractor:		
2. Fund/Account #:	**Division Name:**	
4. Contract Description: Term Contract for Road Striping - Thermoplastic		
5. Contract Monitor: Jeanette Scott, Contract Technician		**6. Mail Stop #: 81**
7. Dept./Office Director: Public Works/John P. Denninghoff		**8. Contract Type:** Term/Payable
ACTION DATE: ASAP	**ACTION REQUIREMENT:** *Need approval*	

SECTION II

The following departments must approve all contracts submitted to the Board:

	APPROVAL			
COUNTY OFFICE	**YES**	**NO**	**INITIALS**	**DATE**
User Agency	_____	_____	_____	_____
Risk Management	✓	_____	JLJ	10/13/2014
County Attorney	✓	_____	CRD	10/8/14

Approving form & content; will need to review executed contract, including Insurance Certificates

FORM ONLY NEED TO SEE ACTUAL EXECUTED CONTRACT See email to S.S below

If any office denies approval, the package will be returned immediately to the User Agency.

NOTE: *This form should be attached to all new contracts being submitted to the Board for approval. After the contract has been approved, the contract package, including this form, will go to the Clerk to the Board. The Clerk's office will return the Initial Contract Form to department for contract to be entered into the Contract Management System. See AO-29 for additional information.*

AO-29: EXHIBIT I

BREVARD County
BOARD OF COUNTY COMMISSIONERS

FLORIDA'S SPACE COAST

Tammy Etheridge, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001
Fax: (321) 264-6972

September 17, 2014

MEMORANDUM

TO: Teresa Camarata, Central Services Director Attn: Leslie Rothering

RE: Item II.C.2., Permission to Issue Annual Supply Bids, Proposals, and Request for Qualifications (FY 2014-2015) and/or Negotiate Competitive Agreements

The Board of County Commissioners, in regular session on September 16, 2014, granted Purchasing Services approval to perform the following actions regarding the attached list of commodities and services for fiscal year 2014-2015, as follows: approved soliciting for competitive bids, quotes, and/or negotiate competitive agreements and award to lowest, responsive and most qualified supplier; approved soliciting for competitive proposals and requests for qualifications, establishing selection/negotiation committees as approved by the County Manager, or designee, and awarding contracts and/or open purchase orders with the best-ranked proposer; approved exercising renewal options upon evaluation of supplier performance, and recommendation from user department/offices, which establishes the continuance of the contract is favorable prior to extension of the agreement; and authorized the Chairman to execute contracts and contract renewals over $100,000 in annual value. Enclosed is a copy of the list.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Etheridge

Tammy Etheridge, Deputy Clerk

Encl. (1)

cc: Finance
Budget

PRINTED ON RECYCLED PAPER

BREVARD County
BOARD OF COUNTY COMMISSIONERS

FLORIDA'S SPACE COAST

Tammy Etheridge, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

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SCOTT ELLIS, CLERK

Tammy Etheridge

Tammy Etheridge, Deputy Clerk

Encl. (1)

cc: Finance
Budget

PRINTED ON RECYCLED PAPER

Brevard COUNTY

BOARD OF COUNTY COMMISSIONERS

Public Works Department
2725 Judge Fran Jamieson Way
Building A, Room 201
Viera, Florida 32940

September 6, 2016

Tammy Rowe, Supervisor
Clerk to the Board
Brevard County Clerk of Courts
400 South Street
Titusville, FL 32781

RE: Written Notification of Contract Renewal
Term contract B-4-14-64 Road Striping – Thermoplastic and Reflective Pavement Marking

As indicated in the Inter-Office Memo dated August 18, 2016, staff is requesting the Chairman sign the Written Notification of Contract Renewal for Term contract B-4-14-64 Road Striping – Thermoplastic and Reflective Pavement Marking. Per the Clerk's Memorandum, the Board of County Commissioners authorized the Chairman to execute contract renewals over $100,000 in annual value.

Upon signature by the Chairman, please contact Jeanette Scott at 321-617-7202/extension 52853 or jeanette.scott@brevardfl.gov to arrange for pick-up of the Written Notification of Contract Renewal.

Thank you,

Jeanette Scott

Jeanette Scott, Construction Contracts Technician

Encl. (4) Contract Renewal Letters

Public Works Department
2725 Judge Fran Jamieson Way
Building A, Room 201
Viera, Florida 32940

BOARD OF COUNTY COMMISSIONERS

Inter-Office Memo

TO: Jim Barfield, Chairman

THRU: Stockton Whitten, County Manager

FROM: Leslie Rothering, Purchasing Services Manager
John P. Denninghoff, Director Public Works Department

RE: Written Notification of Contract Renewal
Term Contract B-4-14-64 Road Striping – Thermoplastic and Reflective Pavement Marking

DATE: August 18, 2016

On September 16, 2014, the Board of County Commissioners granted Purchasing Services permission to issue Annual Supply Bids, Proposals, and Request for Qualifications (FY 2014-2015) and/or Negotiate Competitive Agreements. As noted on the Memorandum dated September 17, 2014, this Board action also authorized the Chairman to execute contract renewals.

Staff is requesting to renew the Agreements for term contract B-4-14-64 for an additional one year period until September 16, 2017. These Agreements were originally entered into on September 16, 2015 with Oglesby Construction, Inc. as the primary contractor and AKCA, Inc. as secondary contractor. These Agreements remain in full force and effect for a period of one year with an option of two additional one year renewals. This will be the last renewal period under term contract B-4-14-64. Each contractor (primary and secondary) has confirmed their agreement to the one year renewal under the same terms and conditions.

If this request meets with your approval, please sign and date each of the attached Written Notification of Contract Renewal letters.

Please feel free to contact our office if you have any questions or concerns. Thank you for your consideration.

Encl: Contract Renewal Letters (2 Oglesby; 2 AKCA)
Memorandum Annual BPQ FY 14-15

RECEIVED
AUG 23 2016
County Manager's Office

BOARD OF COUNTY COMMISSIONERS

Public Works Department
2725 Judge Fran Jamieson Way
Building A, Room 201
Viera, Florida 32940

Written Notification of Contract Renewal

Notice is hereby given to AKCA, Inc., by the Board of County Commissioners of Brevard County, Florida, this 6 day of September, 2016, that the contract previously entered into agreement on September 16, 2014 by and between AKCA, Inc., and the Board of County Commissioners of Brevard County, Florida, under Contract No. 3021 as the secondary contractor, shall be renewed pursuant to the notification set forth therein for an additional period of one year until September 16, 2017, under the same terms and conditions otherwise expressed therein.

Jim Barfield, Chairman
As approved by the Board on September 16, 2014

9/ 6/16
Date

ATTEST:

Scott Ellis, Clerk

Phone (321) 617-7202 • Fax (321) 617-7208
Website: www.brevardcounty.us/PublicWorks/Home

BOARD OF COUNTY COMMISSIONERS

Public Works Department
2725 Judge Fran Jamieson Way
Building A, Room 201
Viera, Florida 32940

Written Notification of Contract Renewal

Notice is hereby given to Oglesby Construction, Inc., by the Board of County Commissioners of Brevard County, Florida, this 6 day of Sept., 2016, that the contract previously entered into agreement on September 16, 2014 by and between Oglesby Construction Inc., and the Board of County Commissioners of Brevard County, Florida, under Contract No. 2719 as the primary contractor, shall be renewed pursuant to the notification set forth therein for an additional period of one year until September 16, 2017, under the same terms and conditions otherwise expressed therein.

Jim Barfield, Chairman
As approved by the Board on September 16, 2014

9/6/16
Date

ATTEST:

Scott Ellis, Clerk

Phone (321) 617-7202 • Fax (321) 617-7208
Website: www.brevardcounty.us/PublicWorks/Home

Meeting Date
September 16, 2014

AGENDA	
Section	Consent
Item No.	II.C.2

AGENDA REPORT

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Continued, Page 2

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Stockton Whitten	Assistant County Manager Venetta Valdengo	Teresa Camarata/ext.5-5492

SUBJECT: PERMISSION TO ISSUE ANNUAL SUPPLY BIDS, QUOTES AND PROPOSALS (FY 2014/2015) AND/OR NEGOTIATE COMPETITIVE AGREEMENTS

SUMMARY EXPLAINATION & BACKGROUND, CONTINUED

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Name: Contact: Leslie. Rothering, Purchasing Services
Phone: x5-6038, leslie.rothering@brevardcounty.us

ANNUAL BID/QUOTE/PROPOSAL LIST
FY 2014/2015

BIDS	RENEWAL OPTIONS	ESTIMATED ANNUAL EXPENDITURES
AGRICULTURAL EQUIPMENT OEM REPLACEMENT PARTS	1 YR W/ 1 YR OPTION.	$80,000.00
ALARM MONITORING*	1 YR W/ 3 -1 YR OPTIONS	$66,000.00
APPRAISALS & APPRAISAL REVIEW SERVICES*	NONE	VARIED
ASPHALTIC CONCRETE	1 YR W/ 3-1 YR OPTIONS	$3,000,000.00
AUTOMOTIVE EQUIPMENT AND BATTERIES	1 YR W/ 1 YR OPTION.	$190,000.00
AUTOMOTIVE BODY REPAIRS	1 YR W/ 1 YR OPTION.	$65,000.00
AUTOMOTIVE PARTS (including Ford & Chevy OEM)	1 YR W/ 1 YR OPTION.	$330,000.00
BIO-MEDICAL WASTE COLLECTION AND DISPOSAL	2 YR W/2-1YR OPTION	$86,000.00
CARPET CLEANING	1 YR W/2-1 YR OPTIONS	$95,000.00
CEMENT--BULK PORTLAND & BAGS	1 YR W/ 1 YR OPTION.	$100,000.00
CERTIFIED BASE ROCK	1 YR W/ 1 YR OPTION.	$215,000.00
CHEMICALS --AGRICULTURAL & AQUATIC & FERTILIERS	1 YR W/ 1 YR OPTION.	$275,000.00
CONCRETE CRUSHING - ONSITE	1 YR W/ 1 YR OPTION.	$100,000.00
CONCRETE PIPE	1 YR W/ 1 YR OPTION.	$420,000.00
CONCRETE SIDEWALK, GUTTER & CURB CONST.	1 YR W/ 1 YR OPTION.	$400,000.00
DRAWBRIDGE MAINTENANCE	1 YR W/ 3-1 YR OPTION.	$85,000.00
ELECTRICAL SERVICES	1 YR W/ 1 YR OPTION.	$150,000.00
EMERGENCY WATER & WASTEWATER REPAIRS	1 YR W/1 YR OPTION	$300,000.00
FENCING	1 YR W/ 1 YR OPTION	$167,000.00
FILL DIRT --SELECT COMMON FILL	1 YR W/ 1 YR OPTION.	$800,000.00
FIRE ENGINGE OUTFITTING EQUIPMENT	1 YR W/1 YR OPTION	$200,000.00
GENERATOR PREVENTATIVE MAINTENANCE AND REPAIR SERVICES	1 YR W/2-1 YR OPTION	$75,000.00
GRASSING SERVICES (SEED,MULCH, SOD)	1 YR W/ 1 YR OPTION.	$360,000.00
HVAC AIR CONDITION SERVICES	1 YR W/ 1 YR OPTION.	$450,000.00
JANITORIAL SUPPLIES (incl. CAN LINERS)	1 YR W/ 1 YR OPTION.	$200,000.00
LABORATORY SERVICES	1 YR W/ 1 YR OPTION.	$200,000.00
LANDFILL GAS REPAIRS	1YR W/ 2 1 YR OPTION	$250,000.00
LAWN/GROUND MAINTENANCE & MGMT*	1 YR W/ 1 YR OPTION.	$400,000.00
LIMEROCK FOR SOLID WASTE	1 YR W/ 1 YR OPTION.	$100,000.00
LUBRICATING OILS	1 YR W/ 1 YR OPTION.	$127,000.00
MANHOLES, INLETS & GRATES (PRE-FABRICATED)	1 YR W/ 1 YR OPTION.	$100,000.00
MED. EXAM. REMOVAL & TRANSPORT OF BODIES	1 YR W /5- 1 YR OPTIONS	$113,000.00
MEDICAL DIRECTOR SERVICES	1 YR W/ 4-1 YR OPTIONS	$89,000.00
MEDICAL SUPPLIES inc. Pharmaceuticals, Controlled Drugs and Gloves	1 YR W/ 1 YR OPTION.	$900,000.00
MIX-IN PLACE ROAD RECYCLING	1 YR W/ 2-1 YR OPTION.	$205,000.00
MULCHING SERVICES	1 YR W/ 2-1 YR OPTION.	$1,500,000.00
OFFICE SUPPLIES	1 YR W/ 1 YR OPTION.	$185,000.00

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TREE REMOVALS	1 YR W/ 1 YR OPTION.	$100,000.00
TRUCKING SERVICES (MATERIAL PER YD/PER MILE)	1 YR W/ 1 YR OPTION.	$92,000.00
UNIFORM PURCHASE (FIRE RESCUE)	1 YR W/ 1 YR OPTION.	$157,000.00
VETERINARY SUPPLIES*	1YR W/ 1YR OPTION	$200,000.00
WATER RESOURCES CHEMICALS	1 YR W/1 YR OPTION	$100,000.00
ADVERTISING SERVICES FOR TDO	2 YR W/ 3-1 YR OPTIONS	$250,000.00
ANTENNA AND TOWER MAINTENANCE	1 YR W/4-1 YR OPTIONS	$300,000.00
AUCTIONEER SERVICES	2 YR W/ 1 YR OPTION	% OF SALES
BILLING & MAILING SERVICE	3YR W/3-1YR OPTION	$980,000.00

ANNUAL BID/QUOTE/PROPOSAL LIST
FY 2014/2015

PROPOSALS	RENEWAL OPTIONS	ESTIMATED ANNUAL EXPENDITURES
BUS MAINTENANCE FOR SCAT	3 YR W/two (2) 1 YR. OPTIONS	$2,700,000.00
COPY MACHINE RENTAL	5 YR W/1 YR OPTION	$450,000.00
DEBT COLLECTION	3 YEARS	% OF TOTAL COLLECTED
DISASTER DEBRIS MANAGEMENT	5 YEARS	VARIED
DISASTER DEBRIS REMOVAL	5 YEARS	$690,000.00
FOOD CONCESSION AT SPESSARD HOLLAND BEACH	5 YR W/ (2) 36 Mos. RENEWALS	REVENUE
FULLFILLMENT AND PHONE ANSWERING SERVICES FOR TDO *	3 YR W/ 2-1 YR OPTIONS.	$115,000.00
GOLF COURSE CONCESSION	5 YR W/ (2) 36 Mos. RENEWALS	REVENUE
GOLF COURSE MAINTENANCE	5 YR W/ (2) 36 Mos. RENEWALS	$1,600,000.00
INSURANCE SERVICES*	VARIED	VARIED
JANITORIAL SERVICES*	1 YR W/ 3 YR OPTION.	$478,400.00
LAUNDRY CONCESSION FOR PARKS & REC	5 YR W/ (2)-1 YR OPTIONS	REVENUE
MAIL/COURIER MANAGEMENT SERVICES	1 YR W/ 4-1 YR OPTIONS	$431,000.00
MARKETING SERVICES FOR SCAT	3 YR W/ 1 2 YR OPTIONS	$570,000.00
PHYSICAL EXAMINATIONS	2 YR W/ 2-1 YR OPTIONS	$250,000.00
PIER CONCESSION	5 YR W/ (2) 3 YR OPTIONS	REVENUE
PUBLIC & MEDIA RELATIONS FOR TDO	2 YR W/3-1 YR OPTIONS	$210,000.00
SAP SUPPORT SERVICES	1 YR W/2-1 YR OPTIONS	$100,000.00
SCRAP METAL	5 yr Agreement	REVENUE
SEASONAL RECREATION WORKERS	3 YR W/2-1 YR OPTIONS	$1,290,000.00
SECURITY SERVICES* (VARIOUS DEPTS)	1 YR W/ 2-1 YR OPTION.	$535,000.00
SPORTS PROMOTION FOR TDC	3 YR W/ 2 YR OPTION	$218,000.00
STRUCTURED CABLING	2 YR W/3-1 YR OPTIONS	$50,000.00
TISSUE & EYE REMOVAL SERVICES	3 YR W/2-1 YR OPTIONS	REVENUE
VACATION PLANNERS FOR TDC	3 YR w/1 2YR OPTION	$50,000.00
VENDING MACHINE SERVICES (Facilities/Parks)	1 YR WITH 4/ 1 YR OPTIONS	REVENUE
WEBSITE DESIGN/MAINTENANCE FOR TDC	3 YR W/1-2 YR OPTION	$40,000.00

ANNUAL BID/QUOTE/PROPOSAL LIST
FY 2014/2015

REQUEST FOR QUALIFICATIONS	RENEWAL OPTIONS	ESTIMATED ANNUAL EXPENDITURES
CONTINUING CONSULTANT ENGINEERING SERVICES - SOLID WASTE	3-5 YEARS TOTAL (including renewals)	Selection will be made in accordance with the Florida Consultants Competitive Negotiations Act (§ 287.055, F.S.) and Brevard County Policy BCC-26 at negotiated rates.
CONTINUING CONSULTANT ENGINEERING SERVICES - UTILITY SERVICES		
CONTINUING CONSULTANT ENGINEERING SERVICES - HOUSING & HUMAN SERVICES		
CONTINUING CONSULTANT- PROFESSIONAL COASTAL ENGINEERING NRMO		
CONTINUING CONSULTANT- PROFESSIONAL ECOLOGICAL ENGINEERING NRMO		
CONTINUING CONSULTANT- PROFESSIONAL ENVIRONMENTAL SCIENCE ENGINEERING NRMO		
CONTINUING CONSULTANT- PROFESSIONAL CIVIL ENGINEERING NRMO		
CONTINUING CONSULTANT ENGINEERING SERVICES - PUBLIC WORKS		
CONTINUING CONSULTANT APPRAISAL SERVICES		
CONTINUING CONSULTANT GEOTECHNICAL SERVICES		
CONTINIUNING CONSTRUCTION MANAGEMENT SERVICES		
CONTINUING CONSULTANT - A/E DESIGN SERVICES		
CONTINUING ENGINEERING SERVICES FOR MECHANICAL/ELECTRICAL/PLUMBING DESIGN		
CONTINUING ENGINEERING SERVICES STRUCTURAL ENGINEERING DESIGN SERVICES		
CONTINUING ROOFING CONTRACTINGS SERVICES		
CONTINUING ROOFING CONSULTANT SERVICES		
Services may be bid or quoted depending on usage or performance experience.		
CONSULTANT ENGINEERING SERVICES - UTILITY SERVICES APPROVED CIP PROJECTS THAT EXCEED CONTINUING CONSULTANT DOLLAR THRESHOLD	PER PROJECT BASIS	Selection will be made in accordance with the Florida Consultants Competitive Negotiations Act (§ 287.055, F.S.) and Brevard County Policy BCC-26 at negotiated costs.

AGREEMENT
BETWEEN OWNER AND CONSTRUCTION MANAGER

THIS AGREEMENT made the 21 day of August in the year Two Thousand Fifteen between the **BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS**, a political subdivision of the State of Florida whose address is 2725 Judge Fran Jamieson Way, Viera, Florida 32940 (hereinafter referred to as "Owner"), and Canaveral Construction Company, Inc. whose address is 3457 U.S. Highway 1, Mims, Florida, 32754 (hereinafter referred to as "Construction Manager"), a company licensed to do business in the State of Florida.

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. The Construction Manager covenants with the Owner to furnish the best skill and judgment and to cooperate with the Architect/Engineer in furthering the interests of the Owner. The Construction Manager agrees to furnish efficient business administration and superintendence and use its best efforts to complete the Project in 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 Design 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 **Attachment "A"** attached.

1.2 Scope of Work – A general description of the Work/Project to be built/constructed/installed under this Agreement (**Attachment "B"**).

1.3 Definitions:

Project - The Project is the total work to be performed under this Agreement. The Project consists of planning, design review, permitting, construction (which includes all labor, equipment, material and supervision) and code inspection necessary to build/construct and complete the Scope of Work identified in Attachment "B" (Scope of Work).

Owner - Brevard County Board of County Commissioners, Central Services Department - Facilities, 2725 Judge Fran Jamieson Way, Building A, 2nd Floor, Viera, Florida 32940, (321) 633-2050; facsimile (321) 633-2101. For the purposes of this agreement, the Owner may also include the County Manager or the Project Manager with regard to the performance of designated functions and duties specified for each under the terms and provisions of this agreement.

Contract Documents - Consist of this Agreement with attachments, Scope of Work, the drawings, the specifications, the GMP, any Conditions of the Contract between the Owner and the Construction Manager (General, Special, Supplementary and other conditions), permit conditions, if any, grant specifications, any addenda to the foregoing listed documents and all change orders, amendments or modifications as provided in Article 10, whether or not any of the foregoing listed documents have been attached hereto.

Permitting Authority - All applicable Federal, State, County and local agencies responsible for permitting and code inspections on projects administered by the Owner.

Construction Manager – Canaveral Construction Company, Inc.

Architect/Engineer – Rodney Honeycutt and Associates

Project Director - The person designated by the Owner to provide direct interface with the Construction Manager with respect to the Owner's responsibilities. Joan Van Sickle, Construction Manager, is the designated Project Director, and Joan Van Sickle is the designated Construction Coordinator.

Owner's Representatives - The Project Director and his/her supervisors and/or designees.

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

Guaranteed Maximum Price (GMP) - The Guaranteed Maximum Price for the construction of the project, which shall be subject to adjustments only as provided herein. GMP includes Cost of the Work and Construction Manager's fee for Construction Phase services. The Guaranteed Maximum Price does include the cost for Owner direct purchases, however, all Owner direct purchases will be deducted in one deductive change order in accordance with **Attachment "C"** (Direct Purchasing Procedure) at the end of the project.

Substantial Completion - the point in the construction where all essential elements of the Project are sufficiently complete in conformance with the Contract, that the OWNER has both the occupancy of the Project, as evidenced

by a Certificate of Occupancy issued by the governmental authority with jurisdiction and the beneficial use of the Project for its intended purpose where only minor punch list items are required for final completion. Substantial Completion shall not be deemed to have occurred where 1) latent defects are revealed subsequent to use and occupation of the project by the OWNER or 2) where the scope of substantial defects in workmanship or materials are not readily observable or discoverable when use and occupancy of the project commenced or 3) the failure to meet grant specifications, if any.

1.4 Extent of Agreement - This Agreement for Construction Management services for the repair of the north boat ramp at Sand Point Park, in Titusville, Florida between the Owner and the Construction Manager supersedes any prior negotiations, representations or agreements. The drawings, specifications and other descriptive documents defining the work to be included under this construction contract are identified in **Attachment "D"**. The Construction Manager shall obtain from the Owner three (3) sets of signed, sealed and dated drawings, specifications and other documents upon which the GMP is based; 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 (1) set of the documents to the Project Director along with his GMP proposal, while keeping one (1) set for himself and returning one (1) set to the Architect/Engineer.

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.

ARTICLE 2

CONSTRUCTION MANAGER'S RESPONSIBILITIES

Construction Manager shall perform all services described in this Article. The services to be provided under Paragraph 2.1 constitute the Pre-Construction Phase services. The services to be provided under Paragraph 2.2 thru 2.9 constitute the Construction Phase services. The parties acknowledge the Construction Phase shall commence before the Pre-Construction Phase is completed, and to a certain extent both phases shall proceed concurrently.

2.1 PRE-CONSTRUCTION PHASE

2.1.1 Preliminary Evaluation - Construction Manager shall provide a preliminary evaluation of Owner's program and Project budget requirements, each in terms of the other.

2.1.2 Consultation - Construction Manager will provide Design Disciplines Construction Documents Plans and Specifications review at all design milestones and a final

constructability review. The review at each milestone will identify areas of omission, overlapping and identify documents to be modified in order to clarify the construction details. The review will also include the coordination and interface of the contract document's General Conditions, Special Conditions, trade contractor bid packages and site utilization planning during construction. Reviews shall be completed and comments provided within five (5) business days. As part of the design review, Construction Manager will provide Value Engineering and construction alternatives, identifying to the Owner and Architect options for systems and components that are cost effective, ease of maintainability and efficiency to be considered.

Construction Manager, with Architect, has scheduled and attended, and will continue to jointly schedule and attend, **weekly** progress meetings (*or as determined by the Project Director or Project Manager*) with Owner and Architect. Construction Manager has and will continue to consult with Owner and Architect regarding site use and improvements, and the selection of materials, building systems and equipment. Construction Manager has provided and will continue to provide recommendations on construction feasibility; actions designated to minimize adverse effects of labor or material shortages; time requirements for procurement, installation and construction completion; and factors related to construction cost including estimates of alternative designs or materials, preliminary budgets and possible economies.

2.1.3 Preliminary Project Schedule - Construction Manager has prepared a Preliminary Project Schedule, a copy of which is attached as **Attachment "E"**. Construction Manager shall coordinate and integrate the Preliminary Project Schedule with the services and activities of Owner, Architect and Construction Manager. The Construction Manager shall 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 Total Project Schedule. The schedule shall include all phases of construction work, material supplies, long lead procurement, approval of shop drawings, change orders in progress, schedules for change orders, and performance of testing requirements. The Construction Manager shall advise the Owner, its representatives and the Architect/Engineer of their required participation in any meeting or inspection giving each at least one (1) week notice unless such notice is made impossible by conditions beyond the Construction Manager's control. The Construction Manager shall hold jobsite meetings at least once each week with the Construction Team and at least once each week with the subcontractors and the Architect/Engineer field representatives, and Owner or more frequently as required by work progress, to review progress, discuss problems and their solutions and coordinate future work with all subcontractors.

2.1.4 Subcontractors and Suppliers - Construction Manager shall continue to develop subcontractor interest in the Project and shall furnish to Owner and Architect for their information a list of possible subcontractors, including suppliers who are to furnish materials or equipment fabricated to a special design, from whom proposals will be requested for each principal portion of the Project. Owner will promptly reply in writing to Construction Manager if Owner has an objection to any such subcontractor or supplier. The receipt of such list shall not require Owner to investigate the qualifications of proposed subcontractors or suppliers, nor shall it waive the rights of Owner to later object to or reject any proposed subcontractor or supplier.

2.1.5 Long Lead and Owner Direct Procurement - The Construction Manager shall review the design for the purpose of identifying long lead and Owner direct procurement items (machinery, equipment, materials and supplies). When each item is identified the Construction Manager shall notify the subcontractors, the Project Director, and the Owner of the required procurement and schedule. Such information shall be included in the bid documents and made a part of all affected subcontracts. 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 Invitation for Bids. The Construction Manager shall keep informed of the progress of the respective subcontractors and/or suppliers, manufacturing or fabricating such items and notify the Project Director, Owner and Architect/Engineer of any problems or prospective delay in delivery.

2.1.6 Extent of Responsibility - The recommendations and advice of Construction Manager concerning design alternatives shall be subject to the review and approval of Owner and Owner's professional consultants. It is not Construction Manager's responsibility to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations. However, if Construction Manager recognizes that portions of the Drawings and Specifications are at variance therewith, Construction Manager shall promptly notify Owner and Architect in writing.

2.1.7 Equal Employment Opportunity and Affirmative Action - Construction Manager shall comply with applicable laws, regulations and special requirements of the Contract Documents regarding equal employment opportunity and affirmative action programs.

2.1.8 Separate Contracts Planning - The Construction Manager shall review the design with the Architect/Engineer and make recommendations to the Owner and to the Architect/Engineer with respect to dividing the work in such manner as will permit the Construction Manager to take bids and award separate construction subcontracts on the current schedule while the design is being completed. The

Construction Manager shall take into consideration such factors as natural and practical lines of severability, sequencing, effectiveness, access and availability constraints, total time for completion, construction market conditions, availability of labor and materials, community relations and any other factors pertinent to saving time and cost by overlapping design and construction that are authorized by the Owner.

2.2 CONSTRUCTION PHASE

2.2.1 Interfacing -

(1) The Construction Manager shall take such measures as are appropriate to provide that all construction requirements will be covered in the separate subcontracts for procurement of long lead items, the separate construction subcontracts and the general conditions items performed without duplication or overlap, sequenced to maintain completion of all work on schedule. Particular attention shall be given to provide that each bid package clearly identifies the work included in that particular separate subcontract, its schedule for start and completion and its relationship to other separate subcontractors.

(b) Subcontractor Interfacing - The Construction Manager shall be the single point of interface with all Subcontractors for the Owner, and all of its agents and representatives, including the Architect/Engineer. The Construction Manager shall negotiate all change orders, field orders and request for proposals, with all affected Subcontractors and shall review the costs of those proposals and advise the Owner and Architect/Engineer of their validity and reasonableness, acting in the Owner's best interest prior to requesting approval of each change order from the Owner. Before any work is begun on any change order, an executed Authorization to Initiate Work form from the Owner must be issued. However, when health and safety are threatened, the Construction Manager shall act immediately to remove the threat to health and safety. The Construction Manager shall also carefully review all shop drawings and then forward the same to the Architect/Engineer for review and actions. The Architect/Engineer will transmit them back to the Construction Manager who will then issue the shop drawings to the affected Subcontractor for fabrication or revision. The Construction Manager shall maintain a suspense control system to promote expeditious handling. The Construction Manager shall request the Architect/Engineer to make interpretations of the drawings or specifications requested of the Construction Manager by the Subcontractors and shall maintain a suspense control system to promote timely response. The Construction Manager shall advise the Project Director and Architect/Engineer when timely response is not occurring on any of the above.

2.2.2 Solicitation of Bids

(1) Without assuming responsibilities of the Architect/Engineer, the Construction Manager shall prepare Invitations for Bids (or Request For Proposals, when applicable) for all procurements of long lead times, materials and services for Subcontractor contracts and for site utilities.

(2) 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.

(3) For each separate subcontractor or construction trade contract used in this project, the Construction Manager shall, unless waived by the 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.

(4) In accordance with Article 2.4.2 the Construction Manager shall open and review all bids and enter into contract(s) with those low bidders determined to be most qualified by the Construction Manager. The Construction Manager shall make every effort to follow the County's Pre-Qualification Ordinance 98-37 (**Attachment "F"**) for applicable subcontract trades.

2.2.3 Bonds - For those projects where the cost will exceed $100,000.00, 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 (**Attachment "G" and "H"**), certified copies of the recorded 100% Public Construction Performance Bond and 100% Public Construction Payment Bond each in an amount not less than the total construction cost (GMP) as defined in Article 9 and inclusive of the construction fee. *Payment and Performance Bonds shall be recorded (by the Construction Manager) in the official record of the County in which the project is located.* The Contractor must provide a copy of the bond(s) to all subcontractors and notify them of deadlines to make claims under the bonds.

2.2.4 Quality Control - The Construction Manager shall develop and maintain a program, acceptable to the Owner and Architect/Engineer, to assure quality control of the construction (*this may include personnel if approved by the Owner*). The Construction Manager shall have a qualified and competent Superintendent to supervise the work of all Subcontractors providing instructions to each when their work does not conform to the requirements of the plans and specifications and shall continue to exert 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 and 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.

2.3 Guaranteed Maximum Price (GMP) and Contract Time

2.3.1 Construction Manager acknowledges and agrees the Drawings and Specifications are sufficiently complete for Construction Manager to propose a Guaranteed Maximum Price (GMP), which is the total not to exceed sum of the Construction Manager's Fee and the Cost of the Project. Accordingly, the Guaranteed Maximum Price (GMP) is hereby established at $60,847.00. *The final approved GMP spread sheet is hereby attached as* **Attachment "I"** *to and shall become a part of this Agreement between Owner and Construction Manager*.

2.3.2 The Cost of the Work shall include Construction Manager's contingency, a sum agreed to by all parties for the Manager's use to cover costs arising from unforeseen conditions in the project. Construction Manager's contingency is hereby established as a separate line item of $2,000.00 within the Guaranteed Maximum Price.

2.3.3 Basis of Guaranteed Maximum Price (GMP)
The Guaranteed Maximum Price, herein established is based upon the following:

.1 The list of the Drawings and Specifications, including all addenda thereto, and the Conditions of the Contract, which are identified in the Attachments to this Agreement.

.2 The list of clarifications and assumptions made by Construction Manager in the preparation of its Guaranteed Maximum Price proposal to supplement the information contained in the Drawings and Specifications.

.3 The Preliminary Construction Schedule (**Attachment "E"**). As reflected in said Schedule, Construction Manager is to achieve Substantial Completion of the Work within 120 calendar days from issuance of Notice

to Proceed. Final Completion shall be achieved within an additional 30 calendar days.

2.3.4 Included within the Guaranteed Maximum Price is the Construction Manager's fee. The Construction Manager's Fee is hereby established as $8,977.00 for services provided in this Agreement. The sum of the Cost of the Project and the Construction Manager's Fee shall not exceed the Guaranteed Maximum Price. The Construction Manager's Fee shall constitute Construction Manager's total compensation for profit. All costs in excess of the final approved GMP (as reduced by Owner direct purchases, if any, in accordance with **Attachment "C"**) are the responsibility of the Construction Manager. Any savings between the GMP (as reduced by Owner direct purchases) and the sum of the actual cost of the Project plus the Construction Manager's fee will be returned to the Owner.

2.3.5 Prior to issuance of the Construction Phase Notice to Proceed, Construction Manager shall not incur any costs to be reimbursed as part of the Cost of the Project, except as Owner may specifically authorize in writing.

2.3.6 The Guaranteed Maximum Price and date of Substantial Completion shall be subject to additions and deductions by a Change Order as provided in the Contract Documents.

2.3.7 The Guaranteed Maximum Price shall include in the Cost of the Project only those taxes which are enacted and in effect at the time the GMP was determined.

2.4 Construction Phase

2.4.1 General

2.4.1.1 The Construction Phase shall commence on the date identified in the Notice to Proceed to be issued by the Owner.

2.4.1.2 The Construction Manager shall cause all Work required by the Contract Documents to be properly completed in accordance with the terms of the Contract Documents and within the Contract Time.

2.4.1.3 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 and to coordinate, inspect and provide general direction of the work and progress of the subcontractors, and the Construction Manager shall provide no less than those personnel during the respective phases of construction. The Construction Manager shall not change any of those designated persons 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 reasonably withheld.

2.4.1.3.1 The Construction Manager shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during the progress of the work. The superintendent shall represent the Construction Manager and all communications given to the superintendent shall be as binding as if given to the Construction Manager.

2.4.1.3.2 The superintendent shall be in attendance at the Project site not less than eight (8) hours per day, five (5) days per week, and any time work is being performed at the jobsite, unless the job is closed down due to a general strike or conditions beyond the control of the Construction Manager or until completion or termination of the Contract. It is understood that such superintendent shall be acceptable to the Owner and the Architect and shall be the one who will be continued in that capacity for the duration of the project, unless the Owner otherwise agrees. The superintendent shall not be employed on any other project for or by Construction Manager or any other entity during the course of the work.

2.4.1.4 Lines of Authority - The Construction Manager shall establish and maintain lines of authority for its personnel, and shall provide this description/definition to the Owner and all other affected parties such as the code inspectors of the permitting authorities, the subcontractors, 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 the Architect/Engineer may attend meetings between the Construction Manager and subcontractors, however, such attendance shall not diminish either the authority or responsibility of the Construction Manager to administer the subcontractor.

2.4.2 Administration

2.4.2.1 Those portions of the Project that Construction Manager does not customarily perform with Construction Manager's own personnel shall be performed under subcontracts or by other appropriate written agreements with Construction Manager. Construction Manager shall obtain bids from subcontractors and from suppliers of materials or equipment fabricated to a special design for the Project from the list previously reviewed and, after analyzing such bids, shall deliver such bids to the Owner and Architect for review and comment. Based upon that review and comment, Construction Manager shall then determine, subject to the reasonable objection of Architect or Owner, which bids will be accepted. Construction Manager shall not be required to contract with anyone to whom Construction Manager has reasonable objection. Notwithstanding anything herein to the

contrary, Construction Manager covenants and agrees that it shall competitively bid all subcontracts. Further, with respect to all such subcontracts, Construction Manager covenants and agrees that it shall select and contract with the lowest, responsive and qualified bidder, unless otherwise consented to in writing by Owner.

2.4.2.2 Subcontracts and agreements with suppliers furnishing materials or equipment fabricated to a special design shall conform with payment provisions and shall not be awarded on the basis of cost plus a fee without prior written consent of Owner.

2.4.2.3 Construction Manager shall schedule and conduct weekly meetings at which Owner, Architect, Construction Manager and appropriate Subcontractors can discuss the status of the Project. Construction Manager shall prepare and promptly distribute meeting minutes within two (2) business days after any such meeting is held.

2.4.2.4 Promptly after Owner's issuance of the Notice to Proceed, Construction Manager shall prepare a more detailed Project Schedule, based upon the preliminary Project Construction Schedule attached as **Attachment "E"**, including Owner's occupancy requirements. Construction Manager will submit monthly updates to the Schedule until the project is completed.

2.4.2.5 Construction Manager shall provide Monthly Written Reports to Owner on the progress of the entire Work. Construction Manager shall maintain a daily log containing a record of weather, subcontractors working on the site, number of workers, Work accomplished, problems encountered and other similar relevant data as Owner may require. The log shall be available to Owner at all times.

2.5 Professional Services - Construction Manager shall not be required to provide professional services which constitute the practice of architecture or engineering, unless such services are specifically required by the Contract Documents for a portion of the Project, or unless Construction Manager has specifically agreed in writing to provide such services. In such event, Construction Manager shall cause such services to be performed by appropriately licensed professionals.

2.6 Unsafe Materials - If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance encountered but not created or brought on the site Construction Manager shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to Owner and Architect in writing. Owner shall be responsible for obtaining the services of a licensed laboratory to verify the presence or absence of the material or substance reported by Construction Manager and, in the event such material or substance is found to be present, to verify that it has been rendered harmless.

In accordance with Florida Statute 255.40, the Owner will require that the Contractor certify (at project completion) that to the best of his/her knowledge and ability no asbestos-containing materials and/or supplies have been purchased and/or installed on this Project.

(*Florida Statute 255.40 Use of asbestos in new public buildings or buildings newly constructed for lease to governmental agencies; prohibition - The use of asbestos or asbestos-based fiber materials is prohibited in any building, construction of which is commenced after September 30, 1983, which is financed with public funds or is constructed for the express purpose of being leased to any governmental entity.*)

2.7 Weather Protection - The Construction Manager will be responsible to 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. All costs associated with this shall be the responsibility of the Construction Manager.

2.8 Job Site Requirements

(1) The Construction Manager shall provide for each of the following activities as a part of the Construction Manager's Construction Phase services:

a. Maintain a log of daily activities, including manpower records, weather, delays, major decisions, etc. and require the same of subcontractors
b. Maintain a directory of companies on the Project with names, addresses, telephone numbers, emergency telephone numbers and fax numbers of key personnel.
c. Establish and enforce job rules governing parking, clean-up, use of facilities and worker discipline.
d. Provide labor relations management for a harmonious, productive Project.
e. 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.
f. Provide a quality control program.
g. Miscellaneous office supplies that support the construction efforts which are consumed by his own forces.

2.9 Job Site Administration - The Construction Manager shall provide as part of the Construction Manager's Construction Phase services, administrative functions during construction, including but not limited to, the following:

(1) 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 and delivery of materials, work sequences, inspection and testing, labor allocations, etc. Review and coordinate each Subcontractor's work. Review and implement revisions to the Schedule. Monitor and promote safety requirements.

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 document and implement the 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.

(2) Shop Drawing Submittals/Approvals - Check Shop Drawings and implement procedures for submittal and transmittal to the Architect/Engineer of such drawings for action, and closely monitor their submittal and approval process. Provide copy of all correspondence to Owner. Construction Manager will provide one (1) approved Submittal or Shop Drawing to Owner.

(3) Material and Equipment Expediting - Closely monitor material and equipment deliveries; implement inspection and follow-up procedures on commitments of all Suppliers and Subcontractors.

(4) Payments to Subcontractor - Develop and implement a procedure for review, processing, and payment of applications by Subcontractors for progress and final payments.

(5) Document Interpretation - Refer all questions for interpretation of the documents prepared by the Architect/Engineer to the Architect/Engineer.

(6) 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.

(7) Substantial Completion - The Construction Manager shall secure the Certificate of Occupancy and notify the Owner and Architect/Engineer, in writing, that the Project will be ready for inspection to determine if it is substantially complete and ready for inspection on or after a specific date, which date shall be stated in the notice. The notice shall be given at least seven (7) calendar days in advance of said date. Inspection and testing shall take place at time(s) mutually agreeable to the Construction Manager, Architect/Engineer and Owner. The inspection will be conducted jointly between the Architect/Engineer, Owner and Construction Manager's representative. The inspection shall determine if substantial completion has been accomplished and the Architect/Engineer shall produce a Certificate of Substantial Completion (**Attachment "J"**) and a written list of unfinished Work and defective work, commonly referred to as a "Punch List", which must be finished and corrected to obtain final completion.

At the Owner's option a specific area or segment of the project may be inspected and/or determined substantially complete.

(8) Final Completion - The Construction Manager shall notify the Architect/Engineer and Owner, in writing, that the Project will be ready for final inspection on or after a specific date, which date shall be stated in the notice. This notice shall be given at least seven (7) calendar days in advance. That inspection and any necessary testing shall be conducted in the same manner as the inspection for Substantial Completion. When the Project is finally and totally complete, including the elimination of all defects, a Certificate of Final Completion (**Attachment "K"**) will be issued by the Architect/Engineer and the Project shall be submitted to the Owner for final acceptance.

The Owner and Architect/Engineer shall conduct the inspections. The Owner may elect to have other persons of its choosing also participate in the inspections. If one or more re-inspections are required, the Construction Manager shall reimburse the Owner for all costs of re-inspection or, at the Owner's option, the costs may be deducted from payments due to the Construction Manager. The Total Project Schedule shall include these notices and inspections as activities.

The Construction Manager shall secure and transmit to the Architect/Engineer all required guarantees, affidavits, releases, bonds and waivers, manuals, record drawings, and maintenance books as part of

final completion (in triplicate) unless stated otherwise in the Project specifications.

(9) Start-Up - With the Owner's personnel, direct the checkout of utilities, operations, systems and equipment for readiness and assist in their initial start-up and testing by the subcontractors.

(10) Record Drawings - The Construction Manager shall monitor the progress of Work on marked-up field prints which, at Substantial Completion, shall be submitted to the Architect/Engineer who will prepare the final record drawings.

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

Contracts and Purchase Orders
Shop Drawing Submittal/Approval Logs
Equipment Purchase/Delivery Logs
Contract Drawings and Specifications with Addenda
Cost Proposal Requests
Meeting Minutes
Lab Test Reports
Contract Changes
Material Purchase Delivery Logs
"As-Built" Marked Prints
Monthly Progress Reports
Correspondence Files
Transmittal Records
Inspection Reports
Punch Lists

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 Construction Phase which will provide a smooth and successful Owner occupancy of the Project. The Construction Manager shall provide consultation and project management to facilitate Owner occupancy and provide transitional services to get the work, as completed by the contractors "on line" in such conditions as will satisfy Owner operational requirements.

The Construction Manager 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.

The Construction Manager shall catalog operational and maintenance requirements of equipment to be operated by maintenance personnel and convey these to the Owner in such a manner as to promote their usability (in triplicate). The Construction Manager shall provide operational training, in equipment use, for building operators to a maximum of eight (8) hours.

The Construction Manager shall secure required guarantees and warranties, assembled and organized (in a binder) and deliver same, in triplicate, to the Owner in a manner that will facilitate their maximum enforcement and assure their meaningful implementation.

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

(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 (1) year from the Date of Final Completion or 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. This warranty inspection will be scheduled by a representative of the Owner**.

ARTICLE 3

OWNER'S RESPONSIBILITIES

3.1 Owner's Information - The Owner shall provide full information regarding Owner's requirements for the Project.

3.2 Owner's Representative/Project Director - 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. The Owner's representative 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 upon request.

3.4 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.

3.5 Legal Services - The Owner shall furnish such legal services as may be necessary for providing the items set forth in Article 3 and such auditing services as the Owner may require.

3.6 Drawings and Specifications - The Owner will provide to the Construction Manager a reproducible set of all drawings and specifications reasonably necessary and ready for printing.

3.7 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.

3.8 Project Fault or Defects - If the Owner becomes aware of any fault or defect in the Project or non-conformance with the drawings and specifications, the Owner shall give prompt written notice thereof to the Construction Manager and Architect/Engineer.

3.9 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.

3.10 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.

3.11 Lines of Authority - The Owner shall establish and maintain lines of authority for Owner's personnel and shall provide this definition to the Construction Manager and all other affected parties.

3.12 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

4.1 Permits, Fees and Notices - Unless otherwise provided in the Contract Documents, the Construction Manager shall secure and the Owner shall pay for any Brevard County building permit or other County permits and governmental fees and licenses necessary for proper execution of the Contract and which are legally required. Any other entity/jurisdiction permits (i.e.: City of Titusville, City of Melbourne, etc.) shall be included in the Guaranteed Maximum Price and secured and paid for by the Construction Manager. County Impact and Solid Waste fees will also be paid by the Owner. Copies of all permits shall be submitted to the Owner.

4.2 The Construction Manager shall comply with and give notices required by laws, ordinances, rules and regulations and lawful orders of public authorities bearing on performance of the work required for the Project.

4.3 It is not the Construction Manager's responsibility to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations. However, if the Construction Manager observes that portions of the Contract Documents are at variance therewith, and such variance was not discoverable during the Construction Manager's review of these documents for the purpose of determining the GMP, the Construction Manager shall promptly notify the Architect and Owner, in writing, and necessary changes shall be accomplished by appropriate modification.

4.4 If the Construction Manager performs Work knowing it to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without such notice to the Architect and Owner, the Construction Manager shall assume full responsibility for such Work and shall bear the attributable costs.

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. Nothing contained in the Contract Document shall create any contractual relation between the Owner or Architect/Engineer and any Subcontractor.

5.2 Bids/Proposals - The Construction Manager shall request and make every attempt to receive, at a minimum, three (3) bids/proposals from Subcontractors and Suppliers and will award those contracts to the most qualified and responsive low bidder after the Construction Manager and Owner have reviewed each bid/proposal and agree that the Subcontractor is qualified to perform the work.

5.3 Required Subcontractor 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 this Agreement, 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 Subcontractor's 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-subcontractor.

(1) Subcontractors must submit a complete pre-qualification form demonstrating their work experience, financial condition, and adherence to schedule. The Subcontractors financial condition must demonstrate that adequate fixed and liquid assets and equipment are available to properly perform the subcontract.

(2) Workforce - The Subcontractor must agree to perform no less than fifty 50%) percent of the Project construction work utilizing its own forces.

(3) 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 cost for such change, plus, no more than five percent (5%) for profit, and five percent (5%) for overhead.

The subcontract shall require the Subcontractor expressly agree that the foregoing constitute its 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, loss or additional compensation.

b. Each subcontract shall require that any claims by Subcontractor for delays 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 its employees and agents and its Subcontractors, agents and employees, and all other persons performing any of the work or supplying materials under this contract to the Construction Manager.

ARTICLE 6

SCHEDULE, TIME OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

6.1 At the time a Guaranteed Maximum Price (GMP) is established, as provided for in Article 7, a Project Substantial Completion Date, a Project Final Completion Date and an Owner Occupancy Date for completion of the Project in accordance with the master Project schedule, shall also be established by the Construction Team. The Construction Manager agrees to complete the construction in accordance with the agreed upon Substantial Completion Date, Final Completion Date and Owner Occupancy Date. The Construction Manager acknowledges that failure to complete the Project within the construction time set forth in the approved schedule will result in substantial damages to the Owner.

It is specifically agreed by and between the parties that the Owner may deduct a sum in the amount scheduled below from the amount of compensation to be paid the Construction Manager, Sundays and Holidays included, that the Project remains uncompleted. This amount as scheduled and agreed upon as a proper measure of liquidated damages, which the Owner will sustain per day by failure of the Construction Manager to complete the Project by the time stipulated in this Agreement, is not to be construed in any sense as a penalty provision.

Project Substantial Completion	$500 per day
Project Final Completion	$250 per day

Liquidated Damages will be assessed for each day beyond the contracted project Substantial Completion date, until actual project Substantial Completion is achieved. From the date of Substantial Completion, the Construction Manager shall be granted thirty (30) days for completion of punch list items, associated inspections and approvals, and submission and approval of required closeout documentation, at which time Final Completion shall be obtained. Final Completion liquidated damages will be assessed for each day beyond the thirty (30) days period from actual Substantial Completion.

6.2 The date of Owner Occupancy shall occur as described in Article 2.9(7) and Article 1.3, hereinabove. Warranties called for by this Agreement or by the Drawings and Specifications shall commence on the Date of Final Completion of the Project unless specified otherwise in the Project Specifications.

ARTICLE 7

GUARANTEED MAXIMUM PRICE FOR CONSTRUCTION

7.1 The Construction Manager will establish and submit in writing a Guaranteed Maximum Price to the Owner for its approval, guaranteeing the maximum price to the Owner, for the construction cost of the Project or designated part thereof, based on a review of the contract drawings and specifications. Such Guaranteed Maximum Price will be subject to increase or deduction for changes in the Project as provided in Article 10 and for Owner direct purchases, if any, in accordance with **Attachment "C"**. All costs in excess of the final approved GMP, as adjusted up or down in accordance with the terms of this agreement, are the responsibility of the Construction Manager. Any savings between the GMP, as adjusted, and the sum of the actual cost of the Project plus the Construction Manager's fees, will be returned to the Owner. The GMP includes all taxes in the Cost of the Project which were legally enacted and in effect at the time the GMP was established.

7.2 Owner-Direct Purchases - In the event the Owner opts to make Owner Direct Purchases, as outlined in **Attachment "C"**, the Guaranteed Maximum Price shall be reduced by the cost of the materials plus applicable sales tax so that all sales tax savings accrue to the benefit of the project contingency. The Construction Manager shall diligently process all Owner Direct Purchase invoices for the project in order for the Owner to benefit from applicable vendor discounts. The Construction Manager will be required to submit all invoices to Owner in sufficient amount of time in order for the project to benefit from the vendor discount. All costs associated with missed discounts by the Construction Manager will be deducted from the Construction Manager's contract via

deductive change order at project completion. Owner reserves the right to waive the Construction Manager's responsibility for missing discounts.

7.3 At the time of execution of the contract, the Construction Manager will verify the time schedule for activities and work which is adopted by the Construction Team and used to determine the Construction Manager's cost of work. Surplus funds from bids received below the applicable line items, including line items within the General Conditions, in the GMP will be set aside for contingency. Construction contingency funds will be used 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. The Architect/Owner shall verify and approve the actual costs.

If bids are received above the applicable line item in the GMP the deficiency will be taken from the contingency via an approved Authorization to Initiate Work/GMP Realignment form; 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 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 8.1.2 and 8.1.3. subject to the retainage specified in 8.1.1 below.

8.1.1 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 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. A percentage of the agreed upon Construction Phase Fee shall be paid monthly based on percentage (%) of work completed, less retainage, in accordance with subsection 12.1 below. The Construction Manager's first monthly Certificate for Payment shall be submitted no earlier than thirty (30) days following the issuance of the Notice to Proceed, and the final monthly payment shall be paid only when construction of the Project is finally completed, all original, final release of liens are received, closeout documentation has been submitted 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, subcontractors or others for whose acts the Construction Manager is responsible.

(2) Costs and Expenses Included in Construction Manager's Construction Phase Fee - The following are included in the Construction Manager's fee for services during the Construction Phase and are included in the GMP (See **Attachment "L"** for Allowable Costs, Overhead associated with the Construction Manager's Construction Phase Fee referenced in Article 8):

(a) Corporate costs including expenses and overhead and profit related to this project by the Construction Manager's principal and branch offices.
(b) Costs of all data processing, accounting, purchasing and associated staff which is performed at the home office.
(c) General operating expenses incurred in the management and supervision of the project, except as expressly included in Article 9.
(d) Salaries or other compensation of the Construction Manager's employees at his principal and branch offices.
(e) Those services set forth in Paragraph 2.1, 2.2, 2.3 and 2.4; except as expressly included in Article 9.
(f) Relocation expenses for Construction Manager's personnel.
(g) Costs of all project estimating, safety, scheduling and accounting staff.

8.1.3 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, based on a review of the contract drawings and specifications. Such Guaranteed Maximum Price will be subject to modification for changes in the Project as provide in Article 10. However, the actual price paid for the Work by the Owner shall be (1) the Cost of the Project as defined in Article 9, plus the Construction Manager's fees, or (2) the GMP, whichever is less, when the Work is complete. All costs in excess of the final approved GMP are the responsibility of the Construction Manager.

ARTICLE 9

COST OF THE PROJECT

9.1 Definition - The term Cost of the Project shall mean costs reasonably and necessarily incurred in the Project during the Construction Phase for construction services and paid by the Construction Manager which are included in the Construction Phase Fee, less Owner direct purchases made in accordance with **Attachment "C"** upon completion of the Project. Such costs shall include the items set forth below in this Article, and shall also include, but are not limited to, those set forth in **Attachment "M"** - "Allowable General Conditions".

The Owner agrees to pay the Construction Manager for the Cost of the Project subject to the limits set forth in Articles 9.2 and 9.3 plus the Construction Manager's fees stipulated in Article 8, provided the total does not to exceed the GMP.

9.2 Direct Cost Items (See **Attachment "M"** - "Allowable General Conditions")

(1) Labor wages paid for the on-site Project Superintendent directly responsible for the operation and supervision of the project, clerical and Quality Control personnel (as opposed to wages paid to management or supervisory personnel who are not part of the on-site project management) in the direct employ of the Construction Manager in the performance of the Construction Manager's work under this Agreement, acceptable salary or wage schedules and such fringe benefits, if any, as may be payable with respect thereto (labor burden not to exceed 40% for payroll and 15% for per diem).

(2) 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.

(3) Cost of the premiums for insurance above and beyond the minimum required by Brevard County ($1 million) and cost of premiums for bonds which the Construction Manager is required to procure by this Agreement specifically for the construction of this project.

(4) Sales, use, gross receipts or similar taxes related to allowable direct costs of the Project imposed by a governmental authority, and for which the Construction Manager is liable. 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.

(5) If approved by the Owner, the Construction Manager, when qualified, may self 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.

(6) 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.

(7) 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.

9.3 Allowances

Within the GMP, there may be specific items which the Construction Manager and Owner have agreed to include as allowances in the estimates until such time as the cost and schedule impact of these items can be more specifically ascertained. At the time that the Costs of the Work of allowance items becomes known (either through a subcontract price or by virtue of either (A) scope of work and cost agreed to by Construction Manager and Owner or (B) an actual buyout of the item), the GMP and Scheduled Completion Date will be adjusted (either increased or decreased) by the actual Costs of the Work and schedule impact of the item. With respect to increases and decreases to the amount of an allowance item, Construction Manager shall be entitled to the Construction Manager's fee, subject to the limits set forth in Article 8, on the adjusted amount of such allowance, and the GMP shall be adjusted by reason thereof, by Change Order. Allowances must be agreed to by both parties. Allowances included within the GMP constitute approval of said allowances at the time the Guaranteed Maximum Price is approved.

9.4 Public Records Law and Audit Requirements

In the performance of this Contract, the Construction Manager shall keep books, records and accounts of all activities related to the Contract in compliance with generally accepted accounting procedures and in compliance with the Public Records Laws of the State of Florida (Including, but not limited to Chapter 119, Florida Statutes).

All records or documents created by Construction Manager or provided to Construction Manager by the County in connection with the activities or services provided by Construction Manager under the terms of this agreement, are public records and Construction Manager agrees to comply with any request for such public records or documents made in accordance with section 119.07 Florida Statutes.

Records, documents, books and accounts ordinarily and necessarily required for the performance of this Contract shall be kept, maintained and open to inspection by the Owner, Owner's representative, and members of the public during regular business hours.

The Construction Manager shall provide the public with access to public records on the same terms and conditions that the public agency provides the records and at a cost that does not exceed the cost provided for in Florida Statute Chapter 119 or as otherwise provided by law (see also County Administrative Order, AO-47).

The Construction Manager shall also ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.

No reports, data, programs or other materials produced, in whole or in part for the benefit and use of the County, under this Contract shall be subject to copyright by Construction Manager in the United States or any other country.

The Construction Manager shall meet all requirements for retaining public records and shall transfer, at no cost, to the Owner/County all public records in possession of the Construction Manager upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the Owner/County in a format that is compatible with the information technology systems of the Owner/County.

Failure to comply with the provisions of this Section 9.4, shall result in the Owner taking enforcement action against the Construction Manager including the cost to the Owner for gaining the Construction Manager's compliance which will include, but are not limited to, the gross hourly rate of the Owner's employee(s) contacts to the Construction Manager to obtain compliance with this section, litigation filing fees and attorney's fees.

ARTICLE 10

CHANGES IN THE PROJECT

10.1 Change Orders - The Owner, without invalidating this Agreement, may order Changes in the Project within the general scope of this Agreement consisting of additions, deletions or other revisions which may cause an increase or decrease in the GMP, and/or the Construction Completion Date. All changes in the Project GMP or Construction Completion Date not covered by an authorized contingency, as described in Article 7.3 must be authorized by a written Change Order or Construction Change Directive, and signed by the Owner, Architect and Construction Manager before the change is implemented. It shall be the Owner's discretion as to whether each change order requires the A/E signature. **Maximum allowable mark-up on any change order is 5% Profit, 5% Overhead, and a 2% Bond.**

10.1.1 A Construction Change Directive is a change directive signed by the Project Director and the County Manager directing an addition, deletion, or revision in the scope of work and/or schedule. The Construction Change Directive is necessary when no Agreement exists among the Architect/Engineer of record, Brevard County and the Construction Manager on the dollar amount of a necessary change in the scope of work and/or an extension of time to the construction contract. The Construction Change Directive is used (1) when an unsafe, hazardous or other similar condition exists, (2) when failure to achieve prompt resolution of the change will result in a demobilization of the Construction Manager, its subcontractors and/or agents, (3) when failure to achieve prompt resolution will result in additional cost, and/or a significant delay in completing the project. A Construction Change Directive does not change the contract price or the contract time, but is evidence that the parties expect that the change will be incorporated in a subsequently issued Change Order or be covered by an authorized contingency.

10.1.2 A Change Order is a written order to the Construction Manager signed by the Owner, Architect, and Construction Manager, issued after the execution of this Agreement, authorizing a change in the Project and/or an adjustment in the construction authorization, the Construction Manager's fee, or the Construction Completion date. Each adjustment in the GMP resulting from a change order shall be documented clearly to separate the amount attributable to the cost of the change in the Project from the original cost of the Project.

10.1.3 The increase or decrease in the Guaranteed Maximum Price resulting from Change Orders in the Project shall be determined by one 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 plus a mutually acceptable fixed or percentage fee; or
(4) by the method provided in Subparagraph 10.1.4.

10.1.4 If none of the methods set forth in Clause 10.1.3 is agreed upon, the Construction Manager, provided he receives a written order signed by the Owner, shall promptly proceed with the work required by the Construction Change Directive 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 10.1.3 above, the Construction Manager shall keep and present, in such forms 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 in the Cost of the Project and the Construction Manager's fee subject to the limits set forth in Article 7.

10.1.5 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.

10.1.6 Should the Construction Manager or his contracted subcontractors encounter:

(1) concealed conditions in the performance of the Work below the surface of the ground; or
(2) concealed or unknown conditions in an existing structure be at

variance with the conditions indicated by the Drawings, Specifications, or Owner furnished information; or

(3) unknown physical conditions below the surface of the ground; or

(4) 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, then 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. and Article 11.

Upon discovery of concealed or unknown conditions, the Construction Manager shall notify the Owner and Architect/Engineer within twenty four (24) hours of discovery, and not proceed with Work until such notice has been given and a response is issued by the Owner. The Architect/Engineer will evaluate the alleged unknown or concealed condition and, if warranted, recommend to the Owner that the GMP and schedule be increased or decreased accordingly. No claim under this Article may be made unless notice, as herein provided, is given prior to Work being performed. No equitable adjustment shall be permitted if this notice provision is not complied with.

Within ten (10) calendar days of submitting its Notice, 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. Within thirty (30) days from Notice, the Construction Manager shall submit detailed schedule impact and detailed cost analysis indicating quantities, unit prices, etc.

10.1.7 The Construction Manager shall review any Owner directed change and shall respond in writing within seven (7) calendar days after receipt of the proposed change (or such other reasonable time as the Owner may direct), stating the effect of the proposed change upon the Construction Manager's Work, including any increase or decrease in the contract time or price. The Construction Manager shall furnish to the Owner an itemized breakdown of the quantities and prices used in computing the change in Contract price.

The Owner and Architect/Engineer shall review the Construction Manager's proposal and respond to the Construction Manager within seven (7) calendar days of receipt. If a change to the Contract price and time for performance are agreed upon, both parties shall sign the Change Order. Changes to the Contract time and/or price shall be effective when

signed by both parties. It shall be the Owner's discretion as to whether each change order requires the A/E signature.

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.

10.2.1 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 or 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.

10.2.2 All change orders must indicate that the Contract Time for Completion is not changed or is either increased or decreased by a specific number of days. The previous Time for Completion and, if there is one, the new Time for Completion must be stated. The Construction Manager must provide written justification for an extension of the Time for Completion to the Architect/Engineer and to the Owner. The written justification must demonstrate an anticipated actual increase in the time required to complete the Work beyond that allowed by the Contract as adjusted by prior change orders or amendments to the Contract, not just an increase or decrease in the time needed to complete some portion of the total Work. No increase to the Time for Completion shall be allowed unless the additional or changed Work increases the length of the critical path. Approved increases in time required to complete the Work shall be added to the Time for Completion. Decreases in time as a result of the change order shall be demonstrated by a decrease in the critical path of the Work if CPM scheduling is properly used and updated by the Construction Manager. If no CPM is used the Owner shall determine the appropriate decrease by the best means possible. Approved decreases in the time needed to complete the Work shall be deducted from the Contract completion date. The change to time and Contract price allowed by each change order shall include all time and monetary impacts of the change, whether the change order is considered alone or with all other changes during the course of the project. Failure to include a change to time and Contract price in a change order shall waive any change to the time and Contract price unless the parties mutually agree in writing to postpone a determination of the change to time and price resulting from the change order. Such a determination may be postponed not more than forty five

(45) days to give the Construction Manager an opportunity to demonstrate a change in the time and price needed to complete the Work.

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 (Realignment of Work)
The Owner and/or 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 affected by written order. Documentation of changes shall be determined by the Construction Team, and included in the Project Manual. Changes shall be approved by the Project Director, Architect/Engineer. It shall be the Owner's discretion as to whether a Realignment of Work requires the A/E signature. All changes or realignments of work performed within the Guaranteed Maximum Price will not include overhead, profit or General Condition additional costs, since costs are absorbed within the Guaranteed Maximum Price (GMP).

10.4 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

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.

ARTICLE 12

PAYMENTS TO THE CONSTRUCTION MANAGER

12.1 Monthly Statements - The Construction Manager shall submit to the Owner a sworn statement along with the Certificate for Payment, 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. This data shall be attached to the Certificate for Payment Form shown in **Attachment "N"**, and shall include, but not be limited, to the following:

- Daily Reports;
- Updated Project Schedule;
- Daily Red line As-Builts review;
- Provide a billing report with each payment application that shows a breakdown of costs incurred by line item. This report should correspond with the amounts being charged on the Schedule of Values.
- Provide backup copies of all invoices that the County is being billed for, including vendor invoices, payments to subcontractors, cell phone statements, insurance, petty cash receipts, etc. These invoices should be coded by the line item that they correspond to on the billing report and Schedule of Values.
- Provide backup copies and documentation of all costs incurred under General Conditions.
- Provide backup copies of all payroll that details which labor amounts were paid to whom on a weekly basis.
- Provide copies of all subcontractor agreements.
  * The amounts charged on the Payment Application must be accurate and correspond with the total dollar amount of backup provided by the Construction Manager.

Payment by the Owner to the Construction Manager of the statement amount shall be made in accordance with Florida Statute 218.735.

Ten percent of each payment shall be held by the OWNER as retainage until 50-percent completion of such Project, which shall be deemed to have occurred when 50% of the GMP, as increased or decreased from time to time, has been expended. At that time, the retainage shall be reduced to 5% and the Construction Manager shall be entitled to request payment or release of up to 50% of the previously withheld retainage amounts, provided the retainage is not the subject of a good faith dispute, the subject of a

claim brought pursuant to s. 255.05, Florida Statutes or otherwise the subject of a claim or demand by the OWNER.

Owner may refuse to certify payment and withhold a Certificate for Payment in whole or in part, in accordance with subsection(s) above, to such extent as may be reasonably necessary to protect the Owner from loss because of:

(1) defective work not remedied;
(2) third party claims filed or reasonable evidence indicating probably filing of such claims;
(3) failure of Construction Manager to make payments properly to subcontractors, consultants, or for labor, materials or equipment;
(4) evidence that the Project cannot be completed for the unpaid balance of the GMP, as adjusted;
(5) evidence that the Work will not be completed by the Scheduled Completion Date, as adjusted, and that the unpaid balance would not be adequate to cover the liquidated damages for the anticipated delay;
(6) failure to carry out the Work of the Project in accordance with the Contract Documents; or

If the Owner is unwilling to certify payment in the amount of the Application for Payment submitted by the Construction Manager, Owner will provide Construction Manager with written reasons for its refusal, within three (3) calendar days. If Construction Manager and Owner cannot agree on a revised amount, Owner will, within one (1) day of the aforesaid notification, promptly issue a Certificate for Payment as to the undisputed amount with respect to which Owner concurs.

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 in accordance with Florida Statutes after an *acceptable* Certificate of Final Completion has been issued **and all contractual closeout obligations have been met by the Construction Manager**. Before issuance of final payment, the Construction Manager, subcontractors and agents shall submit original, sworn, notarized statements that all payrolls, material bills, and other indebtness connected with the Project have been paid or otherwise satisfied, warranty information is complete, Final As-Builts in AutoCad format acceptable to the Owner, have been submitted and instruction and documentation for the Owner's operating and maintenance personnel is complete.

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

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

ARTICLE 13

INSURANCE, INDEMNITY WAIVER OF SUBROGATION

13.1 (1) Indemnification - The Construction Manager agrees to indemnify and hold harmless the County and their employees from all claims, losses and expenses, arising out of or resulting from the performance of the products or services to be contracted, provided such claim, damage, loss or expense (1) is attributable to bodily injury, sickness, disease, death or personal injury, or to property damage, including loss of use resulting therefrom, (but not loss of use for which liquidated damages are assessed under the Agreement) and (2) is caused in whole or in part by any negligent act or omission of the Construction Manager, any subcontractor, any of their employees and/or agents in the performance of this contract. The Construction Manager agrees that it will pay the costs of the County's legal defense, including fees of attorneys as may be selected by the County, and shall defend, satisfy, and pay any judgments which may be rendered against the County in connection with the above hold harmless agreement. The Construction Manager acknowledges specific consideration has been received for this hold harmless/indemnification provision.

(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.

Loss Deductible Clause - Brevard County Board of County Commissioners shall be exempt from, and in no way liable for, any sums of money which may represent a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of the Construction Manager and/or Subcontractor providing such insurance.

13.2 Insurance

(1) The Construction Manager shall not commence any construction work in connection with this Agreement until the Construction Manager has obtained all of the following types of insurance and such insurance certificate(s) have been submitted to the Owner and have been approved by the Owner, nor shall the Construction Manager allow any Subcontractor to commence work on his subcontract until all insurance required of the Subcontractor has been so obtained and approved. All insurance policies shall be with insurers qualified and doing business in the State of Florida.

a. Worker's Compensation - Provide Worker's Compensation Insurance on behalf of all employees who are to provide a service for this project, as required under Florida Laws.

b. Commercial General Liability - Including but not limited to bodily injury, property damage and personal injury with limits of not less than $1,000,000.00 combined single limit per occurrence, including products and completed operations, to include:

1. "XCU" (Explosion, Collapse, Underground Damage) - The Construction Manager's Liability Policy shall provide "XCU" coverage.

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

3. 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.

c. Automobile Liability - Including bodily injury, property damage liability for all vehicles owned, hired, leased and non-owned with limits of not less than $1,000,000.00 combined single limit, per accident.

d. Performance and Payment Bonds - With limits of not less than 100% of the total construction cost of this project. Payment and Performance Bond shall be recorded in the official record of the County in which the project is located. These bonds shall remain in

effect at least until one (1) year after the date when the final payment is approved. Any bonding company submitting a Bid Bond, Performance Bond or Payment Bond to Brevard County must be licensed to transact a fidelity and surety business in the State of Florida, and hold a Certificate of Authority from the Secretary of the Treasury under Act of Congress, approved by July 30, 1947 (U.S.C. 613), and approved by Brevard County. Acceptable surety companies shall be licensed to do business in Florida and shall have an A.M. Best Rating of "A-" and financial size V or higher.

e. 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 canceled because of partial occupancy by the Owner prior to final acceptance of the Project.

The Construction Manager shall require each of his Subcontractors to procure and maintain insurance during the life of the respective subcontracts.

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

Certificate(s) of Insurance will be furnished to the Owner within five (5) days of Notice to Proceed. These shall be completed and signed by the authorized Resident Agent, and shall be dated and show:

(1) 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.

(2) The General Liability and Auto Liability certificates of insurance shall indicate that the policies have been endorsed to cover the County as an additional insured to the extent of liability assumed by the Construction Manager under this Agreement, and that these policies may not be canceled or modified without thirty (30) days prior written notice to the County.

(3) The insurance coverages enumerated above constitute the minimum requirements and shall in no way lessen or limit the liability of the Construction Manager under the terms of the Contract.

*Certificates of Insurance shall be submitted to the Owner within five (5) days of Notice to Proceed, and no work shall commence on site until all submitted Certificates of Insurance are acceptable to the Owner.

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 thirty (30) days by the Owner, then the Construction Manager may, upon seven (7) days written notice to the Owner, request undisputed payment for all work executed, the Construction Manager's fee 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 its obligations under this Agreement, the Owner may, after seven (7) days written notice during which period the Construction Manager fails to perform such obligations, 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 to 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 forty-five (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 cure 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 termination expenses incurred by the Owner may be deducted from any payments left owing the Construction Manager (excluding monies owed the Construction Manager for subcontract work).

14.3 Termination by Owner for Convenience

(1) If the Owner terminates this Agreement other than pursuant to Article 14.2(2) or Article 14.3(2), 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 reimburse the Construction Manager for obligations and commitments made before notice of termination was received by the Construction Manager.

(2) After the establishment of the Guaranteed Maximum Price or at the completion of the Construction 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.

(3) Any termination by Owner for cause which is later determined to be invalid shall be considered a termination by Owner for convenience.

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.

15.3 Venue and Attorney's Fees: Venue for any legal action brought by any party to this Agreement to interpret, construe or enforce this Agreement shall be in a court of competent jurisdiction in and for Brevard County, Florida. In the event of any legal action to enforce the terms of this Agreement, each party shall bear its own attorney's fees and costs and any trial shall be non-jury.

15.4 Severability: If any provision of this Agreement is held by a Court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired.

ARTICLE 16

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

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) If the Construction Manager claims that any instructions given to him by the Architect/Engineer or by the Owner, by drawings or otherwise, involve extra Work not covered by the Contract and not discoverable with a review of the plans and specifications, then, except in emergencies endangering life or property, Construction Manager shall give the Architect/Engineer and the Owner written notice thereof before proceeding to execute the Work. Said notice shall be given promptly enough to avoid delaying the Work and in no instance later than twenty (20) calendar days after the receipt of such instructions.

The Construction Manager must submit a Notice of Claim to the Owner and to the Architect/Engineer within twenty (20) days of when the Construction Manager was or should have been aware of the occurrence of the event giving rise to the claim; and

(c) Within ten (10) days of submitting its Notice of Claim, the Construction Manager shall submit to the Owner its Request For Change Order, which shall include a written statement of all details of the claim, including a description of the work affected. Within thirty (30) days from the Notice of Claim the Construction Manager shall submit a detailed schedule impact and detailed cost analysis indicating quantities, unit prices, etc. establishing the basis for the amount of the claim.

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 section.

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 disputed matters subject to the determination by final Owner action (not actions for breach of contract or tort) the Owner's written decision following compliance with the dispute resolution procedure set forth in sections 16.4 through 16.6 below shall be final Owner action.

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 Article 16.1 above, for an extension of the scheduled construction time. In the event of a change in such work that will modify the GMP, the Construction Manager's claim for adjustment in contract sum are limited exclusively to its actual costs for such changes, including costs involved in claim preparation, plus five percent (5%) overhead, five percent (5%) profit and a two percent (2%) bond in the General Conditions. 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.

16.4 In the event of any dispute over a proposed change order or any other matter arising out of the implementation or interpretation of this contract the following dispute resolution process shall apply.

(a) Within three (3) days after denial of a contractor's change order or contract modification request in an amount, individually or in total, less than the authorized purchasing level approved for the County Manager by the County Commission (currently at $100,000) the contractor may submit to the County Manager or a designee with experience in the oversight of construction projects for a department or business other than the department responsible for monitoring the disputed request, documentation of the contractor's position in the dispute or disagreement. The County Manager or designee, within five (5) days after the receipt of the contractor's documentation, shall review the request and make a final determination as to whether denial was arbitrary or capricious based upon the sufficiency of the work under the terms of the contract, applicable regulations and relevant construction standards. Based upon the sufficiency and degree of completion, as well as any defects in the work

and the amount reasonably required, if any, to correct or repair defective work, the reviewer shall make the final determination as to whether a written change order or contract modification should be approved by the County Manager.

(b) If the denied request or disputed amount exceeds the County Manager's purchasing authority, the County Manager shall present a report, recommendation and the contractor's claim and documentation, to the County Commission for a final determination within thirty (30) days after receiving the contractor's documentation for the claim. The Commission shall make its decision using the standards specified in subparagraph (a) above.

16.5 Within thirty (30) days after denial of a request for a change order or contract modification by the project manager or engineer involving (1) an amount in excess of the County Manager's expenditure authority or (2) for the amount the contractor claims to be due at the time the project is ready for beneficial use or occupation, the County may, at the County's option in lieu of the procedure specified in subparagraph 16.4, submit the dispute to a mediator with knowledge or experience in construction management, as agreed upon by the parties. Upon referral to a mediator, the County and contractor shall each pay half the estimated cost of the mediator, up front. Within fifteen (15) days after the date of submittal, the mediator, applying the standards set forth in subparagraph 16.4, shall investigate the dispute and submit a written recommendation for disposition of the dispute to the County Manager or a designee with the qualifications specified in subparagraph 16.4. Within fifteen (15) days after receiving the mediator's recommendation, the County Manager shall submit the recommendation to the County Commission, along with a staff report analyzing the dispute and mediator's recommendation. Based on the standards set forth in subparagraph 16.4 above, the Commission shall decide whether to grant or deny, in whole or in part, the amounts recommended by the mediator. The Commission's decision will be deemed final action on the disputed claim for the purposes of ripening the decision for judicial review. If the mediator recommends that no change order or contract modification be granted, the contractor shall reimburse the county for any amounts paid by the county to the mediator.

16.6 The deadlines for completing the dispute resolution process described in subparagraphs 16.4 and 16.5 may be extended by mutual agreement of the contractor and the county.

ARTICLE 17

OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

17.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Construction Manager claims that a delay or additional cost is involved because of such action by the Owner, the Construction Manager shall make such claim as provided in this Agreement.

17.2 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Construction Manager, who shall cooperate with them. The Construction Manager shall participate with other separate contractors and the Owner in reviewing their construction schedules when directed to do so. The Construction Manager shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Construction Manager, separate contractors and the Owner until subsequently revised.

17.3 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights which apply to the Construction Manager under the Conditions of the Contract.

17.4 The Construction Manager shall afford the Owner, and separate contractors, reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities and shall connect and coordinate the Contractor's construction and operations with the Construction Manager, as required.

17.5 If part of the Construction Manager's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Construction Manager shall, prior to proceeding with that portion of the Work, promptly report to the Architect/Engineer or Owner apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Construction Manager to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the

Construction Manager's Work, except as to defects not then reasonably discoverable.

17.6 Costs caused by delays or by improperly timed activities or defective construction shall be borne by the party responsible thereof.

17.7 The Construction Manager shall promptly remedy damage wrongfully caused by the Construction Manager to completed or partially completed construction or to property of the Owner or separate contractors.

ARTICLE 18

MISCELLANEOUS

18.1 Interest - Any monies not paid when due to either party under this contract shall not bear interest except as may be required by Section 218.70 et seq., Florida Statutes, ("The Florida Prompt Payment Act").

18.2 Harmony - Construction Manager is advised and hereby agrees to 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.

18.3 Apprentices - If the Construction Manager employs apprentices on the project, the behavior of the Construction Manager and the Owner shall be governed by the provision 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.

18.4 Minority Participation - The Construction Manager shall *diligently attempt* to award his material contracts, subcontracts and sub-subcontracts to firms having a letter of certification as a minority business from the "Office of Minority Business Assistance, Department of General Services, or any other Federal, Florida County or City certification.

18.5 Minority Employment Information - The Board of County Commissioners requires construction contracts, who would otherwise be required to file and EEO Form 1 Report under Federal Law (currently Federal law requires filing for employers with more than 15 employees), to submit an EEO Form 1 Report with the submission of their GMP. This requirement extends to any subcontractors who are required to submit the EEO Form 1 Report (over 15 employees) under Federal law. Failure to submit an EEO Form 1 Report with your GMP will be reason to declare your proposal "non-responsive" to the proposal requirements. However, the information will be used for statistical purposes only and will not be used in any way as a basis to award a contract. See **Attachment "O"**.

18.6 Public Entity Crime Affidavit attached as **Attachment "P"**.

18.7 Non-Collusion Affidavit of Prime Bidder attached as **Attachment "P"**.

18.8 Copyright Clause No reports, data, programs or other materials produced, in whole or in part for the benefit and use of the Owner, under this agreement shall be subject to copyright by Contractor in the United States or any other Country.

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

ATTEST

Scott Ellis, Clerk

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORID

Robin Fisher, Chair
Brevard County Commission

As Approved By the Brevard County Commission: 09/16/14

BY: Canaveral Construction Company, Inc.

Reviewed for legal form and content:

Deputy County Attorney

On: 8/26/15

STATE OF FLORIDA
COUNTY OF BREVARD

The foregoing instrument was acknowledged before me this _____ day of 201__ by whose position is _____ with the firm of, a Florida Corporation, on behalf of the corporation. He/She is personally known to me or has produced _____ as identification.

(SEAL)

_____
NOTARY PUBLIC
Typed, Printed or Stamped Name

ATTACHMENT "A"

CONSTRUCTION TEAM ASSIGNED REPRESENTATIVES

Owner
Brevard County Facilities Department

Joan Van Sickle	Project Director
Joan Van Sickle	Construction Coordinator
Mary Bowers	Support Services Manager/Contracts
Anissa Pratte	Special Projects Coordinator II

Architect-Engineer

Honeycutt and Associates

Construction Manager

J. David Nash	President
Mike Harkcom	Vice President/Principal-In-Charge
Mike Harkcom	Project Manager
Mike Harkcom	Project Administrator
Justin Nash	Project Superintendent
Larry Towsley	Estimator/Cost Control
Mike Harkcom	Schedules

ATTACHMENT "B"

PROJECT SCOPE OF WORK

The Construction Manager to provide all labor and materials to demolish the existing boat ramp and replace with a new 15' wide and 30 ' long (6" thick) concrete ramp per Honeycutt and Associates drawings dated, May 11, 2015. The Construction Manager will be responsible for all permit requirements including payment to the City of Titusville building department.

ATTACHMENT "C"

DIRECT PURCHASING PROCEDURE
CONSTRUCTION MANAGEMENT AGREEMENT

INTENT: The Owner of this Project, Brevard County, Florida, intends that these procedures govern the County's direct purchases of selected materials so that the County may take advantage of its tax exempt status. All monies which would have been payable as taxes, if not for Owner direct purchase under these procedures, will inure solely to the benefit of the Owner. The Owner's direct purchase of materials will not minimize or conflict with the Construction Manager's responsibility for the purchase, installation, coordination, storage, protection, warranty, etc. of the materials as described herein and in the plans and specifications of the Contract.

Definitions: For the purpose of these Procedures, the following words have the following definitions.

a) Contract: Construction Management Agreement by and between Construction Manager and Brevard County Board of County Commissioners, Viera, Florida for the repair of the north boat ramp at Sand Point Park, in Titusville, Florida.

b) County Purchased Materials: Materials purchased directly by the Owner through execution and delivery of a Purchase Order.

c) GMP - Guaranteed Maximum Price established under the Contract.

d) Materials: Tangible Personal Property necessary for completion of the Project.

e) Materials Deduction Summary: Written document signed by Owner's representative and Construction Manager setting forth the amounts of County Purchased Materials, plus applicable taxes were the purchase not exempt from such taxes, as reflected in the parties' previously executed deductive change order(s) to the Contract showing deduction of such Materials from the GMP.

f) Owner: See Definition in Article I, section 1.3.

g) Owner's Representative: See Definition in Article I, section 1.3.

h) Project: See Definition in Article I, section 1.3.

i) Purchase Order: The Owner's request for Materials from a particular vendor or supplier when fully executed and delivered to the Construction Manager, and the Owner's promise to pay for the Material specified upon delivery and acceptance at the Project Site, and presentation of an invoice by the Construction Manager to the Owner certifying payment of same.

j) Material Requisition: A request by the Construction Manager to the Owner that the Owner directly purchase specific items described in sufficient detail, including

quantity, grade, brand, etc., along with the vendor or material supplier and that vendor or material supplier's quoted price for the Materials.

Overview: The Owner requires the Construction Manager (hereinafter, "Manager") to notify the Owner's Representative of Materials needed for the Project exceeding $5,000.00 in value, through a Material Requisition form. For the purpose of these Procedures, the Manager will assign to the Owner any rights the Manager may have under quotes, contracts or commitments received from the particular vendor or supplier for the Materials described in the Material Requisition. Any Materials purchased by Owner pursuant to these Procedures shall be referred to as "County Purchased Materials", and the responsibilities of the Owner and Manager relating to such County Purchased Materials shall be governed by the terms and conditions of these Procedures, which shall take precedence over other conditions and terms of the Contract Documents where inconsistencies or conflicts exist. The invoiced amount of County Purchased Materials and applicable sales tax had the purchases not been tax exempt, once finalized through the Owner's Purchase Order and after confirmation of completed delivery and acceptance pursuant to this Procedure, will be deducted from the GMP, as defined in the Contract, by deductive change order.

Owner Direct Purchasing Requirements and Procedures: When a Materials purchase for the Project is estimated to be $5,000 or greater and time will allow for an Owner Direct Purchase, Manager shall prepare a Material Requisition form, *(to be provided by the Owner)*, acceptable to Owner, and which specifically identifies the Materials which Owner may, in its discretion, elect to purchase directly. The Material Requisition form shall be complete when submitted, and all information requested provided. Along with the Material Requisition the Construction Manager must provide:

a) The name, address, telephone and fax number and contact person for the material supplier;
b) Manufacturer or brand, model or specification number of the item;
c) Quantity needed as estimated by Manager;
d) The price quoted by the supplier for the Materials identified therein;
e) Any sales tax associated with such quote if it were not purchased by a tax exempt entity;
f) Shipping and handling cost, including associated insurance;
g) Delivery dates as established by the Manager;
h) Subcontractor's written acknowledgment of these Procedures for Owner Direct Purchase of Materials.

After receipt of the Material Requisition, the Owner's Representative will determine whether the Owner will directly purchase the Materials described in the Material Requisition, and communicate consent or decline to purchase the materials to the Manager within twenty four (24) hours. Brevard County's Purchasing Division shall be the Owner's approving authority on Purchase Orders of County Purchased Materials. If the Owner consents to purchase the Materials, the Owner shall issue a Purchase Order for same. The Owner shall issue the original Purchase Order, and the Manager shall deliver the Purchase Order to the subcontractor. The Purchase Order shall require (1) that the supplier provide the required shipping, (2) that the supplier provide the required shipping and handling insurance, and (3) delivery of the County Purchased Materials on the delivery dates provided by the Manager in the Material Requisition.

The Manager shall be fully responsible for all matters relating to the receipt of County Purchased Materials under these Procedures, including, but not limited to, preparation of shop drawings and submittals, verifying correct quantities, verifying documents of orders in a timely manner, coordinating purchases, providing and obtaining all warranties and guarantees required by the Contract Documents, inspection and acceptance of the goods at the time of delivery, and loss or damage to equipment and materials due to the negligence of the Manager. The Manager shall coordinate delivery schedules, sequence of delivery, loading orientation, and other arrangements normally required by the Manager for the Materials furnished. The Manager shall provide all services required for the unloading, handling and storage of Materials through installation. The Manager agrees to indemnify and hold the Owner harmless from any and all claims of whatever nature resulting from non-payment of goods to suppliers arising from the actions of Manager.

The Manager shall insure that County Purchased Materials conform to the Specifications, and determine prior to incorporation into the Work, if such Materials are patently defective, and whether such Materials are identical to the Material ordered and match the description on the bill of lading. As County Purchased Materials are delivered to the job site, the Manager shall inspect all shipments from the suppliers, and, if in conformance with the Purchase Order, approve the vendor's invoice for materials delivered. The Manager shall assure that each delivery of County Purchased Material is accompanied by documentation adequate to identify the Purchase Order against which the purchase is made. This documentation may consist of an itemized delivery ticket, packing slip or invoice from the supplier conforming to the Purchase Order against which the purchase is made, together with such additional information as the Owner may require. The Manager will then forward the documentation to the Owner.

If the Manager discovers defective or non-conformities in County Purchased Material upon inspection, the Manager shall not use such non-conforming or defective Materials in the Work and instead shall promptly notify the Owner of the defective or non-conforming conditions and coordinate the repair or replacement of those Materials without any undue delay or interruption to the Project. All repair, maintenance or damage-repair calls shall be forwarded to the Manager for resolution with the appropriate supplier, vendor, or subcontractor. If the Manager fails to perform such inspection, the condition of which the Manager either knew or should have known by performance of an inspection, Manager shall be responsible for all damages to the County resulting from Manager's incorporation of such Materials into the Project, including liquidated or delay damages.

On a bi-weekly basis, Manager shall be required to review invoices submitted by all suppliers of County Purchased Materials delivered to the Project Site during that month and either concur or object to the Owner's issuance of payment to the suppliers, based on Manager's records of materials delivered to the site. In order to arrange for the prompt payment to the supplier, the Manager shall provide to the Owner a list indicating the acceptance of the goods or materials within fifteen (15) days of receipt of said invoice for goods or materials. The list shall reference the applicable purchase order and include a copy of the invoices, delivery tickets, written acceptance of the delivered items, and such other documentation as may be reasonably required by the Owner. Upon receipt of the appropriate documentation in duplicate, the Owner shall prepare a check drawn to the supplier based upon the receipt of data provided. This check will be delivered directly to the supplier. If any discounts are available from the supplier or vendor, they shall accrue to the benefit of the Owner, and the amount quoted by the vendor, plus applicable tax, shall be deducted from the GMP. The Manager agrees to assist the Owner to immediately obtain partial or final releases or waivers as appropriate.

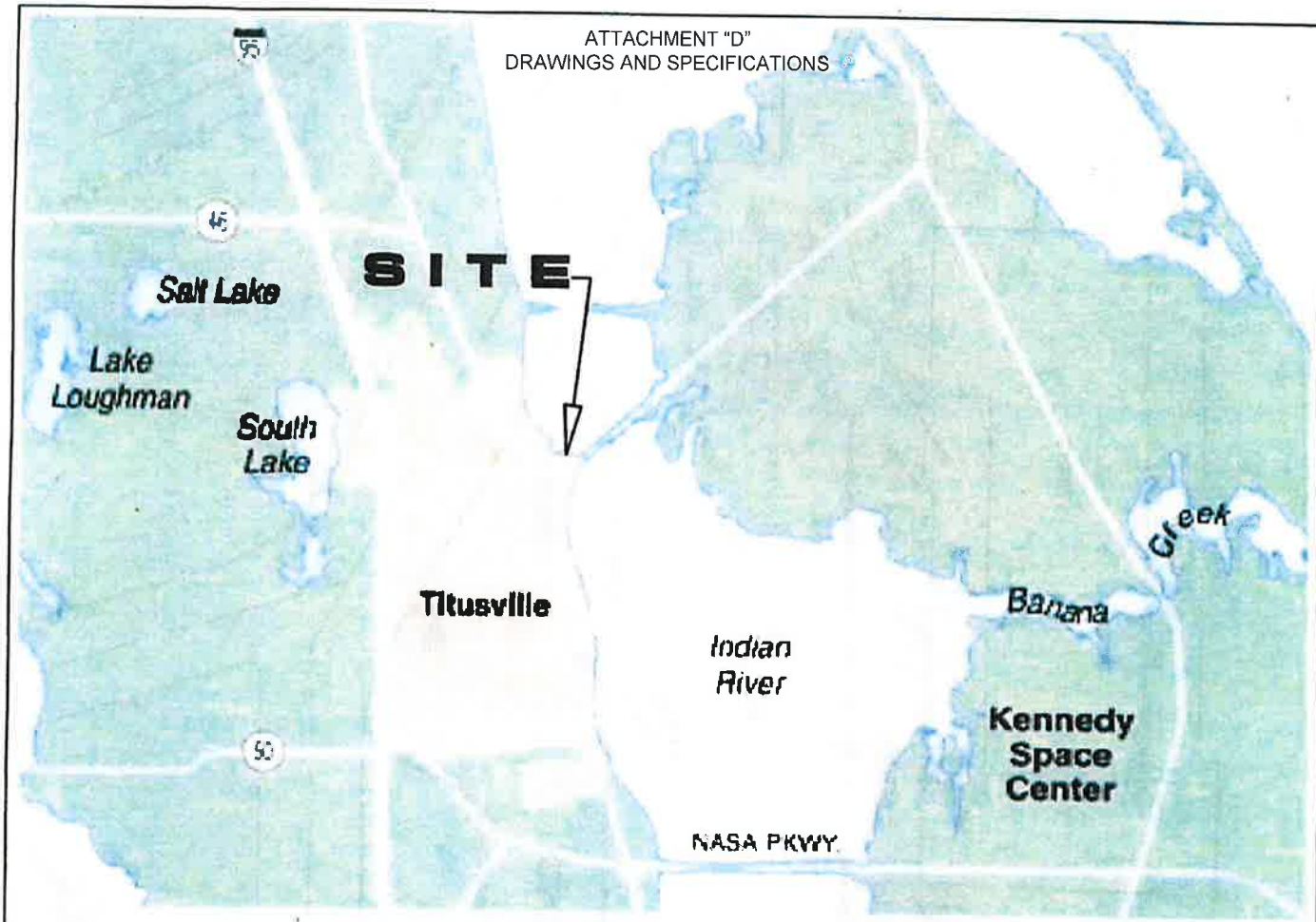
Following performance of the Purchase Orders by the suppliers, and submittal of documentation confirming same to Owner with an invoice for payment by Owner, the Manager shall execute and deliver to the Owner at the end of each month along with the Manager's regular pay requests, a Materials Deduction Summary setting forth the full value of all County Purchased Materials, plus all taxes which would have been payable on the purchase of the Materials had they not been Owner purchased. The Materials Deduction Summary shall show all sums to be deducted by an appropriate deductive change order, and ultimately the GMP, to date. The Board of County Commissioners, or their authorized representative, shall be the approving authority for the Owner on the Materials Deduction Summary for County Purchased Materials.

The Manager shall maintain records of all County Purchased Materials incorporated into the Work. These records shall be available for inspection by the Owner upon request.

Notwithstanding the delivery of County Purchased Materials to the Project Site for the Manager's inspection, custody and incorporation into the Work, the Owner shall retain legal and equitable title to any and all County Purchased Materials. The transfer of possession of County Purchased Materials from the Owner to the Manager shall constitute a bailment for the mutual benefit of the owner and the Manager solely for the purposes set forth herein. The Owner shall be considered the bailer and the Manager the bailee of the County Purchased Materials. County Purchased Materials shall be considered returned to the Owner for purposes of their bailment at such time as they are incorporated into the Project or are returned to the vendor or supplier at the discretion of the Manager prior to payment for the Purchase Order by Owner.

The Owner shall purchase and maintain Builder's Risk Insurance sufficient to protect against any loss or damage to County Purchased Materials. Such insurance shall cover the full value of any County Purchased Materials not yet incorporated into the Project from the time the Owner first takes title to any of such County Purchased Materials and the time when the last of such County Purchased Materials is incorporated into the Project, or are returned to the vendor at the Manager's discretion prior to Owner's payment for same.

The Owner shall in no way be liable for any interruption or delay in the Project, for any defects or other problems with the Project, or any extra costs or time resulting from any delay in the delivery of, or defects in, County Purchased Materials.

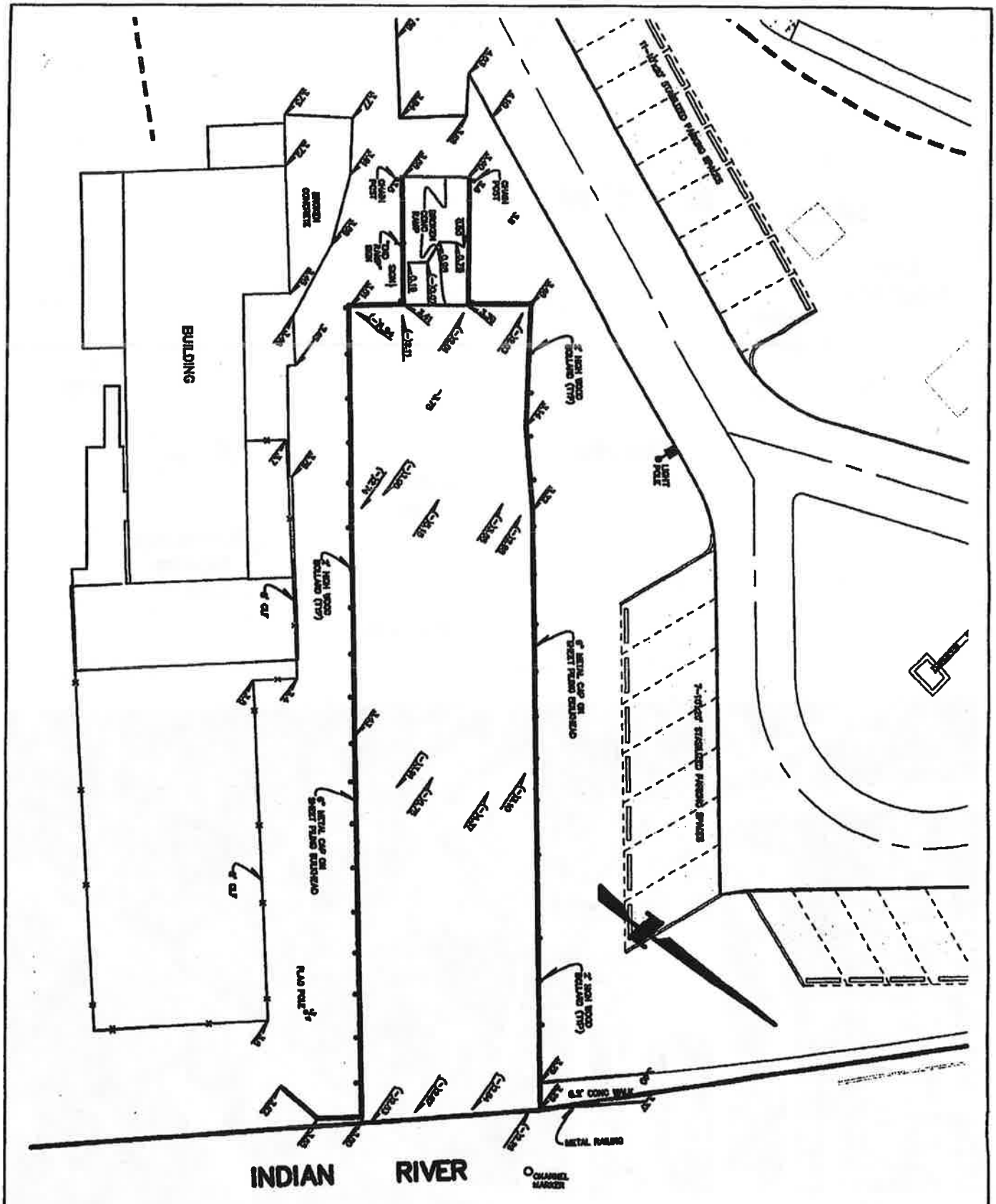




BREVARD COUNTY
SEC: 33 TWN: 22S RNG: 35E
DATUM:
SCALE: N/A

Honeycutt & Associates, Inc.
ENGINEERS · SURVEYORS · PLANNERS
3700 South Washington Avenue – Titusville, Florida 32780
(321) 267-8233 Fax (321) 269-7847

PROPOSED BOAT RAMP REPLACEMENT
APPLICANT: BREVARD COUNTY
DATE: MAY 11, 2015
SHEET 1 OF 4

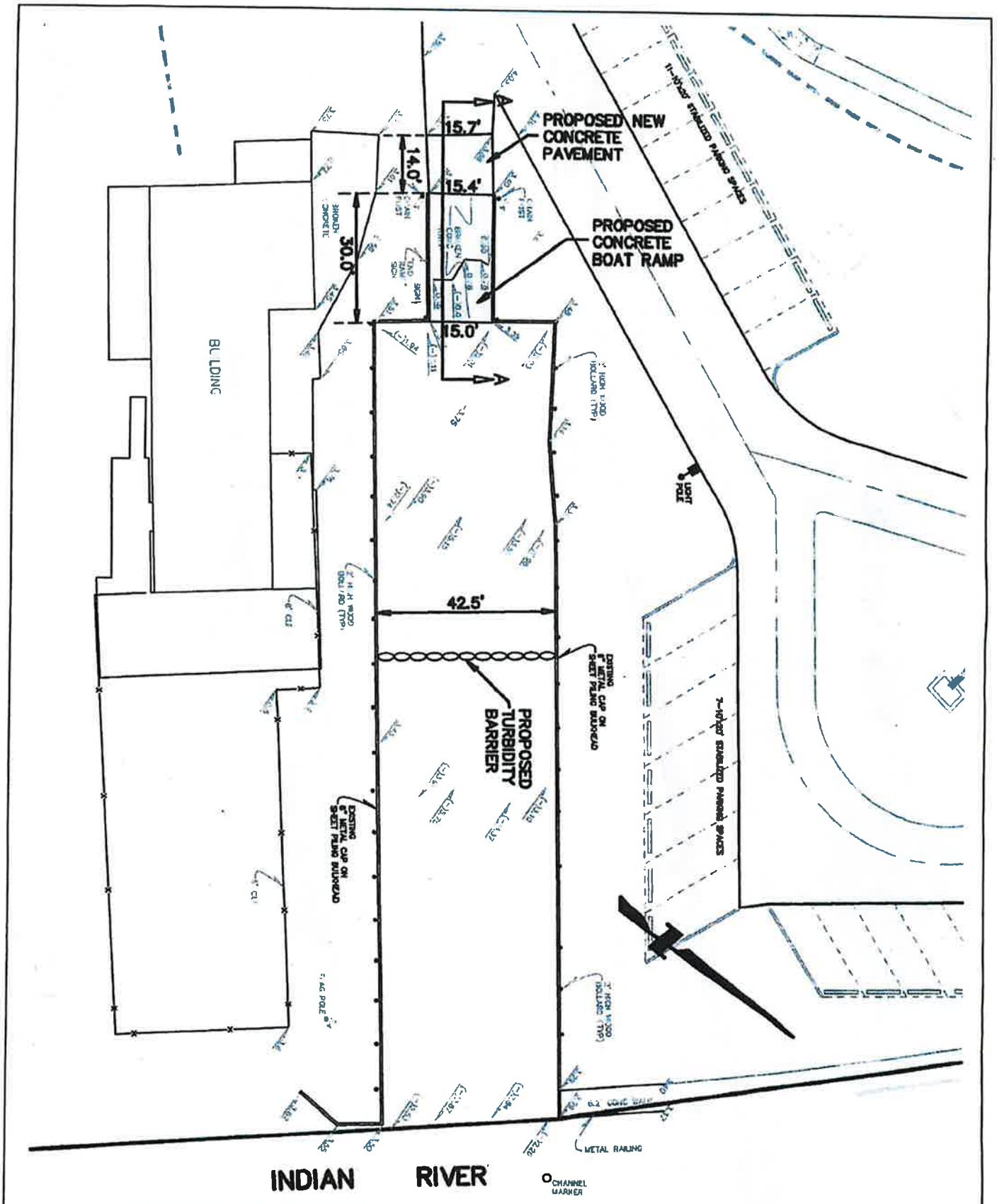


BREVARD COUNTY
SEC: 33 TWN: 22S RNG: 35E
DATUM:
SCALE: 1" = 30'

Honeycutt & Associates, Inc.
ENGINEERS-SURVEYORS-PLANNERS
3700 South Washington Avenue — Titusville, Florida 32780
(321) 267-6233 Fax (321) 269-7847

EXISTING CONDITIONS

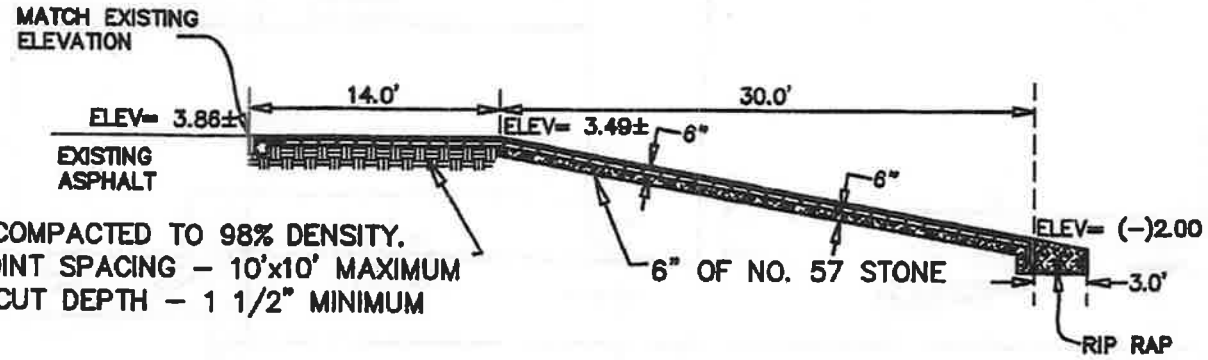
APPLICANT: BREVARD COUNTY
DATE: MAY 11, 2015
SHEET 2 OF 4



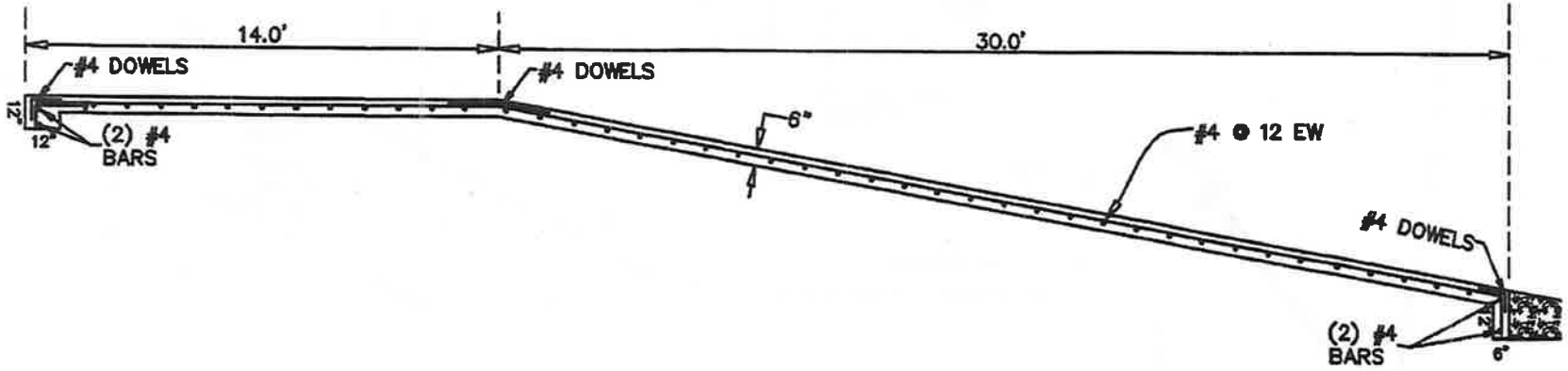
BREVARD COUNTY
SEC: 33 TWN: 22S RNG: 35E
DATUM:
SCALE: 1" = 30'

Honeycutt & Associates, Inc.
ENGINEERS · SURVEYORS · PLANNERS
3700 South Washington Avenue – Titusville, Florida 32780
(321) 267-8233 Fax (321) 269-7847

PROPOSED BOAT RAMP REPLACEMENT
APPLICANT: BREVARD COUNTY
DATE: MAY 11, 2015
SHEET 3 OF 4



SCALE: 1" = 10'



SCALE: 1" = 5'

SECTION A–A

CROSS SECTION

APPLICANT: BREVARD COUNTY

DATE: MAY 11, 2015

SHEET 4 OF 4

Honeycutt & Associates, Inc.
ENGINEERS • SURVEYORS • PLANNERS
3700 South Washington Avenue – Titusville, Florida 32780
(321) 267-6233 Fax (321) 269-7847

BREVARD COUNTY

SEC: 33 TWN: 22S RNG: 35E

DATUM:

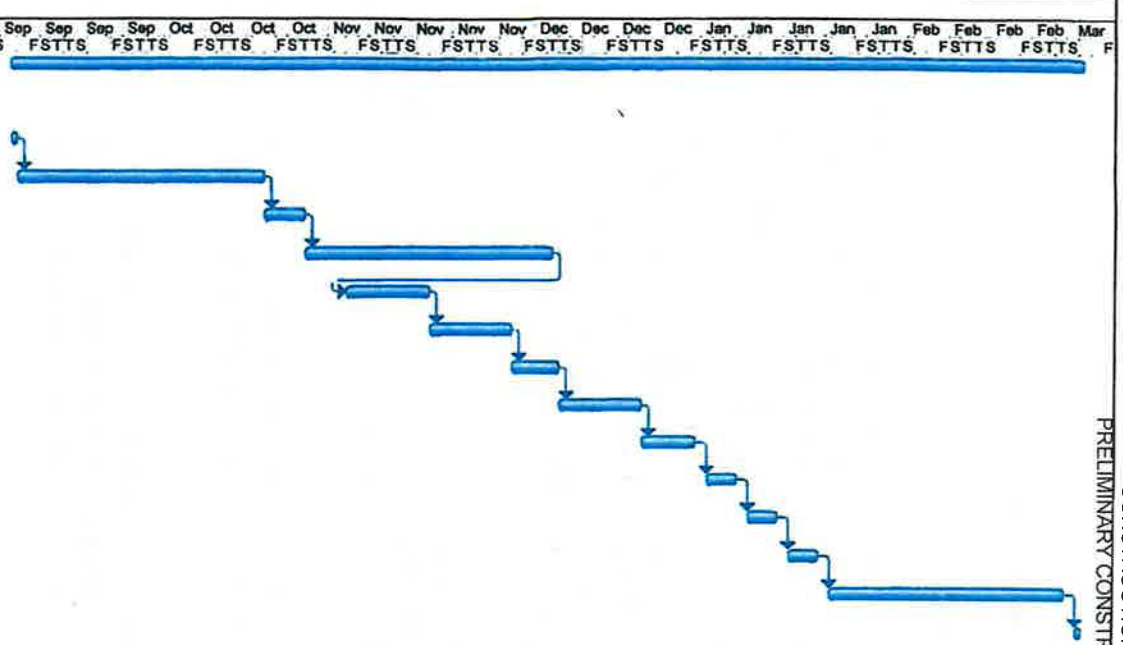
SCALE: AS SHOWN

Contractor: Canaveral Construction Co. Inc.
Owner: Brevard County

Project: Replace North Boat Ramp
Sand Point Park Titusville

Approved By: _____
Date: _____

ID	Task Name	Duration	Start	Finish
1	SAND POINT PARK BOAT RAMP	130 days	Tue 9/8/15	Mon 3/7/16
2				
3	NTP Including Permit	1 day	Tue 9/8/15	Tue 9/8/15
4	Procure and Deliver Aqua Barrier	30 days	Wed 9/9/15	Tue 10/20/15
5	Install Aqua Barrier	5 days	Wed 10/21/15	Tue 10/27/15
6	Dewater Site	30 days	Wed 10/28/15	Tue 12/8/15
7	Demo and Remove Exst Ramp	10 days	Wed 11/4/16	Tue 11/17/15
8	Remove Unsuitable Soils	10 days	Wed 11/18/15	Tue 12/1/15
9	Prep & Install Gravel Base	8 days	Wed 12/2/15	Wed 12/9/15
10	Form & Place Concrete Ramp	10 days	Thu 12/10/15	Wed 12/23/15
11	Remove Dewatering	7 days	Thu 12/24/15	Fri 1/1/16
12	Remove Aqua Barrier	5 days	Mon 1/4/16	Fri 1/8/16
13	Restore Work Site	5 days	Mon 1/11/16	Fri 1/15/16
14	Substantial Completion	5 days	Mon 1/18/16	Fri 1/22/16
15	Punch Out & Turnover Project	30 days	Mon 1/25/16	Fri 3/4/16
16	Final Completion	1 day	Mon 3/7/16	Mon 3/7/16



Project: Sand Point Park Boat Ramp
Date: Thu 7/30/15

Task — Progress — Summary — External Tasks — Deadline
Split — Milestone — Project Summary — External Milestone

Page 1

ATTACHMENT "E"
CONSTRUCTION MANAGER'S
PRELIMINARY CONSTRUCTION SCHEDULE

ATTACHMENT "F"

ORDINANCE 98-37

AN ORDINANCE AMENDING CHAPTER 2 OF THE BREVARD COUNTY CODE TO CREATE ARTICLE VII, A PROCEDURE FOR PREQUALIFYING CONSTRUCTION CONTRACTORS, FOR COMPETITIVE BIDDING CRITERIA AND FOR DEBARMENT OF CONSTRUCTION CONTRACTORS AND SURETIES; PROVIDING FOR ALTERNATIVE CONSTRUCTION DELIVERY METHODS; PROVIDING FOR PREQUALIFICATION AND COMPETITIVE BIDDING CRITERIA, PROCEDURE, AND FOR A STANDARD OF PROOF; PROVIDING FOR EDITING OF THE ORDINANCE FOR INCLUSION WITHIN THE BREVARD COUNTY CODE; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Section 255.20, Fla. Stat. (1997) requires that standards and procedures for determining the lowest qualified and responsive bidder or award of a construction contract under any delivery method be established if a bidder is selected for any reason other than price; and

WHEREAS, the Board has determined that it is in the public's best interest to provide such standards and procedures so that the Board may select the most qualified and responsive bidder; and

WHEREAS, the Board has determined that it is in the public's best interest to prevent construction firms and sureties who have defaulted on a previous contract with the County from future bidding on County projects through a debarment procedure;

THEREFORE, be it ordained by the Board of County Commissioners of Brevard County, Florida as follows:

Section 1: Chapter 2 of the Brevard County Code shall be amended to create Article VII as follows:

1. DEFINITIONS: The following words shall have these meanings throughout this article:

   "AFFECTED PARTY" means an individual or business which has submitted a bid, offer, proposal, quotation, or response which is rejected, or is found unqualified under the provisions of this article, or which would be selected if a low bidder was found unqualified or nonresponsive.

   "BOARD" means the Board of County Commissioners of Brevard County, Florida.

"COMMITTEE" means two or more persons designated to evaluate prequalification and responsiveness criteria. Committees established by the County Manager may be intradepartmental, or include representatives of several departments interested in the administration and success of the construction project.

"DEBARMENT" means the exclusion for cause of a vendor or contractor, or subcontractor from bidding or doing business with the County on a temporary or permanent basis.

"MINOR IRREGULARITY" means a variation from the Invitation to Bid which does not affect the price of the bid, or give the bidder an advantage or benefit not enjoyed by other bidders, or does not adversely impact the interests of the agency.

"QUALIFIED BIDDER" means an individual or business which has submitted a bid, offer, proposal, quotation, or response, which has the capability in all respects to fully perform the contract requirements, and has the financial stability, honesty, integrity, skill, business judgement, experience, facilities and reliability necessary to give reasonable assurance of good faith and performance.

"REQUEST FOR QUALIFICATION" ("RFQ") means the process by which the County may prequalify individuals or businesses for a particular project before requesting bids for the project, thereby limiting the pool of bidders to these prequalified.

"RESPONSIVE BIDDER" means an individual or business which has submitted a bid, offer, proposal, quotation, or response, which conforms in all material respects to the solicitation, including but not limited to compliance with the submittal of specified insurance and bond requirements.

1. Any County contract for the construction or improvement of a public building, structure, or other public construction work that is estimated in accordance with general accounting principles to have construction costs of more than fifty thousand dollars ($50,000.00) shall be competitively awarded to the lowest, qualified and responsive bidder in accordance with this article, unless the project (1) fits within exceptions set forth in s. 255.20, Fla. Stat., as amended from time to time, (2) is a contract governed by the Consultant's Competitive Negotiation Act, or (3) is awarded under another contract delivery method authorized by this article. Nothing in this article shall be construed to require competitive award of every County construction work, nor to prohibit the Board from rejecting all bids if competitively bid, or to prevent the Board from waiving minor irregularities in any bid.

2. (a) Potential lump sum bidders responding to a request for qualifications are required to submit information required by this article and as identified in the RFQ package. A committee identified in the RFQ package will determine whether a potential bidder is qualified and responsive as defined in this article.

(b) For projects advertised for lump sum bid without prior prequalification, the apparent low bidder, after the formal bid opening, will be required to submit the following prequalification information identified in the bid package within five (5) business days after the bid opening. Failure to provide prequalification information within this time frame may be considered as grounds for finding the apparent low bidder nonresponsive. If the apparent low bidder cannot provide adequate documents for review, or the submitted documents indicate the apparent low bidder or any subcontractors are not qualified, or if the bidder's package is determined to be nonresponsive, the Committee will reject the bidder or any of its subcontractors. In the event the bidder is found unqualified or non-responsive, the apparent second low bidder will be contacted and afforded the previous mentioned five (5) days to submit pre-qualification documents. This process will continue until the lowest qualified and responsive bidder is established. In the event that a subcontractor is found unqualified or non-responsive, the potential bidder or prime contractor will have five (5) business days to submit a substitute subcontractor for the same bid price or withdraw the original bid.

(c) In addition to lump sum contracts for construction, the Board may use the following delivery methods for construction or improvement of a public building, structure, or other public construction work: construction manager, design/build, or continuing contracts based on unit prices. The Board may also enter into continuing contracts with construction managers using the pre-qualification procedure set forth herein for potential lump sum bidders. The individual projects shall be awarded under a continuing contract using the following criteria:

> Ability of professional personnel given project's special characteristics; past performance; willingness to meet time and budget requirements; location; recent, current and projected workloads of the firms available under continuing contract; volume of work previously awarded to each firm under a continuing contract provided distribution does not violate the principle of selection of the most qualified firm for the project; previous experience on County projects.

The County Manager will establish procedures for the Board to hear any affected party with a complaint or appeal as to any recommendation or finding made pursuant to this article. Any affected party's complaint or appeal must be presented, in writing, to the County Manager's office within five (5) business days of the posting of a committee's decision.

(d) At the completion of each competitively awarded County construction project, the County department which administered the construction contract shall complete an evaluation of the contractor's performance on a form to be established by the County Manager. The department may also complete evaluations of critical subcontractors using the same form. All such records shall be copied to the party evaluated and maintained by County Purchasing. Any party evaluated may submit a written response of any length, which response shall be filed with the evaluation.

3. Potential bidders, the apparent lowest bidder, or the person providing services under any other contract delivery method, and applicable subcontractors identified in the bid or request for qualification package for any County construction project which is to be competitively awarded shall be evaluated to determine whether the bidder and its subcontractors are qualified. In evaluating qualifications, the County shall consider the following information:

- A Contractor's Pre-Qualification Statement for the prime contractor and subcontractors performing parts of work identified in the bidding documents as critical to the project's success. The Pre-Qualification Statement shall be provided on a form to be established by the County Manager;

- Most current financial statement, but not more than one (1) year old, indication of bondability, or, if project is under $100,000, other evidence of financial capability as identified in the bid documents;

- Resumes of Contractor and Subcontractor's key personnel, including project manager and superintendent levels, showing job history, education related to work to be performed and any license, training, and experience related to the work which that individual will perform;

- List of subcontractors and suppliers, and items of work to be performed by the Contractor's own work force;

- County evaluations of the performance on County projects;

- References obtained from individuals or businesses with whom the contractor or subcontractor has performed work or conducted business;

- Any other relevant qualifications, data or information identified in the bidding documents to be critical to the success of the project.

4. The County Manager will establish committees which may debar a contractor, contractor's key personnel, contractor's surety, subcontractor and

subcontractor's key personnel, or any entity which key personnel are later employed or retained by in a supervisory position, from bidding on any County project under the circumstances enumerated below. The decision to disbar is discretionary, the seriousness of the offense and all mitigating factors should be considered in making the decision to disbar. The notice of debarment shall state the time when such debarment will be lifted, if ever, and the contractor's right to appeal such debarment to the Board of County Commissioners under the Board's regular agenda. The Board reserves the power to waive or lift any committee imposed suspension or debarment.

An individual or business may be *permanently* debarred for any of the following reasons:

- Conviction or a judgment obtained in a court of competent jurisdiction for:
- Commission of a fraud or a criminal offense as an incident to obtaining, attempting to obtain, or in the performance of a pubic contract
- Violation of any Federal or State of Florida anti-trust or anti-racketeering statutes arising out of submission of bids or proposals;
- Commission of embezzlement, theft, forgery, bribery, falsification of or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which seriously and directly affects the question of present responsibility as a County contractor, subcontractor or vendor;
- If the conviction or judgment is reversed on appeal, the debarment shall be removed upon receipt of notification thereof.

Competent and substantial evidence of a violation of a County contract provision, as set forth below, when the violation is of a character so as to justify debarment action such as:

- Failure to perform in accordance with the specifications or delivery requirements in a contract;
- A history of failure to perform, or of unsatisfactory performance, in accordance with the terms of one or more contracts; provided, that such failure or unsatisfactory performance is within a reasonable period of time preceding the determination to debar. Failure to perform for unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered as a basis of debarment.

Upon adequate evidence, an individual or business may be *temporarily* debarred for a period up to three (3) years based upon substantial evidence of involvement in any of the causes cited in paragraph (b) above.

Section 2: Inclusion in Code: It is the intention of the Board of County Commissioners that the provisions of this ordinance shall become and be made a part of the Brevard County Code; and that the sections of this ordinance may be renumbered or relettered

to accomplish such intentions.

Section 3: Severability: If any provision of this ordinance is held to be illegal or invalid, the other provisions shall remain in full force and effect.

Section 4: Effective Date: This ordinance shall become effective upon filing as provided by law. A certified copy of the ordinance shall be filed with the Office of the Secretary of State, State of Florida within ten (10) days of enactment.

ATTACHMENT "G"

PUBLIC CONSTRUCTION PAYMENT BOND

BY THIS BOND, We _____ as Principal and _____, a corporation as Surety, are bound to Brevard County Board of County Commissioners, Brevard County, Florida, herein called Owner, in the sum of _____ ($), for payment of which we bind ourselves, our heirs, personal representatives, successors and assigns, jointly and severally.

THE CONDITIONS OF THIS BOND are that if Principal:

1. Promptly makes payments to all claimants, as defined in Section 255.05(1), Florida Statutes, supplying Principal with labor, materials, or supplies, used directly or indirectly by Principal in the prosecution of the work provided for in the contract dated _____, 20____, between Principal and Owner for construction of _____, the contract being attached hereto and made a part of this bond by reference, in such time and without delay, and in the manner prescribed in the contract; and
2. Pays Owner all losses, damages, expenses, costs, and attorney's fees, including appellate proceedings, that Owner sustains because of a default by Principal under the contract, then this bond is void; otherwise it remains in full force.

   Any changes in or under the contract documents and compliance or noncompliance with any formalities connected with the contract does not affect Surety's obligation under this bond.

Signed and sealed this _____ day of _____, 20___.

Witness:

_____

_____
Principal Seal

Its: _____
Title

Witness:

_____

_____
Surety Seal

Its: _____
Title

ATTACHMENT "H"

PUBLIC CONSTRUCTION PERFORMANCE BOND

BY THIS BOND, We _____, as Principal and _____, a corporation as Surety, are bound to Brevard County Board of County Commissioners, Brevard County, Florida, herein called Owner, in the sum of _____ ($_____), for payment of which we bind ourselves, our heirs, personal representatives, successors and assigns, jointly and severally.

THE CONDITIONS OF THIS BOND are that if Principal:

1. Performs promptly, completely and faithfully the contract dated _____, 2010 between Principal and Owner for construction of _____, the contract being attached hereto and made a part of this bond by reference, in such time and without delay, and in the manner prescribed in the contract including the delivery, execution and performance of any warranty work required by the contract; and
2. Pays Owner all losses, damages, expenses, costs, and attorney's fees, including appellate proceedings, that Owner sustains because of default by Principal under the contract; and
3. Performs the guarantee of all work and materials furnished under the contract for the time specified in the contract, then this bond is void; otherwise it remains in full force.

Any changes in or under the contract documents and compliance or noncompliance with any formalities connected with the contract does not affect Surety's obligation under this bond.

Signed and sealed this _____ day of _____, 20___.

Witness:

_____

_____
Principal Seal

Its: _____
Title

Witness:

_____

_____
Surety Seal

Its: _____
Title

CONSTRUCTION CO., INC.

January 14, 2015

Brevard County Board of Commissioners
2725 Fran Jamison Pkwy
Viera, Fl. 32940

Attention: Joan Van Sickle

Reference: Sand Point Park Boat Ramp

Subject: Cost Proposal North Boat Ramp Replacement

Dear Joan,

Please find attached cost proposal in the amount of $60,847.00 for the work required to demo the existing north boat ramp and replace with a new 6" concrete ramp. The proposal is based upon the HAI drawings 1-4 received.

Please review and advise if the County would like us to perform this work.
If you have any questions, please contact me.

Sincerely,

J. David Nash
President

Name of Client: Brevard County
Name of Project: Sand Point North
Small Boat Ramp
Location of Project: Sand Point Park

Canaveral
CONSTRUCTION CO., INC.

Section	Description	Material	Labor	Unit	Duration	Comments	Totals
DIVISION 1	GENERAL CONDITIONS						
	Project Executive			$100.00/ Hr			
	Project Estimator			$50.00/ Hr	8		$400.00
	Project Quality Control			$55.00/ Hr	8		$440.00
	Superintendent with vehicle/fuel		$2,000.00	Week	3		$6,000.00
	Assistant Superintendent			Week			
	Jobsite Tool Trailer			Month			
	Cell Phones		$100.00	Month			$100.00
	Temporary Utilities & Set-up			Month			
	Temporary Safety Fencing		$250.00	Lump Sum			$250.00
	Surveying / Layout			Lump Sum			
	Permits/Impact Fees			By County			
	Postage/Shipping		$50.00	Lump Sum			
	Payment & Performance Bonds			Lump Sum		NIC	
	Builder's Risk Insurance			Lump Sum		NIC	
	NOC/Bond Filing Fee			Lump Sum			
	Small Tools		$100.00	Lump Sum			$100.00
	Trash Removal & Dump Fees			Lump Sum			
	Port-O-Lets		$100.00	Month			$100.00
	Daily Clean-up			Week			
	Final Clean-up		$500.00	Lump Sum			$500.00
	Ice & Water			Week			
	Safety / First Aid Supply			Month			
	Testing			Lump Sum			
						TOTAL	$7,890.00

CCCI

Name of Client: Brevard County
Name of Project: Sand Point North
Small Boat Ramp
Location of Project: Sand Point Park

Canaveral
CONSTRUCTION CO., INC.

Section	Description	Material	Subcontract	Subcontract	Subcontract	Comments	Totals
DIVISION 1	GENERAL CONDITIONS						
	General Conditions (from attached worksheet)						$7,890.00
	Design/Permit Allowance						$500.00
Eau Gallie Lift Station			WLS	Tedder	Construct	Fender Marine	
	Demo and Installation of Ramp						
				$57,025.00	$43,000.00	$79,000.00	
	Demolition and Removal of Existing Ramp		$38,980.00				$38,980.00
	New 50' x 15' x 6" Thick Reinforced Conc Ramp		incl				
	Dewatering		incl				
	Testing	$500.00				Allowance	$500.00
	Site Restoration	$2,000.00				Allowance	$2,000.00
						Subtotal	**$49,870.00**
			OHP@10% + Profit @ 8%			**Fee @ 18%**	**$8,977.00**
						Contingency	**$2,000.00**
						GMP TOTAL	**$60,847.00**

CCCI

David Nash

From: tom@wlsutilities.com
Sent: Monday, July 20, 2015 3:41 PM
To: David Nash
Subject: [FWD: RE: Boat Ramp Sandpoint Park]

Tom Sandige,

President
WLS Utilities, Inc.
321-403-4001 office
321-632-1565 fax

-------- Original Message --------
Subject: RE: Boat Ramp Sandpoint Park
From: <tom@wlsutilities.com>
Date: Fri, July 17, 2015 10:49 am
To: "Larry Towsley" <Larry@canaveralconstruction.com>

PROPOSAL

7/17/15

Includes;

Demo of existing ramp
Removal of silt or muck
Concrete and steel per dwgs.
Rock per dwgs
Rip rap per dwgs.
Aqua-Barrier water stop
Well points
Turbidity per dwgs.

Labor and material $38,980.00

Tom Sandige,

President
WLS Utilities, Inc.
321-403-4001 office
321-632-1565 fax

ATTACHMENT "J"

CERTIFICATE OF SUBSTANTIAL COMPLETION

(Insert Form Here)

ATTACHMENT "K"

CERTIFICATE OF FINAL COMPLETION

PROJECT NO. & TITLE:
ARCHITECT: CONTRACTOR:
CONTRACT DATE: DATE OF FINAL COMPLETION:

CERTIFICATE OF ARCHITECT/ENGINEER

Based on my inspections and investigation of the Contractor's work under the above referenced contract, I certify that the work, in general, has been completed in accordance with the contract documents, that all matters previously brought to the Contractor's attention as incomplete or defective have been resolved pursuant to my direction, and that the Contractor has submitted the attached sworn affidavit as evidence that the Contractor has paid all labor, materials, and other charges against the project in accordance with the terms of the Contract.

A/E Firm Name: _____ By: _____

TO BE COMPLETED BY ARCHITECT/ENGINEER: DATE: DAYS:

THROUGH THE SUBSTANTIAL COMPLETION PHASE

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 NTP through Date Certified by A/E)
6. Substantial Completion Overrun (Subtract Line 4 from 5 and Enter Overrun)

THROUGH THE FINAL COMPLETION PHASE

1. Time Specified in Contract, Between Substantial and Final Completion
2. Extensions Granted by Change Orders (Days Between S.C. and Final Completion)
3. Total Days Allowable Between Substantial Completion and Final Completion (Add Lines 1 and 2)
4. Date Actually Completed and Total Days Between and Date Certified by A/E as Actually being Finally Completed).
5. Final Completion Overrun (Subtract Line)

Architect: _____ Date: _____

Project Manager: _____ Date: _____

Facilities Construction Manager: _____ Date: _____

ATTACHMENT "L"

ALLOWABLE COSTS, OVERHEAD

DESCRIPTION	EST QUANTITY	UNITS	UNIT COST	BUDGET VALUE	QUANTITY TO DATE	QUANTITY TO COMP
OFFICE PHONES						
OFFICE SUPPLIES						
POSTAGE						
GAS/OIL/LUBRICATION						
AUTOMOBILES/TRUCKS						
PROJECT MANAGER						
ESTIMATING COSTS						
EXECUTIVE LABOR COST						
ASST PROJECT MANAGER						
IN HOUSE SECRETARY						
TRAVEL EXPENDITURES						
WARRANTY EXPENSE						

ATTACHMENT "M"
(Direct Cost Items)
GENERAL CONDITIONS

SUPERINTENDENT

JOB SITE SECRETARY/CLERK

QUALITY CONTROL

SURVEY

PERMITS

IMPACT/CONNECTION FEES

CONSTRUCTION DRAWINGS/SPECS

PROGRESS PHOTOGRAPHS *(IF REQUESTED BY THE OWNER)*

JOB SITE SIGN *(IF REQUESTED BY THE OWNER)*

SPECIAL SECURITY *(IF REQUESTED BY THE OWNER)*

PAYMENT & PERFORMANCE BONDS

BUILDERS RISK INSURANCE

JOBSITE TRAILER AND SUPPORT *(IF REQUESTED BY THE OWNER)*

TEMPORARY UTILITIES *(AS APPROVED BY THE OWNER)*

TEMPORARY JOBSITE FENCING *(INITIAL INSTALLATION ONLY)*

TRASH REMOVAL/DUMP FEES, AND RECYCLING *(AS APPROVED BY THE OWNER)*

ATTACHMENT "N"

CERTIFICATE FOR PAYMENT

(INSERT FORM HERE)

ATTACHMENT "O"

MINORITY EMPLOYMENT INFORMATION

The Board of County Commissioners requires construction contracts, who would otherwise be required to file and EEO Form 1 Report under Federal Law (currently Federal law requires filing for employers with more than 15 employees), to submit an EEO Form 1 Report with the submission of their GMP. This requirement extends to any subcontractors who are required to submit the EEO Form 1 Report (over 15 employees) under Federal law. Failure to submit an Acknowledgment and/or EEO Form 1 Report with your GMP will be reason to declare your proposal "non-responsive" to the proposal requirements. However, the information will be used for statistical purposes only and will not be used in any way as a basis to award a contract.

Please fill out and sign one (1) of the following statements:

1. My Company or subcontractors are required to submit the EEO Form 1 Report and they are attached.

   Company Name:
   Signature: _____ Date: _____

2. My Company or subcontractors are not required to submit the EEO Form 1 Report.

   Company Name:
   Signature: _____ Date: 8/20/15

Company Name: _____

Company Address: _____

Company Telephone: _____

Signature: _____ Printed Signature: _____

ATTACHMENT "P"

PUBLIC ENTITY CRIME ACKNOWLEDGMENT

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/quote/proposal on a contract to provide goods or services to a public entity, may not submit a bid/quote/proposal on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids/quotes/proposals on leases of rental 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 in excess of the threshold amount provided in Section 287.017, for Category Two ($15,000) for a period of thirty six (36) months from the date of being placed on the convicted vendor list.

NON-COLLUSION AFFIDAVIT OF PRIME BIDDER

State of Florida
County of Brevard

J. David Nash, being duly sworn, deposes and says that:

(1) Affiant is President of Canaveral Construction the Bidder that has submitted a bid/quote/proposal;

(2) Affiant is fully informed respecting the preparation and contents of the bid/quote/proposal and of all pertinent circumstances respecting such bid/quote/proposal;

(3) Such bid/quote/proposal is genuine and is not a collusive or sham bid/quote/proposal;

(4) Neither the said Bidder nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, has in any way colluded, conspired, connived or agreed, directly or indirectly with any other Bidder, firm or person to submit a collusive or sham bid/quote/proposal in connection with the Contract for which the bid/quote/proposal has been submitted or to refrain from bidding in connection with such Contract, or has in any manner, directly or indirectly, sought by Contract, or has in any manner, directly or indirectly, sought by the agreement or collusion or communication or conference with any other bidder, firm or person to fix the price or prices in the bid/quote/proposal or of any other Bidder, or to fix any overhead, profit or cost element of the bid/quote/proposal price or the bid/quote/proposal price of any other bidder, or to secure through any collusion, conspiracy, connivance or unlawful agreement any advantage against the Board of County Commissioners of Brevard County, Florida, or any person interested in the Contract; and

(5) The price or prices negotiated for the bid/quote/proposal are fair and proper and are not tainted by any collusion, conspiracy, connivance, or unlawful agreement on the part of the Bidder or any of its agents, representatives, owners, employees, or parties of interest, including affiant.

Signature

President
Title

Subscribed and sworn to before me this 31 day of Aug, 2015.

Notary Public

My Commission expires:

MARILOURDES DIAZ-DEYO
Notary Public - State of Florida
My Comm. Expires Jun 15, 2017
Commission # FF 012189

SUBJECT: PERMISSION TO ISSUE ANNUAL SUPPLY BIDS, QUOTES AND PROPOSALS (FY 2014/2015) AND/OR NEGOTIATE COMPETITIVE AGREEMENTS

SUMMARY EXPLAINATION & BACKGROUND, CONTINUED

continuing contracts for professional services for projects in which the estimated construction cost of each individual project under the contract does not exceed $2 million, if the professional services under the contract does not exceed $200,000. Firms providing professional services under continuing contracts shall not be required to bid against one another.

Annual negotiated competitive agreements/discounts establish a firm source period, and price on high volume materials and services, significantly reducing the number of repetitive, expensive daily purchase transactions through the utilization of open purchase orders or purchase card.

The evaluation of renewal options utilizes factors such as market data, level of competition available, inflation and vendor performance. The using agencies and the Purchasing Manager or designee will document recommendations of exercising renewal options in the official bid or proposal files.

Formal contract renewals will be in accordance with AO-29, Contract Administration.

Fiscal Impact FY 14/15: Minimizing administrative costs by reducing and consolidating Board actions for competitive annual procurement of commodities and services insures efficient use of available funds and the timely provision of commodities and services necessary to provide for the health, education, social needs and enhance the quality of life of the residents of Brevard County. Establishment of costs associated with these commodities/services is allocated to individual agencies' funding sources. Funds will be encumbered through user initiated blanket purchase orders.

Name: Contact: Leslie. Rothering, Purchasing Services
Phone: x5-6038, leslie.rothering@brevardcounty.us

ANNUAL BID/QUOTE/PROPOSAL LIST
FY 2014/2015

BIDS	RENEWAL OPTIONS	ESTIMATED ANNUAL EXPENDITURES
AGRICULTURAL EQUIPMENT OEM REPLACEMENT PARTS	1 YR W/ 1 YR OPTION.	$80,000.00
ALARM MONITORING*	1 YR W/ 3 -1 YR OPTIONS	$66,000.00
APPRAISALS & APPRAISAL REVIEW SERVICES*	NONE	VARIED
ASPHALTIC CONCRETE	1 YR W/ 3-1 YR OPTIONS	$3,000,000.00
AUTOMOTIVE EQUIPMENT AND BATTERIES	1 YR W/ 1 YR OPTION.	$190,000.00
AUTOMOTIVE BODY REPAIRS	1 YR W/ 1 YR OPTION.	$65,000.00
AUTOMOTIVE PARTS (including Ford & Chevy OEM)	1 YR W/ 1 YR OPTION.	$330,000.00
BIO-MEDICAL WASTE COLLECTION AND DISPOSAL	2 YR W/2-1YR OPTION	$86,000.00
CARPET CLEANING	1 YR W/2-1 YR OPTIONS	$95,000.00
CEMENT--BULK PORTLAND & BAGS	1 YR W/ 1 YR OPTION.	$100,000.00
CERTIFIED BASE ROCK	1 YR W/ 1 YR OPTION.	$215,000.00
CHEMICALS --AGRICULTURAL & AQUATIC & FERTILIERS	1 YR W/ 1 YR OPTION.	$275,000.00
CONCRETE CRUSHING - ONSITE	1 YR W/ 1 YR OPTION.	$100,000.00
CONCRETE PIPE	1 YR W/ 1 YR OPTION.	$420,000.00
CONCRETE SIDEWALK, GUTTER & CURB CONST.	1 YR W/ 1 YR OPTION.	$400,000.00
DRAWBRIDGE MAINTENANCE	1 YR W/ 3-1 YR OPTION.	$85,000.00
ELECTRICAL SERVICES	1 YR W/ 1 YR OPTION.	$150,000.00
EMERGENCY WATER & WASTEWATER REPAIRS	1 YR W/1 YR OPTION	$300,000.00
FENCING	1 YR W/ 1 YR OPTION	$167,000.00
FILL DIRT --SELECT COMMON FILL	1 YR W/ 1 YR OPTION.	$800,000.00
FIRE ENGINGE OUTFITTING EQUIPMENT	1 YR W/1 YR OPTION	$200,000.00
GENERATOR PREVENTATIVE MAINTENANCE AND REPAIR SERVICES	1 YR W/2-1 YR OPTION	$75,000.00
GRASSING SERVICES (SEED,MULCH, SOD)	1 YR W/ 1 YR OPTION.	$360,000.00
HVAC AIR CONDITION SERVICES	1 YR W/ 1 YR OPTION.	$450,000.00
JANITORIAL SUPPLIES (incl. CAN LINERS)	1 YR W/ 1 YR OPTION.	$200,000.00
LABORATORY SERVICES	1 YR W/ 1 YR OPTION.	$200,000.00
LANDFILL GAS REPAIRS	1YR W/ 2 1 YR OPTION	$250,000.00
LAWN/GROUND MAINTENANCE & MGMT*	1 YR W/ 1 YR OPTION.	$400,000.00
LIMEROCK FOR SOLID WASTE	1 YR W/ 1 YR OPTION.	$100,000.00
LUBRICATING OILS	1 YR W/ 1 YR OPTION.	$127,000.00
MANHOLES, INLETS & GRATES (PRE-FABRICATED)	1 YR W/ 1 YR OPTION.	$100,000.00
MED. EXAM. REMOVAL & TRANSPORT OF BODIES	1 YR W /5- 1 YR OPTIONS	$113,000.00
MEDICAL DIRECTOR SERVICES	1 YR W/ 4-1 YR OPTIONS	$89,000.00
MEDICAL SUPPLIES inc. Pharmaceuticals, Controlled Drugs and Gloves	1 YR W/ 1 YR OPTION.	$900,000.00
MIX-IN PLACE ROAD RECYCLING	1 YR W/ 2-1 YR OPTION.	$205,000.00
MULCHING SERVICES	1 YR W/ 2-1 YR OPTION.	$1,500,000.00
OFFICE SUPPLIES	1 YR W/ 1 YR OPTION.	$185,000.00

ANNUAL BID/QUOTE/PROPOSAL LIST
FY 2014/2015

BIDS	RENEWAL OPTIONS	ESTIMATED ANNUAL EXPENDITURES
PAINT SUPPLIES AND /OR SERVICES	1 YR W/ 1 YR OPTION.	$150,000.00
PERSONAL PROTECTION EQUIPMENT	1 YR W/2 (1YR) OPTIONS	$200,000.00
PIPE - CURED IN PLACE	3 YR W/1-YR OPTION	$400,000.00
PLUMBING SERVICES (HOURLY RATES)	1 YR W/ 1 YR OPTION.	$100,000.00
POLYMER	1 YR W/ 2 YR OPTION.	$200,000.00
PUMP AND COMPRESSOR REPAIR	1 YR W/ 1 YR OPTION.	$200,000.00
RECYCLING ELECTRONICS	1 YR W/ 2-1 YR OPTION.	$285,000.00
ROAD & SHOULDER EXCAVATION	1 YR W/ 1 YR OPTION.	$50,000.00
ROAD CONSTRUCTION --MISC. MATERIALS	1 YR W/ 1 YR OPTION.	$300,000.00
ROAD STRIPING PAINT AND THERMOPLASTIC	1 YR W/ 2 YR OPTION.	$200,000.00
ROOFING/GUTTER MATERIALS AND SERVICES	1 YR W/ 1 YR OPTION.	$300,000.00
SCRAP METAL	2 YR W 1- 2 YR OPTION	$340,000.00
SECURITY SERVICES* (VARIOUS DEPTS)	1 YR W/4-1 YR OPTION	$600,000.00
SELF CONTAINED BREATHING APPARATUS CYLINDERS AND PACKS	1 YR	$250,000.00
SEPTAGE TREATMENT & DISPOSAL	1 YR W/2-1 YR OPTIONS	$200,000.00
SOIL CEMENT PUG-MILL MIX	1 YR W/ 1 YR OPTION.	$90,000.00
SUMMER FOOD SERVICE PROGRAM	1 YR W/4-1 YR RENEWALS PER FDOA GUIDELINES	$78,000.00
TEMPORARY SERVICES	1 YR W/ 1 YR OPTION.	$300,000.00
TIRE REMOVAL AND DISPOSAL (SHREDDING)	1 YR W/ 1 YR OPTION.	$138,000.00
TRAFFIC SIGN MATERIALS	1 YR W 1YR OPTION	$100,000.00
TRAFFIC SIGNAL/STREET LIGHTING MAINT.&CONST.	3 YR W/ 2-1 YR OPTION.	$200,000.00
TRAINING - FIRE RESCUE	1 YR W/ 1 YR OPTION.	$178,000.00
TREATMENT AND DISPOSAL OF DE-WATERED BIOSOLIDS	1 YR W/ 2-1 YR OPTION.	$370,000.00
TREE REMOVALS	1 YR W/ 1 YR OPTION.	$100,000.00
TRUCKING SERVICES (MATERIAL PER YD/PER MILE)	1 YR W/ 1 YR OPTION.	$92,000.00
UNIFORM PURCHASE (FIRE RESCUE)	1 YR W/ 1 YR OPTION.	$157,000.00
VETERINARY SUPPLIES*	1YR W/ 1YR OPTION	$200,000.00
WATER RESOURCES CHEMICALS	1 YR W/1 YR OPTION	$100,000.00
ADVERTISING SERVICES FOR TDO	2 YR W/ 3-1 YR OPTIONS	$250,000.00
ANTENNA AND TOWER MAINTENANCE	1 YR W/4-1 YR OPTIONS	$300,000.00
AUCTIONEER SERVICES	2 YR W/ 1 YR OPTION	% OF SALES
BILLING & MAILING SERVICE	3YR W/3-1YR OPTION	$980,000.00

ANNUAL BID/QUOTE/PROPOSAL LIST
FY 2014/2015

PROPOSALS	RENEWAL OPTIONS	ESTIMATED ANNUAL EXPENDITURES
BUS MAINTENANCE FOR SCAT	3 YR W/two (2) 1 YR. OPTIONS	$2,700,000.00
COPY MACHINE RENTAL	5 YR W/1 YR OPTION	$450,000.00
DEBT COLLECTION	3 YEARS	% OF TOTAL COLLECTED
DISASTER DEBRIS MANAGEMENT	5 YEARS	VARIED
DISASTER DEBRIS REMOVAL	5 YEARS	$690,000.00
FOOD CONCESSION AT SPESSARD HOLLAND BEACH	5 YR W/ (2) 36 Mos. RENEWALS	REVENUE
FULLFILLMENT AND PHONE ANSWERING SERVICES FOR TDO *	3 YR W/ 2-1 YR OPTIONS.	$115,000.00
GOLF COURSE CONCESSION	5 YR W/ (2) 36 Mos. RENEWALS	REVENUE
GOLF COURSE MAINTENANCE	5 YR W/ (2) 36 Mos. RENEWALS	$1,600,000.00
INSURANCE SERVICES*	VARIED	VARIED
JANITORIAL SERVICES*	1 YR W/ 3 YR OPTION.	$478,400.00
LAUNDRY CONCESSION FOR PARKS & REC	5 YR W/ (2)-1 YR OPTIONS	REVENUE
MAIL/COURIER MANAGEMENT SERVICES	1 YR W/ 4-1 YR OPTIONS	$431,000.00
MARKETING SERVICES FOR SCAT	3 YR W/ 1 2 YR OPTIONS	$570,000.00
PHYSICAL EXAMINATIONS	2 YR W/ 2-1 YR OPTIONS	$250,000.00
PIER CONCESSION	5 YR W/ (2) 3 YR OPTIONS	REVENUE
PUBLIC & MEDIA RELATIONS FOR TDO	2 YR W/3-1 YR OPTIONS	$210,000.00
SAP SUPPORT SERVICES	1 YR W/2-1 YR OPTIONS	$100,000.00
SCRAP METAL	5 yr Agreement	REVENUE
SEASONAL RECREATION WORKERS	3 YR W/2-1 YR OPTIONS	$1,290,000.00
SECURITY SERVICES* (VARIOUS DEPTS)	1 YR W/ 2-1 YR OPTION.	$535,000.00
SPORTS PROMOTION FOR TDC	3 YR W/ 2 YR OPTION	$218,000.00
STRUCTURED CABLING	2 YR W/3-1 YR OPTIONS	$50,000.00
TISSUE & EYE REMOVAL SERVICES	3 YR W/2-1 YR OPTIONS	REVENUE
VACATION PLANNERS FOR TDC	3 YR w/1 2YR OPTION	$50,000.00
VENDING MACHINE SERVICES (Facilities/Parks)	1 YR WITH 4/ 1 YR OPTIONS	REVENUE
WEBSITE DESIGN/MAINTENANCE FOR TDC	3 YR W/1-2 YR OPTION	$40,000.00

ANNUAL BID/QUOTE/PROPOSAL LIST
FY 2014/2015

REQUEST FOR QUALIFICATIONS	RENEWAL OPTIONS	ESTIMATED ANNUAL EXPENDITURES
CONTINUING CONSULTANT ENGINEERING SERVICES - SOLID WASTE	3-5 YEARS TOTAL (including renewals)	Selection will be made in accordance with the Florida Consultants Competitive Negotiations Act (§ 287.055, F.S.) and Brevard County Policy BCC-26 at negotiated rates.
CONTINUING CONSULTANT ENGINEERING SERVICES - UTILITY SERVICES		
CONTINUING CONSULTANT ENGINEERING SERVICES - HOUSING & HUMAN SERVICES		
CONTINUING CONSULTANT- PROFESSIONAL COASTAL ENGINEERING NRMO		
CONTINUING CONSULTANT- PROFESSIONAL ECOLOGICAL ENGINEERING NRMO		
CONTINUING CONSULTANT- PROFESSIONAL ENVIRONMENTAL SCIENCE ENGINEERING NRMO		
CONTINUING CONSULTANT- PROFESSIONAL CIVIL ENGINEERING NRMO		
CONTINUING CONSULTANT ENGINEERING SERVICES - PUBLIC WORKS		
CONTINUING CONSULTANT APPRAISAL SERVICES		
CONTINUING CONSULTANT GEOTECHNICAL SERVICES		
CONTINIUNING CONSTRUCTION MANAGEMENT SERVICES		
CONTINUING CONSULTANT - A/E DESIGN SERVICES		
CONTINUING ENGINEERING SERVICES FOR MECHANICAL/ELECTRICAL/PLUMBING DESIGN		
CONTINUING ENGINEERING SERVICES STRUCTURAL ENGINEERING DESIGN SERVICES		
CONTINUING ROOFING CONTRACTINGS SERVICES		
CONTINUING ROOFING CONSULTANT SERVICES		
Services may be bid or quoted depending on usage or performance experience.		
CONSULTANT ENGINEERING SERVICES - UTILITY SERVICES APPROVED CIP PROJECTS THAT EXCEED CONTINUING CONSULTANT DOLLAR THRESHOLD	PER PROJECT BASIS	Selection will be made in accordance with the Florida Consultants Competitive Negotiations Act (§ 287.055, F.S.) and Brevard County Policy BCC-26 at negotiated costs.

BREVARD COUNTY
BOARD OF COUNTY COMMISSIONERS

INTER-OFFICE MEMORANDUM

TO: Commissioner Robin Fisher, Chairman

FROM: Mary Bowers, Support Services Manager, Facilities

DATE: January 12, 2015

SUBJECT: Bid #B-5-15-16 Brevard County Security Guard Services

Please find enclosed three (3) contracts with the low bidder, Giddens Security, for Bid #B-5-15-16 Security Guard Services.

Please sign all three (3) originals and return to Facilities, Mail Stop #81.

Should you have any questions please contact our office at 633-2050.

Thank you.

/mb

633-2050

Enclosures

Brevard COUNTY
Central Services

Florida's Space Coast

Purchasing Services
2725 Judge Fran Jamieson Way, Suite C303
Viera, FL 32940

Phone (321) 617-7390
Facsimile (321) 617-7391

NOTICE OF AWARD
December 2, 2014
BID#B-5-15-16/Security Services – Brevard Government Complexes

PROCUREMENT ANALYST: April Chapman

VENDOR	MEETS MINIMUM REQUIREMENTS	ITEMS AWARDED	AWARD AMOUNT	Vendor City and State
Giddens Security Group	**Yes**	**All**	**$205,522.25**	**Jacksonville, FL**
Credible Security Services	Yes	None	$215,299.50	Kissimmee, FL
Universal Protection Services	Yes	None	$226,446.00	Palm Bay, FL
Ten Eight Agency, Inc.	Yes	None	$227,987.50	W. Melbourne, FL
Excelsior Defense	Yes	None	$252,284.50	St. Petersburg, FL
US Security Associates, Inc.	Yes	None	$254,181.00	Winter Park, FL
National Alliance Security Agency, Inc.	Yes	None	$265,853.25	Dayton, OH
Blue Shield Security Protection, Inc.	Yes	None	$267,637.50	Riverview, FL
Admiral Security Services	Yes	None	$296,780.25	Melbourne, FL
AFA Protective Systems, Inc.			No Bid	Altamonte Springs, FL

☐ BOARD AWARD--AGENDA ATTACHED

☒ APPROVED AWARD (NON-BOARD AGENDA): Teresa Camarata, Stockton Whitten
(Per Sections III.E. & III.I. & J., BCC-25, PROCUREMENT) Teresa Camarata, Central Services Director/Stockton Whitten, County Manager

☒ Award to Overall Lowest, most Responsive, minimum three bids received.
☐ Award to other than low, with low bid being non-responsive: (copy to Manager)
REASON FOR NON-RESPONSIVENESS:
☐ Award to low bid, less than three responses received: (copy to Manager)
REASON FOR LESS THAN THREE RESPONSES:

AWARDED BY A COMMITTEE CONSISTING OF: L. Rothering, Purchasing Mgr.; M. Bowers, Facilities Support Mgr.; J. Hayes, Central Services Administrative Support, Mgr.; A. Chapman, Purchasing Services

FOR PURCHASING USE ONLY:
☐ ONE TIME PURCHASE

☒ ANNUAL BID:
EFFECTIVE DATE: **1/4/15** ENDING DATE: **1/3/16**
RENEWAL OPTION ☐ One year ☒ Other: Four (4) one-year periods
☐ Prompt Payment Discount Offered ☐ Yes_____(Terms) ☐NO
☐ Performance and payment bonds received with construction contract documents.
☐ Release Cashier's Or Certified Check Received For Bid Deposit On Bids

SPECIAL INSTRUCTIONS TO AWARDED VENDOR:
☒ Please provide certificate of insurance.
☐ Please provide performance and payment bonds as required.
☐ OTHER:

SM/LR

CONTRACT
SECURITY SERVICES
BREVARD COUNTY GOVERNMENT COMPLEXES

THIS CONTRACT by and between the Board of County Commissioners of Brevard County, Florida, a political subdivision of the State of Florida (hereinafter the "County"), and **GIDDENS SECURITY CORPORATION**, a business having its primary business location at 528 South Edgewood Avenue, Jacksonville, Florida 32205, (hereinafter the "Contractor").

WITNESSETH:

WHEREAS, the County is desirous of obtaining security guard services; and,

WHEREAS, the County, after a competitive bidding process; made award to Contractor;

WHEREAS, the provision of such services shall mutually benefit the parties hereto and the residents of Brevard County, Florida.

NOW THEREFORE, in consideration of the covenants herein contained, it is mutually agreed between the parties as follows:

1. **SCOPE OF THE WORK:** The Contractor shall be prepared to furnish all labor, materials, equipment, machinery, tools, apparatus and transportation to perform all work or services specified in **Attachment *A*** (Scope of Services), attached hereto and made a part hereof by this reference.

2. **TERM:** The term of the Contract shall begin **January 05, 2015** and continue through **January 04, 2016**. This Contract shall have a Four (4) one-year renewal options if agreeable to all parties.

3. **PAYMENTS:** Invoices shall be submitted on a monthly basis. The Hourly Billing Rate for these services shall be **$11.53 per hour** for guard services and **$0.00 per hour** for Lead Worker position. The County shall remit payment in accordance with the Florida Prompt Payment Act, Florida Statute section 218.70, et seq.

4. **INDEMNIFICATION:** The Contractor shall indemnify and hold harmless the County and its agents and employees from and against all claims, damages, losses, and expenses, including attorney's fees arising out of or resulting from the performance of its work under this Contract, where such claim, damage, loss, or expense is caused, in whole or in part, by the act or omission of the Contractor, or anyone directly or indirectly employed by the Contractor, or anyone for whose acts any of them may be liable, regardless of whether or not it is caused by in part by a party indemnified thereunder. In any and all claims against the County, or any of its agents or anyone directly or indirectly employed by the Contractor, or anyone for whose acts any of them may be liable, indemnification obligation under this paragraph shall not be limited in any way by a limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor, under workers' compensation acts, or other related policies of insurance. The parties acknowledge specific consideration has been

5. **MODIFICATIONS TO CONTRACT:** This Contract, together with any exhibits, task assignments and schedules constitute the entire contract between the County and the Contractor and supersedes all prior written or oral understandings. This Contract and any exhibits, task assignments and schedules may only be amended, supplemented or canceled by a written instrument duly executed by the parties hereto.

6. **INSURANCE:** The Contractor, at its own expense, shall keep in force and at all times maintain during the term of this Contract:

a. **General Liability Insurance:** General Liability Insurance issued by responsible insurance companies and in a form acceptable to the County, with combined single limits of not less than One Million Dollars ($1,000,000) for Bodily Injury and Property Damage per occurrence.

b. **Automobile Liability Insurance:** Automobile Liability coverage shall be in the minimum amount of One Million Dollars ($1,000,000) combined single limits for Bodily Injury and Property Damage per accident.

c. **Workers' Compensation Coverage:** Full and complete Workers' Compensation Coverage, as required by State of Florida law, shall be provided.

d. **Insurance Certificates:** The Contractor shall provide the County with Certificates(s) of Insurance on all the policies of insurance and renewals thereof in a form(s) acceptable to the County. Said Liability Policies shall provide that the County be an additional insured. The County shall be notified in writing of any reduction, cancellation or substantial change of policy or policies at least thirty (30) days prior to the effective date of said action. All insurance policies shall be issued by responsible companies who are acceptable to the County and licensed and authorized under the laws of the State of Florida.

7. **ATTORNEY'S FEES:** In the event of any legal action to enforce the terms of this contract each party shall bear its own attorney's fees and costs.

8. **GOVERNING LAW:** This Contract shall be governed, interpreted and construed according to the laws of the State of Florida.

9. **COMPLIANCE WITH STATUTES:** It shall be the Contractor's responsibility to be aware of and comply with all federal, state and local laws.

10. **VENUE:** Venue for any legal action by any party to this Contract to interpret, construe or enforce this Contract shall be in a court of competent jurisdiction in and for Brevard County, Florida and any trial shall be non-jury.

11. **ASSIGNMENTS:** Contractor shall not assign any portion of this Contract without the written permission of the County.

12. **TERMINATION:** If either party fails or refuses to perform any of the provisions of this Contract or otherwise fails to timely satisfy the contract provisions, either may notify the other party in writing of the nonperformance and terminate the Contract or such part of the Contract as to which there has been delay or a failure to properly perform. Such termination is effective upon the other party's receipt of the Notice of Termination. Any work completed or

services provided prior to the date of termination shall, at the option of the County, become the property of the County. The County is only responsible for payment for work completed prior to the effective date of termination.

13. **INDEPENDENT CONTRACTOR:** The Contractor shall perform the services under this Contract as an independent contractor and nothing contained herein shall be construed to be inconsistent with this relationship or status. Nothing in this Contract shall be interpreted or construed to constitute the Contractor or any of its agents or employees to be the agent, employee or representative of the County.

14. **RIGHT TO AUDIT RECORDS:** The County and its auditors shall be entitled to audit the books and records of the Contractor to the extent that such books and records relate to the performance of this Contract. Said records shall be made available, upon request, for audit purposes to Brevard County and its auditors. Such books and records shall be maintained by the Contractor for a period of three (3) years from the date of final payment under this Contract unless a shorter period is otherwise authorized in writing.

15. **UNAUTHORIZED ALIEN WORKERS:** Brevard County will not intentionally award publicly-funded contracts to any contractor who knowingly employs unauthorized alien workers, constituting a violation of the employment provisions contained in 8 U.S.C. Section 1324a(e)(Section 274A(e) of the Immigration and Nationality Act "INA"). The County shall consider a contractors intentional employment of unauthorized aliens as grounds for immediate termination of this Contract.

16. **FEDERAL TAX ID NUMBER:** The Contractor shall provide to the County their Federal Tax ID Number or, if the Contractor is a sole proprietor, a Social Security Number.

17. **EMPLOYMENT:** The Contractor shall not engage the services of any person or persons now employed by the County, including any department, agency, board or commission thereof, to provide services relating to this contract without written consent from the County.

18. **PUBLIC ENTITY CRIMES:** A person or affiliate who has been placed on the convicted contractor 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 contractor, supplier, subcontractor, or consultant under a contract with a public entity, and may not transact business with any public entity in excess of the threshold amount provided in s. 287.017 for CATEGORY TWO for a period of thirty six (36) months from the date of being placed on the convicted Contractor list.

19. **CONSTRUCTION OF CONTRACT:** The parties hereby acknowledge that they fully reviewed this Contract, its attachments and had the opportunity to consult with legal counsel of their choice, and that this Contract shall not be construed against any party as if they were the drafter of this Contract.

20. **NOTICE:** Notice under this Contract shall be given by certified mail or hand delivery as follows:

Brevard County Central Services Department
Attn: Mary Bowers, Facilities Support Services Manager

2725 Judge Fran Jamieson Way, Building A-207
Viera, Florida 32940

and Notice shall be given to the Contractor by certified mail or hand delivery as follows:

Giddens Security Corporation
Mr. Adam Giddens, CPA, Chief Financial Officer
528 Edgewood Avenue
Jacksonville, Florida 32205

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals on the day and year first above written.

ATTEST:

Scott Ellis, Clerk

BOARD OF COUNTY COMMISSIONERS OF
BREVARD COUNTY, FLORIDA

By: _____
Robin Fisher, Chairman

Date: 1/14/15

As approved by Board on: _____

Reviewed for legal form and
content: _____, 1/5/15
Assistant County Attorney

GIDDENS SECURITY CORPORATION

WITNESS:

By: _____
Signature

Date: 1/7/15

Adam Giddens, CPA Chief Financial Officer
Name & Title, Typed or Printed

ATTACHMENT A
SCOPE OF SERVICES
B-5-15-16
SECURITY SERVICES FOR GOVERNMENT COMPLEXES

POST ASSIGNMENTS

Harry T. & Harriette V. Moore Justice Center: Four (4) guards will provide entry control, screening, of all entrants and packages, and security in the lobby of the Harry T. & Harriette V. Moore Justice Center, Viera. One (1) guard will report to the post at 7:00 a.m. and one (1) guard will remain until 6:30 p.m. Two (2) guards will report at 7:30 a.m. and depart at 5:30 p.m. A fourth guard will report on Mondays, Tuesdays, and Wednesdays from 7:30 a.m. to 12:30 p.m. This post will not be staffed on weekends and holidays unless specifically requested. These additional hours will be scheduled by the Facilities Department as needed and the hours added to the monthly invoice total at the same hourly rate.

Vassar B. Carlton Historic Courthouse: Two (2) guards will provide entry control, screening of all entrants and packages, and security at the entrance area. Guards will report at 7:30 a.m. and depart at 5:30 p.m., Monday through Friday. One (1) guard will remain in the Courthouse; one (1) will patrol the employee and visitor parking lot located on the corner of South Street and Palm Avenue. One (1) guard will make a perimeter sweep of the facility every hour, entrant traffic allowing. This post will not be staffed on weekends and holidays unless specifically requested as above.

Melbourne Courthouse: Two (2) guards will provide entry control, screening of all entrants and packages, and security at the entrance area. Guards will report at 7:30 a.m. and depart at 5:30 p.m., Monday through Friday. One (1) guard will make a perimeter sweep of the facility every hour, entrant traffic allowing. This post will not be staffed on holidays and weekends unless specifically requested as above.

Additional Coverage: One (1) guard will be required to remain on post at Courthouse(s) until court proceedings, Teen Court, Guardian Ad Litem, State Attorney's business, or special meetings are adjourned. These hours will be scheduled by the Facilities Department as needed. Overtime will be paid for hours worked beyond 6:00 p.m. at the Harry T. & Harriette V. Moore Justice Center and 5:30 p.m. at the Vassar B. Carlton Titusville Courthouse and Melbourne Courthouse.

Guards will be required to stand post at other County facilities on an as-needed basis. Eight (8) hour notice will be provided and the additional hours will be billed at the regular hourly rate. If an eight (8) hour notice is not provided, hours may be billed at an overtime rate of 1 ½ times the regular hourly rate for the first day and regular hourly rates shall be charged thereafter.

TRAINING CRITERIA

Security guard(s) assigned to work at any Brevard County property must have completed the appropriate training required by the State of Florida pursuant to Chapter 493, Florida Statutes and have the appropriate license. Within five (5) working days of its execution of this Contract, the Contractor will provide to Brevard County representative(s) documentation of minimum training performed prior to guards standing at any Brevard County post. Prior to commencement, the Contractor will provide Brevard County representative(s) with copies of licenses for all guards working on Brevard County property. If at any time during the term of this

contract a security guard is found to be unlicensed in compliance with Chapter 493, Florida Statutes, the Contractor shall immediately remove the guard from the premises and provide a replacement within one (1) hour.

The Contractor is required to provide this training to all field personnel to assure Brevard County said guards are capable of assuming the responsibilities of their assignments. The cost for the basic training program is to be borne by the Contractor. All security personnel must successfully complete and pass this training prior to assignment to a specific post under the contract. This basic training must include, but is not limited to, the following:

1. **Courthouse Screening**

   a. Courthouse screening will be conducted in accordance with Brevard County Administrative Order 98-10.

   b. The Contractor shall train, test, and supervise all guards performing screening functions in such a manner as to ensure effective, courteous screening and shall assure that all personnel performing screening functions are capable of performing such functions. All guards used to perform weapon screening functions shall be trained in proper screening techniques, physical inspection, use of metal detectors, and use of X-ray systems. The Contractor shall assure that all screening personnel operating X-ray systems possess sufficient eyesight proficiency to perform X-ray operator's duties. The Contractor shall assure that supervisory personnel assigned to the Brevard County Courthouses are thoroughly familiar with weapon screening and other screening related activities.

   c. In addition to the primary security objectives, the training shall emphasize the need for courteous, cautious, and efficient application of screening procedures. The Contractor may include additional related security material with written notification to the Brevard County representative or designee. The training must be presented in a formal manner with ample opportunity for question and answer time.

   d. The Contractor may invite local law enforcement officers performing a support function at the Brevard County Courthouses to attend the training classes at no additional cost to the County.

   e. The Contractor's supervisory personnel will be responsible for providing training for security guards in the use of all post equipment. The Contractor will be responsible for all costs associated with their supervisory personnel attending the orientation class and the training of their security guards.

   f. Current and accurate training records shall be maintained by the Contractor for each employee, reflecting the date and type of training received. The Contractor shall supply Brevard County with copies of all the above mentioned training documents within seven (7) days of completion of training. The records shall also be made available to the Brevard County representative or designee upon request and shall be maintained for a period of at least five (5) years following the termination of this Contract. Failure to provide timely training documentation shall be cause to withhold payment for services rendered.

2. **Initial Training.** The Contractor shall assure that no person shall perform any screening function that requires the exercise of independent judgments regarding persons with property having access to the area beyond the screening point unless the person has:

a. Received a presentation covering the purpose and seriousness of the screening function with emphasis on special screening situations and screening equipment operation. Further, the presentation shall include weapons and dangerous device guidelines, X-ray screening guidelines, physical inspection guidelines, and training guidelines.

b. For guards assigned to E-SCAN x-ray systems, a viewing of the "E-SCAN Small Parcel Inspection" video and corresponding tests.

c. Detected all FAA/Brevard County approved type of test objects under realistic conditions.

3. **On-the-Job Training.** The Contractor shall have a formal on-the-job training (OJT) program. The program shall require:

a. All new-hires or transfers shall work initially with or under the close supervision of more experienced personnel for a period of forty (40) working hours. During this initial OJT period and prior to the new-hire/transfer guard making independent judgments regarding the persons or property having access to the area beyond the screening checkpoint, the Contractor shall test the new hire/transfer guard using the FAA/Brevard County approved test objects. Brevard County will pay the Contractor for these hours. However, OJT hours in excess of those required to cover a post will not be paid by the County.

b. Contractor's supervisory personnel shall frequently (at least 1x per month) observe and check the performance of screening personnel, paying particular attention to newly-hired personnel working as guards to assure each guard knows, understands, and demonstrates the job requirements and procedures and to provide instruction and practical guidance to them as appropriate. The Contractor will annotate each guard's training records with significant observations made and deficiencies noted.

4. **Contractor Testing.** To provide the required high level of assurance that adequate protection is being provided to the employees and general public at Brevard County Courthouses, the effectiveness of X-ray operators and other screening personnel must be tested. Accordingly, the Contractor shall conduct a series of recurring tests of screeners quarterly. When a screener fails to detect U.S. Marshall/FAA approved test object(s) provided by the Contractor and approved by Brevard County Representative pursuant to the conduct of a test as described above, the Contractor shall repeat the procedure as appropriate, counsel the screener regarding proper screening procedures and take corrective action as needed. Certification of completion of tests together with the results and corrective actions planned or taken will be retained in the personnel folder of each screener through the period of the person's employment and for one hundred eighty (180) days thereafter for the inspection by the Brevard County Representative or his designee. Any failed test will be documented and employee will be immediately retrained. If employee (screener) fails two consecutive quarterly tests in the use of the equipment, he/she shall be removed from screening duties.

a. Recurring tests shall be conducted as follows:

1. Place approved test object in the small of the back (under the belt) or otherwise secret the test object in other positions (in coat pocket, strapped to leg, etc.) and proceed through the walk through metal detector in the direction of normal public flow. In the case of an alarm, the tester will determine if the scanner identifies the test object by the use

of a hand-held metal detector, physical research, or otherwise does not identify the object. In the case of no alarm, the person conducting the test shall contact Brevard County representative and other responsible Contractor. Contractor's personnel to assure that the walk through metal detector is operating correctly.

2. Randomly place the test object in a parcel with two or three other items such as a book, calculator, pen, etc. The tester should not try to hide the test object and should not place other metal objects in the parcel. The parcel should then be placed on the x-ray system's conveyor belt in a normal fashion. The tester will then determine whether or not the screener detected the test object and took appropriate action.

5. **Random Testing.** In order to ensure that appropriate protection is being provided to the employees and general public entering the Brevard County Courthouse, the Brevard County representative or his designee will conduct tests of screeners. Tests will be conducted by an employee designated by Brevard County representative and will be done with the consent of the Contractor's supervisory personnel at a specified time and date. However, the Contractor's screening personnel will not be advised of any test conducted by the Brevard County representative or his designee assuring that the test will be completely unannounced. Each test is conducted so that the following screening methods are examined: metal detectors (walk through metal detectors and hand-held), E-SCAN x-ray screening systems, and physical searches. The test objects will be used in rotation to ensure that screeners are tested on all objects.

When it is determined that a test object was not detected due to equipment failure, the Contractor shall immediately notify the Brevard County representative or his designee.

6. **Dosimeter Badges.** Brevard County will provide the Contractor with dosimetry badges for issue to each person working at a screening checkpoint where X-ray is used. The Contractor shall ensure that each person working wears a dosimetry badge while on duty. Brevard County will collect the badges and issue new ones periodically. Used badges will be evaluated by a radiation laboratory at the County's expense. Copies of the radiation report will be maintained by the County.

7. **Records.** All security guard training records shall be made available to Brevard County representatives upon request. The results of all training must be certified to the Contract Administrator or designated representative as part of each guard's personnel file.

8. **Hand searches.** Contractor's staff shall **not** search handbags, tote bags, carry cases and the like by putting their hands into the bags. If a suspicion arises after item has gone through the X-ray machine, the bag contents shall be emptied into a tray, by its owner, or owner may be asked to make all sections of bag visible to Contractor's staff. At no time is manual hand search to be conducted by means of inserting hands into the bag.

9. **After-Hours Contact.** Contractor shall provide a means for County personnel to reach its staff when they are on duty after hours or on weekends.

SECURITY GUARD MINIMUM QUALIFICATIONS

Contractor shall provide proof that all security personnel serving under this Contract are well trained and possess current security officer certification by the State of Florida. Prior to performing duties under this Contract, the Contractor shall certify that all personnel dispatched to County facilities have passed a background check, psychological and drug test, and have

been fingerprinted. Personnel assigned to Courthouse security during business hours shall be required to complete training in the operation of security equipment as required.

1. **Pre-employment Check.** A comprehensive pre-employment check of each person will be conducted and maintained by the Contractor to determine suitability of employment. All costs associated with the pre-employment check will be the responsibility of the Contractor. All pre-employment records must be provided or made available for inspection by an authorized Brevard County representative or designee. The pre-employment check shall include at least the following:

   a. Five (5) year employment background.

   b. Fingerprinting.

   c. FCIC/NCIC records check.

   d. Urinalysis for detection of controlled substances.

2. **All security guards employed must meet the following minimum requirements:**

   a. All employees must be twenty one (21) years or older.

   b. Criminal background investigation must reveal no criminal convictions.

   c. Must pass the urinalysis for detection of controlled substances.

   d. Must possess, at a minimum, a high school diploma or equivalent, (GED).

   e. Must be a citizen of the United States, or possess the necessary authorization from the INS, pursuant to the Immigration Reform and Control Act of 1986 and regulations thereto.

   f. Must be able to read identification badges, credentials, and labels.

   g. Must be able to distinguish color used in visual displays or badges, specifically red, green, blue, and yellow.

   h. Guards who perform hand-held metal detection searches of persons must be able to reach all parts of the person with a hand-held metal detection device.

   i. Guards must be able to hear and respond to the spoken voice, audible alarms, and telephone calls in an operational setting.

   j. Guards must be able to understand and carry out instructions in written or oral English regarding the proper performance of their position.

   k. Guards must be able to read English-language identification badges, credentials, and labels on bottles, cans, and packages.

   l. Guards must be able to sufficiently understand English to answer questions and give comprehensible directions in English.

   m. Guards must be able to communicate clearly and concisely on all daily reports, incident reports, and other forms or reports associated with guard duties.

3. Each guard must be given a physical examination to determine suitability for hire prior to assignment to a Brevard County post. The Contractor shall pay for the cost of this physical examination. All personnel must meet the following physical requirements:

   a. All employees must be well proportioned as to height and weight.

b. All employees must be in good health without physical disabilities that would interfere with the performance of duties.

c. All employees must possess binocular vision correctable to 20/30 (Snellen).

d. All employees must be capable of hearing ordinary conversation at fifteen (15) feet with either ear without benefit of a hearing aid.

e. All records of physical examinations must be made available upon request for inspection by an authorized County representative.

UNIFORMS

All security guards shall be in full and complete standard identical uniforms while on duty. Any security personnel reporting for duty in an unauthorized and unkept uniform, or who exhibits a poor personal appearance (as determined by Brevard County representative or Contractor supervisor) shall be replaced within one (1) hour by the Contractor, or a temporary replacement Contractor will be used and billed against the prime Contractor at the replacement security company's wage rate.

1. Complete uniform look (military or police type); between the hours of 7:30 AM and 6:00 PM. In Building C, Brevard County Government Center, Viera, the guard must be in professional business attire when on duty after 5 P.M. Guards will not be required to wear a tie except when requested by Brevard County representatives or during special functions.

2. All security guards must have and wear a photo identification badge with full name.

3. All uniforms must have logos identifying the individual as security personnel in accordance with Chapter 493 of the Florida Statutes.

SCHEDULES AND BREAKS

1. The Contractor will be responsible for hiring and dismissing any personnel hired to perform the work specified herein. Brevard County reserves the right to interview and approve of any personnel hired to perform security guard services prior to employment by Contractor or assignment to specific post. Brevard County also reserves the right to request the Contractor remove any employee from any facility at any time it deems necessary.

2. The Contractor will be responsible for preparing all work schedules in accordance with Brevard County site requirements and assuring that each posted shift is manned as required. Any unmanned posts filled by a Court Security person, Brevard County employee, or other Contractor will be billed against the Contractor at the substitute's wage rate. Failure to provide manning for all posted shifts as required may result in termination of contract.

3. All Contractor employees must submit an hours-worked voucher or other form of documentation to be used to verify payroll and billable hours. Each post will be billed and invoiced separately on a monthly basis and forwarded to the Brevard County Facilities Department.

4. All security guards who work continuous eight-hour shifts or longer will be guided by the Fair Labor Standards Act. All authorized breaks shall be taken in an area away from a public access area and out of the public view. Any breaks authorized by the Contractor away from the duty station shall be covered by a replacement security guard at the Contractor's expense.

QUALITY ASSURANCE

1. Each security guard is responsible for maintaining legible daily records reflecting hours of work performed. Daily records shall be maintained at each post location. Contractor supervisory staff shall maintain legible daily records reflecting hours of work performed and supervised. Supervisory staff daily records must be maintained by the Contractor using a time and location based filing system for the period of the Contract. Supervisory staff daily records must be available to Brevard County representatives upon request.

2. Incident reports shall be generated by security guards for those events outside the normal operation of the specific site. These incident reports shall be maintained by the Contractor using a time and location based filing system for the period of the Contract. The Contractor will be responsible for providing a monthly recap of all incident reports to Brevard County representatives or their designee. This recap shall include information including; Post locations, time of incident, nature of incident, involved parties, and resolution of incident. The monthly recap report shall be submitted by the 10th day of the month for the preceding month. In lieu of this monthly report, incident reports may be handed to the Contract Administrator the next business day after the incident. In any case, if incidents are of the nature that the Contract Administrator needs to be made aware of circumstances immediately, the Contractor shall call the Contract Administrator or other County contact, at once, or, depending on circumstances, the next business day. The Contractor shall promptly address any concerns raised by the Contract Administrator or using agency, pertaining to the administration of services under the Contract, including but not limited to the security guards provided to the using agencies, furnishing of supplies and equipment, and procedures for timely payment of personnel and subcontractors.

3. Throughout the term of the Contract, the Contractor shall keep fully informed of all federal, state, County and local laws, ordinances, codes, rules and regulations, and all orders and decrees of bodies or tribunals having jurisdiction or authority which, in any manner, affect services to be provided under the terms of the contract.

USE OF PREMISES

1. In the case of damage to Brevard County owned equipment or facilities caused by the Contractor's negligence during the performance of the work under the Contract, the Contractor shall repair, replace, or reimburse for such damage at the option of Brevard County. Security guards are not permitted to use Brevard County phones for personal calls. Any unauthorized calls made by guards that involve long distance costs will be reimbursed to Brevard County during the next pay period of the Contractor.

   Security guards are not permitted to use Brevard County computer equipment or network facilities unless required as part of their specific post requirements. Any security guard found using unauthorized computer time or equipment may be removed from that post at the discretion of Brevard County representatives.

AGREEMENT

THIS AGREEMENT, entered into this 16th day of September, 2014, by and between the Board of County Commissioners of Brevard County, Florida, a political subdivision of the State of Florida, hereinafter referred to as "County" and Oglesby Construction, Inc., a business having its primary business location at 600 Hickman Circle, Sanford, FL 32779, hereinafter referred to as the "Contractor".

W I T N E S S E T H:

That in consideration of the mutual covenants contained herein, it is hereby agreed between the parties as follows:

I. GENERAL TERMS AND CONDITIONS

1. DEFINITIONS

The words and expressions (or pronouns used in their stead) defined in this Agreement shall, wherever they appear in the Contract Documents, be construed as follows unless a different meaning is clear from the context.

Addenda: shall mean any additional solicitation provisions issued in writing by the County prior to the date and time for bid openings

Bid Proposal: shall mean the offer of proposal of the Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.

Bidder: shall mean any person, firm or corporation submitting a Bid for the Work.

Board of County Commissioners: shall mean the Board of County Commissioners, Brevard County, Florida, or their duly authorized representative(s).

Change Order: shall mean a written order to the Contractor, signed by the County, authorizing an addition, deletion, or revision in the Work, or an adjustment in the Contract and/or Task Order, or the Contract Performance Period or Completion Time issued after execution of the Contract or issuance of a Task Order.

Completion Time: shall mean the number of days specified on a Task Order for completion of the Work on that Task Order.

Contract: shall mean the written agreement between the County and the Contractor regulating the Work to be performed. The Contract will be attached to and made a part of the Contract Documents.

Contractor: shall mean successful Bidder, whether a corporation, firm, individual or any combination thereof, and their successors, personal representatives, executors, administrators and assigns.

Contract Performance Period: shall mean the overall performance period of this Contract.

County: shall mean the Board of County Commissioners, Brevard County, Florida, or their duly authorized

representative(s), for whom the Contract Work is being performed.

Day: shall mean one calendar day when used in the Contract Documents.

Defective Work: shall mean (a) Work that is unsatisfactory, deficient or damaged, does not conform to the Contract Documents, or does not meet the requirements of any inspection test or approval, or (b) Work associated with punch list items that the Contractor fails to complete within a reasonable time after issuance of the punch list by the Project Manager.

Final Acceptance: shall mean acceptance of the Work specified on an individual Task Order by the County upon the expiration of the warranty period as stated in the Contract Documents.

Notice: shall mean written Notice delivered to an authorized representative identified herein in person or by mail.

Notice of Intent to Award: shall mean the notice given by the County to the successful Bidder

Project: A specific description of Work to be performed at a Site under the scope of this Contract.

Project Manager: Shall mean the Public Works Department Engineering Manager or their designee. The Project Manager will receive correspondence at 580 Manor Drive, Merritt Island, Florida 32952, Phone 321-455-1440.

Site: shall mean the area upon or in which the Contractor's operations are carried on and such other areas adjacent thereto as may be designated as such by the Project Manager.

Specifications: shall mean the parts of the Contract Documents identified as "Specifications' and organized into Divisions. The specifications include general requirements and technical descriptions of materials, equipment, construction systems, standards and workmanship. The term "Technical Provisions" where used in the Contract Documents refers to the Specifications.

Subcontractor: shall mean any person, firm, or corporation other than employees of the Contractor that contract with the Contractor to furnish, or actually furnishes labor, materials and/or equipment for the work.

Task Order: shall mean any order issued against the basic Contract for construction work in accordance with its terms and conditions.

Work: shall mean any and all obligations, duties and responsibilities necessary to the successful completion of the construction assigned to or undertaken by the Contractor under the Contract documents, including the furnishing of all labor materials, equipment, and other incidentals.

2. SCOPE OF WORK

This Work consists of the installation of thermoplastic pavement markings and reflective pavement markers on new, newly

resurfaced, and existing roads in Brevard County. This work will also include the removal of thermoplastic markings.

3. DISASTERS

After a disaster the COUNTY may require the Contractor to restore existing thermoplastic markings to an operational condition. Restoration work shall be conducted in accordance with the Local Agency Contracting Requirements for the FHWA Emergency Relief Program. Work performed under the FHWA Emergency Relief Program will be compensated in accordance with Attachment B: Schedule of Emergency Relief Program Pricing

4. TERM OF AGREEMENT

This agreement shall be for one (1) year, with the option to renew for up to two (2) additional one (1) year periods. Renewals may be subject to negotiation of pricing, terms, and conditions.

5. REPRESENTATION OF CONTRACTOR

The Contractor must present sufficient evidence that it is a Florida Department of Transportation pre-qualified contractor in the field of Pavement Markings. The Contractor must maintain the pre-qualifications throughout the term of the contract.

6. UNAUTHORIZED ALIEN WORKERS

Brevard County will not intentionally award publicly-funded contracts to any contractor who knowingly employs unauthorized alien workers constituting a violation of the employment provisions contained in 8 U.S.C. Section 1324a(e)(Section

274A(e) of the Immigration and Nationality Act "INA"). The County shall consider the employment by the contractor of unauthorized aliens a violation of Section 274A(e) of the INA. Such violation by the Recipient of the employment provisions contained in Section 274A(e) of the INA shall be grounds for unilateral termination of this Agreement by the County.

7. PUBLIC ENTITY CRIMES

The Contractor must provide a fully executed Public Entity Crimes Affidavit in accordance with F.S. 287.133(3)(a) within ten (10) days of the date of this Agreement and prior to commencing any work under this Agreement.

8. BOND

The Contractor shall furnish a surety (performance) bond, Attachment C, in the amount of fifty thousand dollars ($50,000.00), which bond shall guarantee the faithful performance of any and all duties and materials or labor under this agreement.

9. INDEMNIFICATION

The Contractor agrees to indemnify and hold harmless the County and their employees from all claims, losses and expenses, including attorney's fees, arising out of or resulting from the performance of the products or services to be contracted, provided such claim, damage, loss or expense:

a. Is attributable to bodily injury, sickness, disease, death or personal injury, or to property damage, including loss of use resulting there from, and;

b. Is caused in whole or in part by any negligent act or omission of the Contractor, any subcontractor or any of their employees, or arises from a work-related injury to any of the Contractor's employees, any subcontractor, or any of their employees.

The Contractor acknowledges receipt of adequate consideration for this agreement.

10. INSURANCE REQUIREMENTS

The Contractor providing services under this Agreement will be required to procure and maintain, at their own expense and without cost to the County, until final acceptance by the County of all products or services covered by the purchase order or contract, the following types of insurance. The policy limits required are to be considered minimum amounts.

General Liability Insurance policy with a $1,000,000 combined single limit for each occurrence to include the following coverage: Operations, Products and Completed Operations, Personal Injury, Contractual Liability covering this contract, and "X-C-U" hazards

Auto Liability Insurance which includes coverage for all owned, non-owned and rented vehicles with a $1,000,000 combined single limit for each occurrence.

Workers' Compensation and Employers Liability Insurance covering all persons conducting the Contractor's operations on County premises or on behalf of the County in the full amount required by the State of Florida laws.

The Contractor shall provide certificates of insurance to the County demonstrating that the aforementioned insurance requirements have been met prior to the commencement of work under this contract. The General Liability and Auto Liability certificates of insurance shall indicate that the policies have been endorsed to cover the County as an additional insured and that these policies may not be canceled or modified without thirty (30) days prior written notice to the County.

The insurance coverage enumerated above constitutes the minimum requirements and shall in no way lessen or limit the liability of the Contractor under the terms of the contract. Subcontractor's insurance shall be the responsibility of the Contractor.

11. ATTORNEY'S FEES

In the event of any legal action to enforce the terms of this contract, each party shall bear its own attorney's fees and costs.

12. VENUE

Venue for any legal action brought by any party to this agreement (for the purposes of this clause, this includes any city or municipality who is allowed to utilize the contractor's

services under this agreement), to interpret, construe, or enforce this agreement shall be in a court of competent jurisdiction in and for Brevard County, Florida.

13. INDEPENDENT CONTRACTOR

The Contractor shall perform the conditions of this agreement as an independent contractor and nothing contained herein shall be construed to be inconsistent with this relationship or status. Nothing in this agreement shall be in any way construed to constitute the Contractor, or any of its agents or employees, as an agent, employee or representative of the County.

14. DELEGATION OF WORK

The County reserves the right to ascertain the necessity for Contractor service and shall, at its sole discretion, determine the conditions warranting Contractor response.

15. EVALUATION OF PERFORMANCE

The County will conduct an annual evaluation of the Contractor's performance. The evaluation may be used as a consideration with respect to extension or termination of the contract.

16. DEFICIENCIES

If through any cause, the Contractor shall fail to fulfill its obligations under this agreement, or if the Contractor violates any of the covenants, agreements, or stipulations of this agreement:

a. The county shall have the right to direct the contractor to cease operation until deficiencies are corrected;

b. The County shall have the right to schedule a meeting to discuss the deficiencies. The Contractor shall be responsible for providing a written corrective action plan within two (2) working days after the meeting.

c. The County shall have the right to reject the defective Work. Upon rejection of defective Work the Contractor shall remove the defective Work from the site and replace it with non-defective Work within a reasonable time, or as specified in a corrective action plan.

d. The County shall have the right to specify other remedial action, which may be incorporated into this agreement by mutual consent of the parties.

e. Any deficiencies not addressed by the contractor by the time required under this contract will be grounds to deny payment for the location affected.

17. LIQUIDATED DAMAGES

Liquidated damages in the amount of four hundred (400) dollars per Day shall be deducted from the Task Order amount one day after the specified completion date if:

a. The Project is not completed by the completion date and/or;

b. The Contractor does not correct defects in the Work within five (5) days after notification by the County.

Liquidated damages shall continue to be charged each calendar day thereafter until the project is completed and accepted by the County. The dates specified on the Task Order shall constitute the basis for the assessment of liquidated damages.

If the Contractor believes that any such delay has been caused by a circumstance beyond its reasonable control the Contractor must submit notice of Request for Waiver of the respective delay to the Project Manager. Each such Request for Waiver must be received by the Project Manager within forty-eight (48) hours of the start of the event that is alleged to be the cause of that delay. Unless an extension of time is granted for good cause by the Project Manager, failure to submit such written Request for Waiver within the forty-eight (48) hours of the start of the event that is alleged to be the cause of that delay shall bar the Contractor from claiming any waiver of that delay. The Project Manager shall respond to the Request for Waiver in writing within five (5) working days of receipt of the Request for Waiver. Each decision of the County with regard to granting, denying, or partially granting or denying the Request for Waiver shall be final, but each such Request must be reviewed on its merits by the Project Manager pursuant to the terms and conditions of this Agreement. Although no such

Request will be unreasonably denied, the burden of persuasion rests with the Contractor.

From time to time, usually not less than each thirty (30) days and solely as a courtesy to the Contractor, the County may notify the Contractor of the then total sum of liquidated damages to be deducted from the contract price.

18. TERMINATION

If through any cause, the Contractor shall fail to fulfill its obligations under this agreement, or if the Contractor violates any of the covenants, agreements, or stipulations of this agreement, the County shall have the right to terminate this agreement by giving written notice to the Contractor of such termination, specifying the effective date thereof, at least ten (10) days before the effective date of such termination.

The County reserves the right to terminate the agreement, without cause, during the thirty (30) days preceding the anniversary date of the contract execution, the effective date being the anniversary day, or other mutually agreed upon date.

In the event of termination, the Contractor shall not be entitled to any damages, liquidated or otherwise caused as a result of such termination.

Any Work completed prior to the date of termination shall, at the option of the County, become the property of the County. The County is only responsible for payment of work completed,

inspected and accepted prior to the effective date of termination, excluding any and all anticipated supplemental costs, administrative expenses and profit for uncompleted Work.

The contract may be canceled by the Contractor, for good cause, upon ninety (90) days prior written notice.

19. ASSIGNABILITY BY CONTRACTOR

This agreement is not assignable by the Contractor without the expressed prior written consent of the County.

20. ASSIGNABILITY BY COUNTY

Any public agency within Brevard County may contract with the County for services to be performed by the Contractor under the terms and conditions of this agreement.

21. NON-EXCLUSIVITY

The parties hereto specifically agree that this is a non-exclusive agreement and that the County may select other contractors to perform construction, rehabilitation and maintenance during the term of this agreement.

22. ENTIRE AGREEMENT

It is agreed that neither party has made any statement, promise or agreement, or taken upon itself any engagement whatsoever, verbally or in writing, in conflict with the terms of this agreement or that in any way modifies, varies, alters, enlarges or invalidates any provisions hereof.

23. SEVERABILITY

In the event a court of competent jurisdiction finds any sentence, provision, paragraph, or section of this agreement null and void, the remaining parts of this agreement shall continue in full force and effect as though such sentence, provision, paragraph or section has been omitted from this Agreement.

24. WAIVER

In the event the County waives any of the Contractor's obligations or duties in this Agreement, it shall not constitute a waiver of any of the other obligations and duties of the Contractor, nor shall waiver of any such obligation or duty constitute a continuing waiver of that obligation or duty.

25. COMPENSATION

Compensation for the base contract shall be in accordance with Attachment A: Schedule of Unit Prices.

Compensation schedules may be adjusted after the 120 days of the contract upon mutual consent of the parties. Compensation adjustment shall be based on Thermoplastic material cost variation or other relevant economic conditions, sufficiently documented by the requesting party. Either party may request a compensation adjustment. Failure to agree upon compensation adjustments shall constitute mutually agreed upon termination of this agreement. The request for compensation adjustment must be made at least (30) calendar days prior to the

requested effective date of new compensation rate. Contractor requested compensation adjustment will only be considered in the case of a valid price increase passed on from the wholesaler or manufacturer to the Contractor during the award period. This must be supported by timely and proper written notification from the wholesaler or manufacturer to the Contractor.

26. WARRANTY

The Contractor shall extend to the County the same warranty on all materials and equipment furnished under this agreement, which the manufacturer extends to the Contractor, or purchasers, whichever is greater.

The Contractor shall guarantee its workmanship under this agreement for a period of one (1) year from the date of acceptance.

27. CONTRACTOR'S RECORDS

The County and its auditors shall be entitled to audit the books and records of the Contractor to the extent that such books and records relate to the performance of this Agreement. The Contractor shall maintain such records and accounts, including property, personnel, financial records, as are deemed necessary by the County and its auditors to insure proper accounting for all funds expended under this Agreement. Said records shall be made available, upon request, for audit purposes to Brevard County and its auditors. Such books and records shall be maintained by the Contractor for a period of

five (5) years from the date of final payment under this Agreement unless a shorter period is otherwise authorized in writing.

28. UTILITY COORDINATION

The Contractor is responsible for coordinating with all public and private utility companies, as may be necessary for proper and safe completion of the work.

29. SUBCONTRACTING

It is understood that the Contractor will be solely responsible for the assigned work. Any subcontractors must be previously approved by the Project Manager.

The Contractor will not employ any Subcontractor, other person or organization against whom the County or the Project Manager may have reasonable objections, nor will the Contractor be required to employ any Subcontractor against whom he has reasonable objection. The Contractor will not make any substitution for any Subcontractor who has been accepted by the Project Manager, unless the County and the Project Manager determine that there is good cause for doing so.

Nothing in the Contract documents shall create, nor shall it be interpreted to create, privity or any other contractual relationship whatsoever between any Subcontractor and the County, or any person or business entity except the Contractor, or any obligation on the part of the County to pay or to see to the payment of any monies due any Subcontractor, except as may

otherwise be required by law. The County may furnish to any Subcontractor, to the extent practicable, evidence of amounts paid to the Contractor on account of specific Work done.

The Contractor agrees to specifically bind every Subcontractor to the applicable terms and conditions of the Contract documents for the benefit of the County.

II. INSTALLATION, MAINTENANCE, AND REMOVAL

1. RESOURCE REQUIREMENTS

The Contractor shall furnish all supervision, quality control, labor, materials, equipment, supervision, tools, transportation, supplies, manpower, and pay disposal fees necessary to complete the Work specified in this contract. Unit prices shall be inclusive of all incidentals, labor, materials, maintenance of traffic, mobilization, etc. No additional compensation will be provided to the contractor.

2. MULTIPLE CONCURRENT PROJECTS

The Contractor shall have adequate resources to handle two (2) or more Projects at the same time. Bidders shall define and submit a Management Plan and Resource List containing the minimum components (including personnel and equipment) to describe in detail their capability to handle multiple concurrent Projects. The multiple concurrent project capability is considered a minimum requirement in the consideration of award of a contract for this solicitation.

3. SAFETY AND PROTECTION

The Contractor shall follow all applicable safety standards. The Contractor will take all necessary precautions for the safety and protection of:

a. All employees and other persons who may be affected by the Work;

b. All the Work and all materials or equipment on or off the site; and

c. Private property at the site or adjacent thereto including trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not within the scope of the Project.

4. EQUIPMENT AND RESOURCES

All equipment used in the performance of the contract on County Property shall be maintained properly. All equipment used by the Contractor is subject to inspection by the Project Manager. Any equipment deemed inoperable, unsafe, or improper for the Work shall be removed from the work site.

The Contractor shall utilize equipment of a type and in sufficient quantity to perform the work in a satisfactory manner and as scheduled in the Task Order. The list of equipment shall comply with minimum requirements for equipment as detailed on the Florida Department of Transportation Standard Specifications for Road and Bridge Construction, latest edition.

5. PROJECT MANAGER

The Contractor will coordinate with the Project Manager who will verify that the work has been completed in accordance with specifications, as scheduled, and handle problems that may arise.

The Project Manager may issue verbal orders to address emergencies or to ensure the continuity of critical elements of contract performance.

The County's Project Manager shall be advised, at their request, as to the status and details of work being completed by the Contractor in the format they require.

The Contractor will provide the Project Manager a list of all foremen and supervisors who will perform the work. This list will also contain twenty-four (24) hour emergency numbers.

6. CONTRACTORS REPRESENTATIVE

The Contractor will designate a competent Contractor's Representative who will not be replaced without written notice to the County's Project Manager at least twenty-four (24) hours before the change. The Contractor's Representative will be present at work locations and will have the authority to act on behalf of the Contractor. All communications (both verbal and written) given to the Contractor's Representative will be as binding as if given to the Contractor. The Contractor's Representative must be International Municipal Signal Association (IMSA) Signs & Markings Level 2 certified. There

must be an IMSA Signs & Marking Level 2 certified Contractor's Representative on the job site at all times.

7. COORDINATION CONFERENCE

A coordination conference will be held to discuss schedules, procedures, invoicing, maintenance of traffic, utility coordination, and any other aspects of the Work. The conference will be scheduled within 20 days after the effective date of the Contract, but before Contractor begins Work at any site. The conference shall be attended by the Contractor, Project Manager, and other personnel as required. Either party may request and be granted additional coordination conferences.

8. TASK ORDERS

All Work will be ordered by the Project Manager in the form of a written Task Order. No work will begin until a Task Order has been issued to the Contractor.

The Contractor shall visit the site, if needed, and submit a written quotation to the Project Manager within seven (7) Days. The quotation shall be based solely upon the unit prices contained in the Bid Item Schedule. The quotation shall also include the proposed schedule for completion of the project in Days.

A Task Order will be issued for each Project. The Task Order will contain a start date and completion date that will be mutually agreed to between the County and the Contractor.

The Contractor will submit a work schedule prior to beginning any work ordered. The work schedule will contain the route to be followed and the location of work each day. The Contractor will consult with the County's Project Manager prior to any schedule variance. The County's Project Manager shall be notified one day prior to the schedule change and must concur with the recommended changes. The Contractor shall start working on assigned projects within two (2) days of notification.

9. CLEAN UP

The Contractor will keep the site free from accumulations of waste material, rubbish and other debris during performance of the Work. At the completion of the Work the Contractor will remove all waste materials, rubbish, and debris from and about the premises as well as all tools, construction equipment, machinery, and surplus materials, and will leave the site clean and ready for occupancy by the County. The Contractor shall restore those portions of the site not designated for alteration by the Task Order to their original condition.

10. FINAL INSPECTION

Upon written notice from the Contractor that the project is complete, the County's Project Manager shall schedule and conduct a final inspection with the Contractor and will notify the Contractor in writing of any deficiencies in the project. The Contractor shall correct all deficiencies and request an

inspection within five (5) work days or as agreed to by the Project Manager and before final acceptance and payment is made.

If a third inspection is required, the County will assess a one hundred ($100.00) dollar fee to the Contractor. The one hundred ($100.00) dollar fee will be assessed for every subsequent re-inspection. The fee is assessed to offset the additional County labor costs and vehicle usage required for inspections and will be deducted from the final invoice for that Task Order.

11. ACCEPTANCE

Acceptance of the Project will be granted when the Contractor completes a Project to the satisfaction of the County. The County shall remit payment upon acceptance in accordance with the Florida Prompt Payment Act, Florida Statute section 218.70, et seq.

12. PERFORMANCE STANDARDS

Any marking products utilized must be listed in the current FDOT "Qualified Product List" if the specific device category exists. All materials and installations shall be in accordance with the latest edition of all applicable technical specifications including, but not limited to, the following:

a. Florida Department of Transportation:

i. Standard Specifications for Road & Bridge Construction

ii. Design Standards for Design, Construction, Maintenance, and Utility Operations on the State Highway System

iii. Manual on Uniform Minimum Standards for Design, Construction and Maintenance of Streets and Highways

iv. Accident Prevention Procedures Manual

b. Federal Highway Administration:

i. Manual on Uniform Traffic Control Devices

c. Associated General Contractors of America, Inc.

i. Manual of Accident Prevention in Construction

13. CONFLICTING STANDARDS

In the event of conflicting specifications, the resolution shall be at the discretion of the Project Manager. In those cases where the County specifications are more restrictive, the County specifications shall govern, except as may be otherwise determined by the Manager.

14. MODIFICATION OF STANDARDS

The County may, at its discretion, modify and/or exceed performance standards based on engineering judgment or maintenance considerations. In those cases where the County requests a performance level significantly in excess of the specifications, the Contractor shall be entitled to request compensation. Additional compensation must be requested by the

Contractor and approved by the Project Manager in writing, prior to commencing the work.

15. MAINTENANCE OF TRAFFIC

The Contractor is responsible for maintaining safe traffic flow in accordance with all applicable standards. The County shall reserve the right to specify the Work be conducted at night in order to maintain adequate traffic flow. All costs associated with M.O.T. must be included with the Unit Price.

Due to congested traffic or weather conditions, the Contractor may be required to remove his/her operation from the right-of-way at the discretion of the County's Project Manager. If the Contractor is required to remove his/her operation due to congested traffic or weather conditions, less than five (5) hours worked will constitute one-half (1/2) of a work day and five (5) or more hours worked will constitute one (1) work day.

Road closures will not be allowed except in the case of emergencies and only when approved by the Project Manager.

TECHNICAL PROVISIONS

16. PAVEMENT MARKINGS

a. Thermoplastic pavement markings, material, equipment, and method of application will be in accordance with Sections 711 and 971 of the F.D.O.T. Standard Specifications for Road and Bridge Construction.

b. Painted pavement markings, material, equipment, and method of application will be in accordance with

Sections 710 and 971 of the F.D.O.T. Standard Specifications for Road and Bridge Construction.

c. Pavement markings will be laid out in accordance with Index 17344, 17345 and 17346 of the F.D.O.T. Design Standards.

d. Only alkyd resin type thermoplastic material will be used.

e. Six (6), eight (8), twelve (12), eighteen (18), and twenty-four (24) inch yellow or white traffic stripes will be measured and paid for by the actual linear foot of paint or thermoplastic installed. Unpainted/un-striped gaps will not be measured or paid for.

17. REFLECTORIZATION

Initial thermoplastic pavement markings on new pavement shall be reflectorized with a double drop application of glass spheres, except transverse markings such as stop lines, words and arrows shall be reflectorized with a single drop application of glass spheres. Thermoplastic pavement markings for recapping and refurbishing of existing markings shall be reflectorized with a single drop application of glass spheres.

18. REFLECTIVE PAVEMENT MARKERS

Reflective pavement markers will be installed in accordance with Index 17352 of the F.D.O.T. Design Standards.

19. PAVEMENT MARKINGS ON NEWLY SURFACED ROADS

The paint pavement markings shall be identical in layout to the final thermoplastic pavement markings. Final thermoplastic pavement markings shall be installed after the final asphalt surface has cured sufficiently to prevent asphalt tracing on the pavement markings.

20. REMOVAL OF EXISTING THERMOPLASTIC PAVEMENT MARKINGS

Existing thermoplastic pavement markings will be removed in accordance with Section 711 of F.D.O.T. Standard Specifications for Road and Bridge Construction.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year first above written.

ATTEST:

Scott Ellis, CLERK

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA

Mary Bolin Lewis, Chairman

Approved by the Board on
September 16, 2014

Reviewed for legal form and content:

Deputy County Attorney

ATTEST:

OGLESBY CONSTRUCTION, INC.

KEVIN
Vice, President

REVISED ATTACHMENT A

DESCRIPTION	UNIT	QUANTITY	UNIT PRICE	SUB TOTAL
Retro-reflective pavement marker, Class B	EA	5000	3.25	16,250.00
Retro-reflective pavement marker removal	EA	100	1.00	100.00
Thermoplastic (new) (white) (solid) (4")	LF	105600	.05	5,280.00
Thermoplastic (new) (white) (solid) (6")	LF	264000	.65	171,600.00
Thermoplastic (new) (white) (solid) (8")	LF	1600	1.50	2,400.00
Thermoplastic (new) (white) (solid) (12")	LF	5000	2.50	12,500.00
Thermoplastic (new) (white) (solid) (18")	LF	2000	2.00	4,000.00
Thermoplastic (new) (white) (solid) (24")	LF	5000	4.25	21,250.00
Thermoplastic (new) (white) (skip) (4")	LF	26400	.05	1,320.00
Thermoplastic (new) (white) (skip) (6")	LF	26400	.83	21,912.00
Thermoplastic (new) (white) (skip) (8")	LF	500	.01	5.00
Thermoplastic (new) (white) (dot guide) (4")	LF	500	.01	5.00
Thermoplastic (new) (white) (dot guide) (6")	LF	500	1.50	750.00 TP
Thermoplastic (new) (white) (message)	EA	50	90.00	4,500.00
Thermoplastic (new) (white) (arrows)	EA	100	62.00	6,200.00
Thermoplastic (new) (white) (yield lines)	LF	100	1.00	100.00
Thermoplastic (new) (yellow) (solid) (4")	LF	105600	.05	5,280.00
Thermoplastic (new) (yellow) (solid) (6")	LF	264000	.65	171,600.00
Thermoplastic (new) (yellow) (solid) (8")	LF	500	1.00	500.00
Thermoplastic (new) (yellow) (solid) (12")	LF	1000	.01	10.00
Thermoplastic (new) (yellow) (solid) (18")	LF	2000	3.00	6,000.00
Thermoplastic (new) (yellow) (solid) (24")	LF	500	.01	5.00
Thermoplastic (new) (yellow) (skip) (4")	LF	26400	.05	1,320.00
Thermoplastic (new) (yellow) (skip) (6")	LF	26400	.80	21,120.00
Thermoplastic (new) (yellow) (skip) (8")	LF	500	.01	5.00
Thermoplastic (new) (yellow) (dot guide) (4")	LF	500	.01	5.00
Thermoplastic (new) (yellow) (dot guide) (6")	LF	500	1.00	500.00
Thermoplastic (new) (blue) Handicap Stall with walkway	EA	1	175.00	175.00
Thermoplastic (new) (blue) Handicap Stall without	EA	1	125.00	125.00

REVISED ATTACHMENT A

walkway				
Thermoplastic (refurbish) (white) (solid) (4")	LF	105600	.05	5,280.00
Thermoplastic (refurbish) (white) (solid) (6")	LF	264000	.47	124,080.00
Thermoplastic (refurbish) (white) (solid) (8")	LF	1600	1.25	2,000.00
Thermoplastic (refurbish) (white) (solid) (12")	LF	5000	1.80	9,000.00
Thermoplastic (refurbish) (white) (solid) (18")	LF	2000	2.50	5,000.00
Thermoplastic (refurbish) (white) (solid) (24")	LF	5000	3.60	18,000.00
Thermoplastic (refurbish) (white) (skip) (4")	LF	26400	.05	1,320.00
Thermoplastic (refurbish) (white) (skip) (6")	LF	26400	.60	15,840.00
Thermoplastic (refurbish) (white) (skip) (8")	LF	500	.01	5.00
Thermoplastic (refurbish) (white) (dot guide) (4")	LF	500	TP .01	5.00
Thermoplastic (refurbish) (white) (dot guide) (6")	LF	500	1.50	750.00
Thermoplastic (refurbish) (white) (message)	EA	50	85.00	4,250.00
Thermoplastic (refurbish) (white) (arrows)	EA	100	55.00	5,500.00
Thermoplastic (refurbish) (white) (yield lines)	EA	100	1.00	100.00
Thermoplastic (refurbish) (yellow) (solid) (4")	LF	105600	.05	5,280.00
Thermoplastic (refurbish) (yellow) (solid) (6")	LF	264000	.47	124,080.00
Thermoplastic (refurbish) (yellow) (solid) (8")	LF	500	1.00	500.00
Thermoplastic (refurbish) (yellow) (solid) (12")	LF	1000	.01	10.00
Thermoplastic (refurbish) (yellow) (solid) (18")	LF	2000	2.50	5,000.00
Thermoplastic (refurbish) (yellow) (solid) (24")	LF	500	.01	5.00
Thermoplastic (refurbish) (yellow) (skip) (4")	LF	26400	.05	1,320.00
Thermoplastic (refurbish) (yellow) (skip) (6")	LF	26400	.60	15,840.00
Thermoplastic (refurbish) (yellow) (skip) (8")	LF	500	.01	5.00
Thermoplastic (refurbish) (yellow) (dot guide) (4")	LF	500	.01	5.00
Thermoplastic (refurbish) (yellow) (dot guide) (6")	LF	500	1.00	500.00
Thermoplastic (refurbish) (blue) Handicap Stall with walkway	EA	1	150.00	150.00
Thermoplastic (refurbish) (blue) Handicap Stall without walkway	EA	1	125.00	125.00

Grand Total $818,767.00

KEVIN THEISEN
V. President
8/12/14

ATTACHMENT A

Quantities are estimated for bidding purposes only. These quantities are not to be construed as guaranteed, but will be used as the basis for determining the bid award.

ATTACHMENT B

DESCRIPTION	UNIT	UNIT PRICE
Retro-reflective pavement marker, Class B	EA	3.25
Thermoplastic (new) (white) (solid) (4")	LF	.15
Thermoplastic (new) (white) (solid) (6")	LF	.65
Thermoplastic (new) (white) (solid) (8")	LF	1.50
Thermoplastic (new) (white) (solid) (12")	LF	2.50
Thermoplastic (new) (white) (solid) (18")	LF	2.00
Thermoplastic (new) (white) (solid) (24")	LF	4.25
Thermoplastic (new) (white) (skip) (4")	LF	.05
Thermoplastic (new) (white) (skip) (6")	LF	.83
Thermoplastic (new) (white) (skip) (8")	LF	.01
Thermoplastic (new) (white) (dot guide) (4")	LF	.01
Thermoplastic (new) (white) (dot guide) (6")	LF	1.50
Thermoplastic (new) (white) (message)	EA	90.00
Thermoplastic (new) (white) (arrows)	EA	62.00
Thermoplastic (new) (white) (yield lines)	LF	1.00
Thermoplastic (new) (yellow) (solid) (4")	LF	.05
Thermoplastic (new) (yellow) (solid) (6")	LF	.65
Thermoplastic (new) (yellow) (solid) (8")	LF	1.00
Thermoplastic (new) (yellow) (solid) (12")	LF	.01
Thermoplastic (new) (yellow) (solid) (18")	LF	3.00
Thermoplastic (new) (yellow) (solid) (24")	LF	.01
Thermoplastic (new) (yellow) (skip) (4")	LF	.05
Thermoplastic (new) (yellow) (skip) (6")	LF	.80
Thermoplastic (new) (yellow) (skip) (8")	LF	.01
Thermoplastic (new) (yellow) (dot guide) (4")	LF	.01
Thermoplastic (new) (yellow) (dot guide) (6")	LF	1.00
Thermoplastic (refurbish) (white) (solid) (4")	LF	.05
Thermoplastic (refurbish) (white) (solid) (6")	LF	.47
Thermoplastic (refurbish) (white) (solid) (8")	LF	1.25
Thermoplastic (refurbish) (white) (solid) (12")	LF	2.00

ATTACHMENT B

Thermoplastic (refurbish) (white) (solid) (18")	LF	2.00
Thermoplastic (refurbish) (white) (solid) (24")	LF	3.60
Thermoplastic (refurbish) (white) (skip) (4")	LF	.05
Thermoplastic (refurbish) (white) (skip) (6")	LF	.60
Thermoplastic (refurbish) (white) (skip) (8")	LF	.01
Thermoplastic (refurbish) (white) (dot guide) (4")	LF	.01
Thermoplastic (refurbish) (white) (dot guide) (6")	LF	1.50
Thermoplastic (refurbish) (white) (message)	EA	85.00
Thermoplastic (refurbish) (white) (arrows)	EA	55.00
Thermoplastic (refurbish) (white) (yield lines)	EA	1.00
Thermoplastic (refurbish) (yellow) (solid) (4")	LF	.05
Thermoplastic (refurbish) (yellow) (solid) (6")	LF	.47
Thermoplastic (refurbish) (yellow) (solid) (8")	LF	1.00
Thermoplastic (refurbish) (yellow) (solid) (12")	LF	.01
Thermoplastic (refurbish) (yellow) (solid) (18")	LF	2.50
Thermoplastic (refurbish) (yellow) (solid) (24")	LF	.01
Thermoplastic (refurbish) (yellow) (skip) (4")	LF	.05
Thermoplastic (refurbish) (yellow) (skip) (6")	LF	.60
Thermoplastic (refurbish) (yellow) (skip) (8")	LF	.01
Thermoplastic (refurbish) (yellow) (dot guide) (4")	LF	.01
Thermoplastic (refurbish) (yellow) (dot guide) (6")	LF	1.00

Kevin Thesser
V-President
8/12/14

AGREEMENT

(SECONDARY CONTRACTOR)

THIS AGREEMENT for Secondary Contractor, entered into this 16th day of September, 2014, by and between the Board of County Commissioners of Brevard County, Florida, a political subdivision of the State of Florida, hereinafter referred to as "County" and AKCA, Inc., a business having its primary business location at 4603 Reece Road, Plant City, FL 33566, hereinafter referred to as the "Contractor".

W I T N E S S E T H:

That in consideration of the mutual covenants contained herein, it is hereby agreed between the parties as follows:

I. GENERAL TERMS AND CONDITIONS

1. DEFINITIONS

The words and expressions (or pronouns used in their stead) defined in this Agreement shall, wherever they appear in the Contract Documents, be construed as follows unless a different meaning is clear from the context.

Addenda: shall mean any additional solicitation provisions issued in writing by the County prior to the date and time for bid openings

Bid Proposal: shall mean the offer of proposal of the Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.

Bidder: shall mean any person, firm or corporation submitting a Bid for the Work.

Board of County Commissioners: shall mean the Board of County Commissioners, Brevard County, Florida, or their duly authorized representative(s).

Change Order: shall mean a written order to the Contractor, signed by the County, authorizing an addition, deletion, or revision in the Work, or an adjustment in the Contract and/or Task Order, or the Contract Performance Period or Completion Time issued after execution of the Contract or issuance of a Task Order.

Completion Time: shall mean the number of days specified on a Task Order for completion of the Work on that Task Order.

Contract: shall mean the written agreement between the County and the Contractor regulating the Work to be performed. The Contract will be attached to and made a part of the Contract Documents.

Contractor: shall mean successful Bidder, whether a corporation, firm, individual or any combination thereof, and their successors, personal representatives, executors, administrators and assigns.

Contract Performance Period: shall mean the overall performance period of this Contract.

County: shall mean the Board of County Commissioners, Brevard County, Florida, or their duly authorized

representative(s), for whom the Contract Work is being performed.

Day: shall mean one calendar day when used in the Contract Documents.

Defective Work: shall mean (a) Work that is unsatisfactory, deficient or damaged, does not conform to the Contract Documents, or does not meet the requirements of any inspection test or approval, or (b) Work associated with punch list items that the Contractor fails to complete within a reasonable time after issuance of the punch list by the Project Manager.

Final Acceptance: shall mean acceptance of the Work specified on an individual Task Order by the County upon the expiration of the warranty period as stated in the Contract Documents.

Notice: shall mean written Notice delivered to an authorized representative identified herein in person or by mail.

Notice of Intent to Award: shall mean the notice given by the County to the successful Bidder

Project: A specific description of Work to be performed at a Site under the scope of this Contract.

Project Manager: Shall mean the Public Works Department Engineering Manager or their designee. The Project Manager will receive correspondence at 580 Manor Drive, Merritt Island, Florida 32952, Phone 321-455-1440.

Site: shall mean the area upon or in which the Contractor's operations are carried on and such other areas adjacent thereto as may be designated as such by the Project Manager.

Specifications: shall mean the parts of the Contract Documents identified as "Specifications' and organized into Divisions. The specifications include general requirements and technical descriptions of materials, equipment, construction systems, standards and workmanship. The term "Technical Provisions" where used in the Contract Documents refers to the Specifications.

Subcontractor: shall mean any person, firm, or corporation other than employees of the Contractor that contract with the Contractor to furnish, or actually furnishes labor, materials and/or equipment for the work.

Task Order: shall mean any order issued against the basic Contract for construction work in accordance with its terms and conditions.

Work: shall mean any and all obligations, duties and responsibilities necessary to the successful completion of the construction assigned to or undertaken by the Contractor under the Contract documents, including the furnishing of all labor materials, equipment, and other incidentals.

2. SCOPE OF WORK

Work will be assigned to the secondary contractor in the event that the primary contractor is unresponsive or unable to

provide all the necessary services as required in the scope of services. This work consists of the installation of thermoplastic pavement markings and reflective pavement markers on new, newly resurfaced, and existing roads in Brevard County. This work will also include the removal of thermoplastic markings.

3. DISASTERS

After a disaster the COUNTY may require the Contractor to restore existing thermoplastic markings to an operational condition. Restoration work shall be conducted in accordance with the Local Agency Contracting Requirements for the FHWA Emergency Relief Program. Work performed under the FHWA Emergency Relief Program will be compensated in accordance with Attachment B: Schedule of Emergency Relief Program Pricing

4. TERM OF AGREEMENT

This agreement shall be for one (1) year, with the option to renew for up to two (2) additional one (1) year periods. Renewals may be subject to negotiation of pricing, terms, and conditions.

5. REPRESENTATION OF CONTRACTOR

The Contractor must present sufficient evidence that it is a Florida Department of Transportation pre-qualified contractor in the field of Pavement Markings. The Contractor must maintain the pre-qualifications throughout the term of the contract.

6. UNAUTHORIZED ALIEN WORKERS

Brevard County will not intentionally award publicly-funded contracts to any contractor who knowingly employs unauthorized alien workers constituting a violation of the employment provisions contained in 8 U.S.C. Section 1324a(e)(Section 274A(e) of the Immigration and Nationality Act "INA"). The County shall consider the employment by the contractor of unauthorized aliens a violation of Section 274A(e) of the INA. Such violation by the Recipient of the employment provisions contained in Section 274A(e) of the INA shall be grounds for unilateral termination of this Agreement by the County.

7. PUBLIC ENTITY CRIMES

The Contractor must provide a fully executed Public Entity Crimes Affidavit in accordance with F.S. 287.133(3)(a) within ten (10) days of the date of this Agreement and prior to commencing any work under this Agreement.

8. BOND

The Contractor shall furnish a surety (performance) bond, Attachment C, in the amount of fifty thousand dollars ($50,000.00), which bond shall guarantee the faithful performance of any and all duties and materials or labor under this agreement.

9. INDEMNIFICATION

The Contractor agrees to indemnify and hold harmless the County and their employees from all claims, losses and expenses,

including attorney's fees, arising out of or resulting from the performance of the products or services to be contracted, provided such claim, damage, loss or expense:

a. Is attributable to bodily injury, sickness, disease, death or personal injury, or to property damage, including loss of use resulting there from, and;

b. Is caused in whole or in part by any negligent act or omission of the Contractor, any subcontractor or any of their employees, or arises from a work-related injury to any of the Contractor's employees, any subcontractor, or any of their employees.

The Contractor acknowledges receipt of adequate consideration for this agreement.

10. INSURANCE REQUIREMENTS

The Contractor providing services under this Agreement will be required to procure and maintain, at their own expense and without cost to the County, until final acceptance by the County of all products or services covered by the purchase order or contract, the following types of insurance. The policy limits required are to be considered minimum amounts.

General Liability Insurance policy with a $1,000,000 combined single limit for each occurrence to include the following coverage: Operations, Products and Completed Operations, Personal Injury, Contractual Liability covering this contract, and "X-C-U" hazards

Auto Liability Insurance which includes coverage for all owned, non-owned and rented vehicles with a $1,000,000 combined single limit for each occurrence.

Workers' Compensation and Employers Liability Insurance covering all persons conducting the Contractor's operations on County premises or on behalf of the County in the full amount required by the State of Florida laws.

The Contractor shall provide certificates of insurance to the County demonstrating that the aforementioned insurance requirements have been met prior to the commencement of work under this contract. The General Liability and Auto Liability certificates of insurance shall indicate that the policies have been endorsed to cover the County as an additional insured and that these policies may not be canceled or modified without thirty (30) days prior written notice to the County.

The insurance coverage enumerated above constitutes the minimum requirements and shall in no way lessen or limit the liability of the Contractor under the terms of the contract. Subcontractor's insurance shall be the responsibility of the Contractor.

11. ATTORNEY'S FEES

In the event of any legal action to enforce the terms of this contract, each party shall bear its own attorney's fees and costs.

12. VENUE

Venue for any legal action brought by any party to this agreement (for the purposes of this clause, this includes any city or municipality who is allowed to utilize the contractor's services under this agreement), to interpret, construe, or enforce this agreement shall be in a court of competent jurisdiction in and for Brevard County, Florida.

13. INDEPENDENT CONTRACTOR

The Contractor shall perform the conditions of this agreement as an independent contractor and nothing contained herein shall be construed to be inconsistent with this relationship or status. Nothing in this agreement shall be in any way construed to constitute the Contractor, or any of its agents or employees, as an agent, employee or representative of the County.

14. DELEGATION OF WORK

The County reserves the right to ascertain the necessity for Contractor service and shall, at its sole discretion, determine the conditions warranting Contractor response.

15. EVALUATION OF PERFORMANCE

The County will conduct an annual evaluation of the Contractor's performance. The evaluation may be used as a consideration with respect to extension or termination of the contract.

16. DEFICIENCIES

If through any cause, the Contractor shall fail to fulfill its obligations under this agreement, or if the Contractor violates any of the covenants, agreements, or stipulations of this agreement:

a. The county shall have the right to direct the contractor to cease operation until deficiencies are corrected;

b. The County shall have the right to schedule a meeting to discuss the deficiencies. The Contractor shall be responsible for providing a written corrective action plan within two (2) working days after the meeting.

c. The County shall have the right to reject the defective Work. Upon rejection of defective Work the Contractor shall remove the defective Work from the site and replace it with non-defective Work within a reasonable time, or as specified in a corrective action plan.

d. The County shall have the right to specify other remedial action, which may be incorporated into this agreement by mutual consent of the parties.

e. Any deficiencies not addressed by the contractor by the time required under this contract will be grounds to deny payment for the location affected.

17. LIQUIDATED DAMAGES

Liquidated damages in the amount of four hundred (400) dollars per Day shall be deducted from the Task Order amount one day after the specified completion date if:

a. The Project is not completed by the completion date and/or;

b. The Contractor does not correct defects in the Work within five (5) days after notification by the County.

Liquidated damages shall continue to be charged each calendar day thereafter until the project is completed and accepted by the County. The dates specified on the Task Order shall constitute the basis for the assessment of liquidated damages.

If the Contractor believes that any such delay has been caused by a circumstance beyond its reasonable control the Contractor must submit notice of Request for Waiver of the respective delay to the Project Manager. Each such Request for Waiver must be received by the Project Manager within forty-eight (48) hours of the start of the event that is alleged to be the cause of that delay. Unless an extension of time is granted for good cause by the Project Manager, failure to submit such written Request for Waiver within the forty-eight (48) hours of the start of the event that is alleged to be the cause of that delay shall bar the Contractor from claiming any waiver of that delay. The Project Manager shall respond to the Request for

Waiver in writing within five (5) working days of receipt of the Request for Waiver. Each decision of the County with regard to granting, denying, or partially granting or denying the Request for Waiver shall be final, but each such Request must be reviewed on its merits by the Project Manager pursuant to the terms and conditions of this Agreement. Although no such Request will be unreasonably denied, the burden of persuasion rests with the Contractor.

From time to time, usually not less than each thirty (30) days and solely as a courtesy to the Contractor, the County may notify the Contractor of the then total sum of liquidated damages to be deducted from the contract price.

18. TERMINATION

If through any cause, the Contractor shall fail to fulfill its obligations under this agreement, or if the Contractor violates any of the covenants, agreements, or stipulations of this agreement, the County shall have the right to terminate this agreement by giving written notice to the Contractor of such termination, specifying the effective date thereof, at least ten (10) days before the effective date of such termination.

The County reserves the right to terminate the agreement, without cause, during the thirty (30) days preceding the anniversary date of the contract execution, the effective date being the anniversary day, or other mutually agreed upon date.

In the event of termination, the Contractor shall not be entitled to any damages, liquidated or otherwise caused as a result of such termination.

Any Work completed prior to the date of termination shall, at the option of the County, become the property of the County. The County is only responsible for payment of work completed, inspected and accepted prior to the effective date of termination, excluding any and all anticipated supplemental costs, administrative expenses and profit for uncompleted Work.

The contract may be canceled by the Contractor, for good cause, upon ninety (90) days prior written notice.

19. ASSIGNABILITY BY CONTRACTOR

This agreement is not assignable by the Contractor without the expressed prior written consent of the County.

20. ASSIGNABILITY BY COUNTY

Any public agency within Brevard County may contract with the County for services to be performed by the Contractor under the terms and conditions of this agreement.

21. NON-EXCLUSIVITY

The parties hereto specifically agree that this is a non-exclusive agreement and that the County may select other contractors to perform construction, rehabilitation and maintenance during the term of this agreement.

22. ENTIRE AGREEMENT

It is agreed that neither party has made any statement, promise or agreement, or taken upon itself any engagement whatsoever, verbally or in writing, in conflict with the terms of this agreement or that in any way modifies, varies, alters, enlarges or invalidates any provisions hereof.

23. SEVERABILITY

In the event a court of competent jurisdiction finds any sentence, provision, paragraph, or section of this agreement null and void, the remaining parts of this agreement shall continue in full force and effect as though such sentence, provision, paragraph or section has been omitted from this Agreement.

24. WAIVER

In the event the County waives any of the Contractor's obligations or duties in this Agreement, it shall not constitute a waiver of any of the other obligations and duties of the Contractor, nor shall waiver of any such obligation or duty constitute a continuing waiver of that obligation or duty.

25. COMPENSATION

Compensation for the base contract shall be in accordance with Attachment A: Schedule of Unit Prices.

Compensation schedules may be adjusted after the 120 days of the contract upon mutual consent of the parties. Compensation adjustment shall be based on Thermoplastic material

cost variation or other relevant economic conditions, sufficiently documented by the requesting party. Either party may request a compensation adjustment. Failure to agree upon compensation adjustments shall constitute mutually agreed upon termination of this agreement. The request for compensation adjustment must be made at least (30) calendar days prior to the requested effective date of new compensation rate. Contractor requested compensation adjustment will only be considered in the case of a valid price increase passed on from the wholesaler or manufacturer to the Contractor during the award period. This must be supported by timely and proper written notification from the wholesaler or manufacturer to the Contractor.

26. WARRANTY

The Contractor shall extend to the County the same warranty on all materials and equipment furnished under this agreement, which the manufacturer extends to the Contractor, or purchasers, whichever is greater.

The Contractor shall guarantee its workmanship under this agreement for a period of one (1) year from the date of acceptance.

27. CONTRACTOR'S RECORDS

The County and its auditors shall be entitled to audit the books and records of the Contractor to the extent that such books and records relate to the performance of this Agreement. The Contractor shall maintain such records and accounts,

including property, personnel, financial records, as are deemed necessary by the County and its auditors to insure proper accounting for all funds expended under this Agreement. Said records shall be made available, upon request, for audit purposes to Brevard County and its auditors. Such books and records shall be maintained by the Contractor for a period of five (5) years from the date of final payment under this Agreement unless a shorter period is otherwise authorized in writing.

28. UTILITY COORDINATION

The Contractor is responsible for coordinating with all public and private utility companies, as may be necessary for proper and safe completion of the work.

29. SUBCONTRACTING

It is understood that the Contractor will be solely responsible for the assigned work. Any subcontractors must be previously approved by the Project Manager.

The Contractor will not employ any Subcontractor, other person or organization against whom the County or the Project Manager may have reasonable objections, nor will the Contractor be required to employ any Subcontractor against whom he has reasonable objection. The Contractor will not make any substitution for any Subcontractor who has been accepted by the Project Manager, unless the County and the Project Manager determine that there is good cause for doing so.

Nothing in the Contract documents shall create, nor shall it be interpreted to create, privity or any other contractual relationship whatsoever between any Subcontractor and the County, or any person or business entity except the Contractor, or any obligation on the part of the County to pay or to see to the payment of any monies due any Subcontractor, except as may otherwise be required by law. The County may furnish to any Subcontractor, to the extent practicable, evidence of amounts paid to the Contractor on account of specific Work done.

The Contractor agrees to specifically bind every Subcontractor to the applicable terms and conditions of the Contract documents for the benefit of the County.

II. INSTALLATION, MAINTENANCE, AND REMOVAL

1. RESOURCE REQUIREMENTS

The Contractor shall furnish all supervision, quality control, labor, materials, equipment, supervision, tools, transportation, supplies, manpower, and pay disposal fees necessary to complete the Work specified in this contract. Unit prices shall be inclusive of all incidentals, labor, materials, maintenance of traffic, mobilization, etc. No additional compensation will be provided to the contractor.

2. MULTIPLE CONCURRENT PROJECTS

The Contractor shall have adequate resources to handle two (2) or more Projects at the same time. Bidders shall define and submit a Management Plan and Resource List containing the

minimum components (including personnel and equipment) to describe in detail their capability to handle multiple concurrent Projects. The multiple concurrent project capability is considered a minimum requirement in the consideration of award of a contract for this solicitation.

3. SAFETY AND PROTECTION

The Contractor shall follow all applicable safety standards. The Contractor will take all necessary precautions for the safety and protection of:

a. All employees and other persons who may be affected by the Work;

b. All the Work and all materials or equipment on or off the site; and

c. Private property at the site or adjacent thereto including trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not within the scope of the Project.

4. EQUIPMENT AND RESOURCES

All equipment used in the performance of the contract on County Property shall be maintained properly. All equipment used by the Contractor is subject to inspection by the Project Manager. Any equipment deemed inoperable, unsafe, or improper for the Work shall be removed from the work site.

The Contractor shall utilize equipment of a type and in sufficient quantity to perform the work in a satisfactory manner

and as scheduled in the Task Order. The list of equipment shall comply with minimum requirements for equipment as detailed on the Florida Department of Transportation Standard Specifications for Road and Bridge Construction, latest edition.

5. PROJECT MANAGER

The Contractor will coordinate with the Project Manager who will verify that the work has been completed in accordance with specifications, as scheduled, and handle problems that may arise.

The Project Manager may issue verbal orders to address emergencies or to ensure the continuity of critical elements of contract performance.

The County's Project Manager shall be advised, at their request, as to the status and details of work being completed by the Contractor in the format they require.

The Contractor will provide the Project Manager a list of all foremen and supervisors who will perform the work. This list will also contain twenty-four (24) hour emergency numbers.

6. CONTRACTORS REPRESENTATIVE

The Contractor will designate a competent Contractor's Representative who will not be replaced without written notice to the County's Project Manager at least twenty-four (24) hours before the change. The Contractor's Representative will be present at work locations and will have the authority to act on behalf of the Contractor. All communications (both verbal and

written) given to the Contractor's Representative will be as binding as if given to the Contractor. The Contractor's Representative must be International Municipal Signal Association (IMSA) Signs & Markings Level 2 certified. There must be an IMSA Signs & Marking Level 2 certified Contractor's Representative on the job site at all times.

7. COORDINATION CONFERENCE

A coordination conference will be held to discuss schedules, procedures, invoicing, maintenance of traffic, utility coordination, and any other aspects of the Work. The conference will be scheduled within 20 days after the effective date of the Contract, but before Contractor begins Work at any site. The conference shall be attended by the Contractor, Project Manager, and other personnel as required. Either party may request and be granted additional coordination conferences.

8. TASK ORDERS

All Work will be ordered by the Project Manager in the form of a written Task Order. No work will begin until a Task Order has been issued to the Contractor.

The Contractor shall visit the site, if needed, and submit a written quotation to the Project Manager within seven (7) Days. The quotation shall be based solely upon the unit prices contained in the Bid Item Schedule. The quotation shall also include the proposed schedule for completion of the project in Days.

A Task Order will be issued for each Project. The Task Order will contain a start date and completion date that will be mutually agreed to between the County and the Contractor.

The Contractor will submit a work schedule prior to beginning any work ordered. The work schedule will contain the route to be followed and the location of work each day. The Contractor will consult with the County's Project Manager prior to any schedule variance. The County's Project Manager shall be notified one day prior to the schedule change and must concur with the recommended changes. The Contractor shall start working on assigned projects within two (2) days of notification.

9. CLEAN UP

The Contractor will keep the site free from accumulations of waste material, rubbish and other debris during performance of the Work. At the completion of the Work the Contractor will remove all waste materials, rubbish, and debris from and about the premises as well as all tools, construction equipment, machinery, and surplus materials, and will leave the site clean and ready for occupancy by the County. The Contractor shall restore those portions of the site not designated for alteration by the Task Order to their original condition.

10. FINAL INSPECTION

Upon written notice from the Contractor that the project is complete, the County's Project Manager shall schedule and

conduct a final inspection with the Contractor and will notify the Contractor in writing of any deficiencies in the project. The Contractor shall correct all deficiencies and request an inspection within five (5) work days or as agreed to by the Project Manager and before final acceptance and payment is made.

If a third inspection is required, the County will assess a one hundred ($100.00) dollar fee to the Contractor. The one hundred ($100.00) dollar fee will be assessed for every subsequent re-inspection. The fee is assessed to offset the additional County labor costs and vehicle usage required for inspections and will be deducted from the final invoice for that Task Order.

11. ACCEPTANCE

Acceptance of the Project will be granted when the Contractor completes a Project to the satisfaction of the County. The County shall remit payment upon acceptance in accordance with the Florida Prompt Payment Act, Florida Statute section 218.70, et seq.

12. PERFORMANCE STANDARDS

Any marking products utilized must be listed in the current FDOT "Qualified Product List" if the specific device category exists. All materials and installations shall be in accordance with the latest edition of all applicable technical specifications including, but not limited to, the following:

a. Florida Department of Transportation:

i. Standard Specifications for Road & Bridge Construction

ii. Design Standards for Design, Construction, Maintenance, and Utility Operations on the State Highway System

iii. Manual on Uniform Minimum Standards for Design, Construction and Maintenance of Streets and Highways

iv. Accident Prevention Procedures Manual

b. Federal Highway Administration:

i. Manual on Uniform Traffic Control Devices

c. Associated General Contractors of America, Inc.

i. Manual of Accident Prevention in Construction

13. CONFLICTING STANDARDS

In the event of conflicting specifications, the resolution shall be at the discretion of the Project Manager. In those cases where the County specifications are more restrictive, the County specifications shall govern, except as may be otherwise determined by the Manager.

14. MODIFICATION OF STANDARDS

The County may, at its discretion, modify and/or exceed performance standards based on engineering judgment or maintenance considerations. In those cases where the County requests a performance level significantly in excess of the specifications, the Contractor shall be entitled to request

compensation. Additional compensation must be requested by the Contractor and approved by the Project Manager in writing, prior to commencing the work.

15. MAINTENANCE OF TRAFFIC

The Contractor is responsible for maintaining safe traffic flow in accordance with all applicable standards. The County shall reserve the right to specify the Work be conducted at night in order to maintain adequate traffic flow. All costs associated with M.O.T. must be included with the Unit Price.

Due to congested traffic or weather conditions, the Contractor may be required to remove his/her operation from the right-of-way at the discretion of the County's Project Manager. If the Contractor is required to remove his/her operation due to congested traffic or weather conditions, less than five (5) hours worked will constitute one-half (1/2) of a work day and five (5) or more hours worked will constitute one (1) work day.

Road closures will not be allowed except in the case of emergencies and only when approved by the Project Manager.

TECHNICAL PROVISIONS

16. PAVEMENT MARKINGS

a. Thermoplastic pavement markings, material, equipment, and method of application will be in accordance with Sections 711 and 971 of the F.D.O.T. Standard Specifications for Road and Bridge Construction.

b. Painted pavement markings, material, equipment, and method of application will be in accordance with Sections 710 and 971 of the F.D.O.T. Standard Specifications for Road and Bridge Construction.

c. Pavement markings will be laid out in accordance with Index 17344, 17345 and 17346 of the F.D.O.T. Design Standards.

d. Only alkyd resin type thermoplastic material will be used.

e. Six (6), eight (8), twelve (12), eighteen (18), and twenty-four (24) inch yellow or white traffic stripes will be measured and paid for by the actual linear foot of paint or thermoplastic installed. Unpainted/un-striped gaps will not be measured or paid for.

17. REFLECTORIZATION

Initial thermoplastic pavement markings on new pavement shall be reflectorized with a double drop application of glass spheres, except transverse markings such as stop lines, words and arrows shall be reflectorized with a single drop application of glass spheres. Thermoplastic pavement markings for recapping and refurbishing of existing markings shall be reflectorized with a single drop application of glass spheres.

18. REFLECTIVE PAVEMENT MARKERS

Reflective pavement markers will be installed in accordance with Index 17352 of the F.D.O.T. Design Standards.

19. PAVEMENT MARKINGS ON NEWLY SURFACED ROADS

The paint pavement markings shall be identical in layout to the final thermoplastic pavement markings. Final thermoplastic pavement markings shall be installed after the final asphalt surface has cured sufficiently to prevent asphalt tracing on the pavement markings.

20. REMOVAL OF EXISTING THERMOPLASTIC PAVEMENT MARKINGS

Existing thermoplastic pavement markings will be removed in accordance with Section 711 of F.D.O.T. Standard Specifications for Road and Bridge Construction.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year first above written.

ATTEST:

Scott Ellis, CLERK

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA

Mary Bolin Lewis, Chairman

Approved by the Board on
September 16, 2014

Reviewed for legal form and content:

Deputy County Attorney

ATTEST:

AKCA, INC.

Scott Walls, Vice ,President

REVISED ATTACHMENT A

DESCRIPTION	UNIT	QUANTITY	UNIT PRICE	SUB TOTAL
Retro-reflective pavement marker, Class B	EA	5000	3.50	17,500.00
Retro-reflective pavement marker removal	EA	100	1.00	100.00
Thermoplastic (new) (white) (solid) (4")	LF	105600	.10	10,560.00
Thermoplastic (new) (white) (solid) (6")	LF	264000	.65	171,600.00
Thermoplastic (new) (white) (solid) (8")	LF	1600	1.50	2400.00
Thermoplastic (new) (white) (solid) (12")	LF	5000	2.75	13,750.00
Thermoplastic (new) (white) (solid) (18")	LF	2000	3.25	6,500.00
Thermoplastic (new) (white) (solid) (24")	LF	5000	3.75	18,750.00
Thermoplastic (new) (white) (skip) (4")	LF	26400	.10	2,640.00
Thermoplastic (new) (white) (skip) (6")	LF	26400	.75	19,800.00
Thermoplastic (new) (white) (skip) (8")	LF	500	.01	5.00
Thermoplastic (new) (white) (dot guide) (4")	LF	500	.01	5.00
Thermoplastic (new) (white) (dot guide) (6")	LF	500	2.00	1,000.00
Thermoplastic (new) (white) (message)	EA	50	100.00	5,000.00
Thermoplastic (new) (white) (arrows)	EA	100	60.00	6,000.00
Thermoplastic (new) (white) (yield lines)	LF	100	2.00	200.00
Thermoplastic (new) (yellow) (solid) (4")	LF	105600	.10	10,560.00
Thermoplastic (new) (yellow) (solid) (6")	LF	264000	.60	158,400.00
Thermoplastic (new) (yellow) (solid) (8")	LF	500	1.00	500.00
Thermoplastic (new) (yellow) (solid) (12")	LF	1000	.01	10.00
Thermoplastic (new) (yellow) (solid) (18")	LF	2000	3.25	6500.00
Thermoplastic (new) (yellow) (solid) (24")	LF	500	.01	5.00
Thermoplastic (new) (yellow) (skip) (4")	LF	26400	.10	2,640.00
Thermoplastic (new) (yellow) (skip) (6")	LF	26400	.70	18,480.00
Thermoplastic (new) (yellow) (skip) (8")	LF	500	.01	5.00
Thermoplastic (new) (yellow) (dot guide) (4")	LF	500	.01	5.00
Thermoplastic (new) (yellow) (dot guide) (6")	LF	500	1.00	500.00
Thermoplastic (new) (blue) Handicap Stall with walkway	EA	1	400.00	400.00
Thermoplastic (new) (blue) Handicap Stall without	EA	1	300.00	300.00

REVISED ATTACHMENT A

walkway				
Thermoplastic (refurbish) (white) (solid) (4")	LF	105600	.10	10,560.00
Thermoplastic (refurbish) (white) (solid) (6")	LF	264000	.50	132,000.00
Thermoplastic (refurbish) (white) (solid) (8")	LF	1600	1.25	2,000.00
Thermoplastic (refurbish) (white) (solid) (12")	LF	5000	2.75	13,750.00
Thermoplastic (refurbish) (white) (solid) (18")	LF	2000	3.25	6500.00
Thermoplastic (refurbish) (white) (solid) (24")	LF	5000	3.75	18,750.00
Thermoplastic (refurbish) (white) (skip) (4")	LF	26400	.10	2,640.00
Thermoplastic (refurbish) (white) (skip) (6")	LF	26400	.60	15,840.00
Thermoplastic (refurbish) (white) (skip) (8")	LF	500	.01	5.00
Thermoplastic (refurbish) (white) (dot guide) (4")	LF	500	.01	5.00
Thermoplastic (refurbish) (white) (dot guide) (6")	LF	500	2.00	1000.00
Thermoplastic (refurbish) (white) (message)	EA	50	100.00	5,000.00
Thermoplastic (refurbish) (white) (arrows)	EA	100	60.00	6,000.00
Thermoplastic (refurbish) (white) (yield lines)	EA	100	2.00	200.00
Thermoplastic (refurbish) (yellow) (solid) (4")	LF	105600	.10	10,560.00
Thermoplastic (refurbish) (yellow) (solid) (6")	LF	264000	.50	132,000.00
Thermoplastic (refurbish) (yellow) (solid) (8")	LF	500	1.00	500.00
Thermoplastic (refurbish) (yellow) (solid) (12")	LF	1000	.01	10.00
Thermoplastic (refurbish) (yellow) (solid) (18")	LF	2000	3.25	6500.00
Thermoplastic (refurbish) (yellow) (solid) (24")	LF	500	.01	5.00
Thermoplastic (refurbish) (yellow) (skip) (4")	LF	26400	.10	2640.00
Thermoplastic (refurbish) (yellow) (skip) (6")	LF	26400	.60	15,840.00
Thermoplastic (refurbish) (yellow) (skip) (8")	LF	500	.01	5.00
Thermoplastic (refurbish) (yellow) (dot guide) (4")	LF	500	.05	25.00
Thermoplastic (refurbish) (yellow) (dot guide) (6")	LF	500	1.00	500.00
Thermoplastic (refurbish) (blue) Handicap Stall with walkway	EA	1	400.00	400.00
Thermoplastic (refurbish) (blue) Handicap Stall without walkway	EA	1	300.00	300.00

Grand Total $ 857,650.00

ATTACHMENT A

Quantities are estimated for bidding purposes only. These quantities are not to be construed as guaranteed, but will be used as the basis for determining the bid award.

ATTACHMENT B

DESCRIPTION	UNIT	UNIT PRICE
Retro-reflective pavement marker, Class B	EA	3.50
Thermoplastic (new) (white) (solid) (4")	LF	.10
Thermoplastic (new) (white) (solid) (6")	LF	.65
Thermoplastic (new) (white) (solid) (8")	LF	1.50
Thermoplastic (new) (white) (solid) (12")	LF	2.75
Thermoplastic (new) (white) (solid) (18")	LF	3.25
Thermoplastic (new) (white) (solid) (24")	LF	3.75
Thermoplastic (new) (white) (skip) (4")	LF	.10
Thermoplastic (new) (white) (skip) (6")	LF	.75
Thermoplastic (new) (white) (skip) (8")	LF	.01
Thermoplastic (new) (white) (dot guide) (4")	LF	.01
Thermoplastic (new) (white) (dot guide) (6")	LF	2.00
Thermoplastic (new) (white) (message)	EA	100.00
Thermoplastic (new) (white) (arrows)	EA	60.00
Thermoplastic (new) (white) (yield lines)	LF	2.00
Thermoplastic (new) (yellow) (solid) (4")	LF	.10
Thermoplastic (new) (yellow) (solid) (6")	LF	.60
Thermoplastic (new) (yellow) (solid) (8")	LF	1.00
Thermoplastic (new) (yellow) (solid) (12")	LF	.01
Thermoplastic (new) (yellow) (solid) (18")	LF	3.25
Thermoplastic (new) (yellow) (solid) (24")	LF	.01
Thermoplastic (new) (yellow) (skip) (4")	LF	.10
Thermoplastic (new) (yellow) (skip) (6")	LF	.70
Thermoplastic (new) (yellow) (skip) (8")	LF	.01
Thermoplastic (new) (yellow) (dot guide) (4")	LF	.01
Thermoplastic (new) (yellow) (dot guide) (6")	LF	1.00
Thermoplastic (refurbish) (white) (solid) (4")	LF	.10
Thermoplastic (refurbish) (white) (solid) (6")	LF	.50
Thermoplastic (refurbish) (white) (solid) (8")	LF	1.25
Thermoplastic (refurbish) (white) (solid) (12")	LF	2.75

ATTACHMENT B

Thermoplastic (refurbish) (white) (solid) (18")	LF	3.25
Thermoplastic (refurbish) (white) (solid) (24")	LF	3.75
Thermoplastic (refurbish) (white) (skip) (4")	LF	.10
Thermoplastic (refurbish) (white) (skip) (6")	LF	.60
Thermoplastic (refurbish) (white) (skip) (8")	LF	.01
Thermoplastic (refurbish) (white) (dot guide) (4")	LF	.01
Thermoplastic (refurbish) (white) (dot guide) (6")	LF	2.00
Thermoplastic (refurbish) (white) (message)	EA	100.00
Thermoplastic (refurbish) (white) (arrows)	EA	60.00
Thermoplastic (refurbish) (white) (yield lines)	EA	2.00
Thermoplastic (refurbish) (yellow) (solid) (4")	LF	.10
Thermoplastic (refurbish) (yellow) (solid) (6")	LF	.50
Thermoplastic (refurbish) (yellow) (solid) (8")	LF	1.00
Thermoplastic (refurbish) (yellow) (solid) (12")	LF	.01
Thermoplastic (refurbish) (yellow) (solid) (18")	LF	3.25
Thermoplastic (refurbish) (yellow) (solid) (24")	LF	.01
Thermoplastic (refurbish) (yellow) (skip) (4")	LF	.10
Thermoplastic (refurbish) (yellow) (skip) (6")	LF	.60
Thermoplastic (refurbish) (yellow) (skip) (8")	LF	.01
Thermoplastic (refurbish) (yellow) (dot guide) (4")	LF	.05
Thermoplastic (refurbish) (yellow) (dot guide) (6")	LF	1.00

SWORN STATEMENT UNDER SECTION 287.133(3)(a), FLORIDA STATUTES, ON PUBLIC ENTITY CRIMES

(To be signed in the presence of a notary public or other officer authorized to administer oaths.)

Before me, the undersigned authority, personally appeared Scott Walls, who, being by me first duly sworn, made the following statements:

1. The business address of Akca Inc. (name of bidder or contractor)

   is 4603 Reece Road, Plant City, FL 33566.

2. My relationship to Akca Inc. (name of bidder or contractor)

   is Vice President. (relationship such as sole proprietor, partner, president, vice president, etc.)

3. I understand that a public entity crime as defined in Section 287.133 of the Florida Statutes includes a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity in Florida or with an agency or political subdivision of any other state or with the United States, including, but not limited to, any bid or contract for goods or services to be provided to any public entity or such an agency or political subdivision and involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.

4. I understand that "convicted" or "conviction" is defined by the statute to mean a finding of guilt or a conviction of a public entity crime, with or without an adjudication of guilt, in any federal or state trail court of record relating to charges brought by indictment or information after July 1, 1989, as a result of a jury verdict, nonjury trial, or entry of a plea of guilty or nolo contendere.

5. I understand that "affiliate" is defined by the statute to mean (1) a predecessor or successor of a person or a corporation convicted of a public entity crime, or (2) an entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime, or (3) those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate, or (4) a person or corporation who knowingly entered into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months.

6. Neither the bidder or contractor nor any officer, director, executive, partner, shareholder, employee, member or agent who is active in the management of the bidder or contractor nor any affiliate of the bidder or contractor has been convicted of a public entity crime subsequent to July 1, 1989.

10/20/14
Signature/Date (undersigned authority)

Sworn to and subscribed before me in the state of Florida and county of Hillsborough on the 20th day of October, 2014.

Krista Beauchamp
Notary Public

(affix seal)

Nov. 28, 2016
My commission expires

KRISTA BEAUCHAMP
MY COMMISSION # EE 854715
EXPIRES: November 28, 2016
Bonded Thru Notary Public Underwriters

Meeting Date
September 16, 2014

AGENDA	
Section	Consent
Item No.	II.C.2

AGENDA REPORT

BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

SUBJECT:	PERMISSION TO ISSUE ANNUAL SUPPLY BIDS, PROPOSALS AND REQUEST FOR QUALIFICATIONS (FY 2014/2015) AND/OR NEGOTIATE COMPETITIVE AGREEMENTS
DEPT/OFFICE:	CENTRAL SERVICES DEPARTMENT/PURCHASING SERVICES

Requested Action:

It is requested the Board grant Purchasing Services approval to perform the following actions regarding the attached list of commodities and services for fiscal year 2014/2015.

1. Solicit competitive bids, quotes and/or negotiate competitive agreements and award to lowest, responsive and most qualified supplier.
2. Solicit competitive proposals and requests for qualifications, establish selection/negotiation committees approved by the County Manager, or designee; and award contracts and/or open purchase orders with the best-ranked proposer.
3. Exercise renewal options upon evaluation of supplier performance, and recommendation from user departments/offices. This establishes the continuance of the contract is favorable prior to extension of the agreement.
4. Authorize the Chairman to execute contracts and contract renewals over $100,000 in annual value.

Summary Explanation & Background:

Purchasing Services estimates the annual needs of the County for items or groups of items where there is an opportunity to achieve savings by using formal competitive processes (formal bids, quotes proposals, and request for qualifications). Annual competitions establish a source, a firm price and a performance period on high-volume, repetitive materials and continuing services.

Approval of this action will eliminate repetitive Board action granting permission to purchase routinely used items and services and will eliminate an estimated several thousand individual purchase order transactions. Also to expedite the award process, the County Manager currently has Board authorization to solicit, award and execute contracts up to $100,000. Award recommendations will be made by a selection committee consisting of user agency representatives approved by the County Manager, or designee, for evaluation of proposals; and Purchasing and user agency staff members for determining responsive and responsible bids.

The competitive procurement method (competitive bid vs. competitive proposal) will be determined by the individual services or commodity requirements. Acquisition of services for recurring continuing professional consultant contracts will be solicited in accordance with Policy BCC-27 and Florida Statutes §287.055, "Consultants' Competitive Negotiation Act". Florida Statute §287.055 allows the County to enter into

Continued, Page 2

Clerk to the Board instruction: Return one copy to Department

Exhibits Attached: Annual Procurement Commodity and Services List (FY 2014/2015)

Contract /Agreement (If attached): Reviewed by County Attorney	Yes ☐	No ☐	PR ☐

County Manager	Assistant County Manager Mel Scott	Department Director / Extension
Stockton Whitten	Assistant County Manager Venetta Valdengo	Teresa Camarata/ext.5-5492

SUBJECT: PERMISSION TO ISSUE ANNUAL SUPPLY BIDS, QUOTES AND PROPOSALS (FY 2014/2015) AND/OR NEGOTIATE COMPETITIVE AGREEMENTS

SUMMARY EXPLAINATION & BACKGROUND, CONTINUED

continuing contracts for professional services for projects in which the estimated construction cost of each individual project under the contract does not exceed $2 million, if the professional services under the contract does not exceed $200,000. Firms providing professional services under continuing contracts shall not be required to bid against one another.

Annual negotiated competitive agreements/discounts establish a firm source period, and price on high volume materials and services, significantly reducing the number of repetitive, expensive daily purchase transactions through the utilization of open purchase orders or purchase card.

The evaluation of renewal options utilizes factors such as market data, level of competition available, inflation and vendor performance. The using agencies and the Purchasing Manager or designee will document recommendations of exercising renewal options in the official bid or proposal files.

Formal contract renewals will be in accordance with AO-29, Contract Administration.

Fiscal Impact FY 14/15: Minimizing administrative costs by reducing and consolidating Board actions for competitive annual procurement of commodities and services insures efficient use of available funds and the timely provision of commodities and services necessary to provide for the health, education, social needs and enhance the quality of life of the residents of Brevard County. Establishment of costs associated with these commodities/services is allocated to individual agencies' funding sources. Funds will be encumbered through user initiated blanket purchase orders.

Name: Contact: Leslie. Rothering, Purchasing Services
Phone: x5-6038, leslie.rothering@brevardcounty.us

ANNUAL BID/QUOTE/PROPOSAL LIST
FY 2014/2015

REQUEST FOR QUALIFICATIONS	RENEWAL OPTIONS	ESTIMATED ANNUAL EXPENDITURES
CONTINUING CONSULTANT ENGINEERING SERVICES - SOLID WASTE	3-5 YEARS TOTAL (including renewals)	Selection will be made in accordance with the Florida Consultants Competitive Negotiations Act (§ 287.055, F.S.) and Brevard County Policy BCC-26 at negotiated rates.
CONTINUING CONSULTANT ENGINEERING SERVICES - UTILITY SERVICES		
CONTINUING CONSULTANT ENGINEERING SERVICES - HOUSING & HUMAN SERVICES		
CONTINUING CONSULTANT- PROFESSIONAL COASTAL ENGINEERING NRMO		
CONTINUING CONSULTANT- PROFESSIONAL ECOLOGICAL ENGINEERING NRMO		
CONTINUING CONSULTANT- PROFESSIONAL ENVIRONMENTAL SCIENCE ENGINEERING NRMO		
CONTINUING CONSULTANT- PROFESSIONAL CIVIL ENGINEERING NRMO		
CONTINUING CONSULTANT ENGINEERING SERVICES - PUBLIC WORKS		
CONTINUING CONSULTANT APPRAISAL SERVICES		
CONTINUING CONSULTANT GEOTECHNICAL SERVICES		
CONTINIUNING CONSTRUCTION MANAGEMENT SERVICES		
CONTINUING CONSULTANT - A/E DESIGN SERVICES		
CONTINUING ENGINEERING SERVICES FOR MECHANICAL/ELECTRICAL/PLUMBING DESIGN		
CONTINUING ENGINEERING SERVICES STRUCTURAL ENGINEERING DESIGN SERVICES		
CONTINUING ROOFING CONTRACTINGS SERVICES		
CONTINUING ROOFING CONSULTANT SERVICES		
Services may be bid or quoted depending on usage or performance experience.		
CONSULTANT ENGINEERING SERVICES - UTILITY SERVICES APPROVED CIP PROJECTS THAT EXCEED CONTINUING CONSULTANT DOLLAR THRESHOLD	PER PROJECT BASIS	Selection will be made in accordance with the Florida Consultants Competitive Negotiations Act (§ 287.055, F.S.) and Brevard County Policy BCC-26 at negotiated costs.

JONES EDMUNDS

LETTER OF TRANSMITTAL

TO	Christi Winn, PE Engineer II Brevard County Utility Services Department 2725 Judge Fran Jamieson Way, A-213 Viera, FL 32940-6602	DATE	August 14, 2015
		PROJ #	08705-037-01
		RE	RFQ 4-15-02

WE ARE SENDING YOU VIA:

☐ U.S. Mail ☐ UPS Next Day *Tracking Number:* ☒ UPS Ground *Tracking Number:* 1ZF626R20398215586 ☐ Federal Express *Tracking Number:* ☐ Hand Delivery

THE FOLLOWING DOCUMENTS:

# Copies	Date	Description
3		Signed, sealed and notarized copies of Professional Services Contract Sykes Creek Regional Wastewater Treatment Facility

TRANSMITTED AS CHECKED BELOW:

RECEIVED
AUG 17 2015
UTILITY SERVICES

☐ As requested.
☒ **For signature.**
☐ For your file.
☒ **Please return a fully executed copy for our file**
☐ Please return both copies. One fully executed copy will be returned for your file.
☐ Please provide a Certificate of Insurance as per the Contract Terms & Conditions

Copies to: Michael Clark, PE

Signed: *Linda Freese*

Linda Freese
Contracts Specialist
lfreese@jonesedmunds.com

PROFESSIONAL SERVICES CONTRACT

This is a CONTRACT entered into this 18 day of August, 2015 by and between the Board of County Commissioners of Brevard County, Florida a political subdivision of the State of Florida, hereinafter referred to as COUNTY and **Jones Edmunds & Associates, Inc.**, a business having its primary location at **3910 South Washington Avenue, Suite 210, Titusville, Florida 32780,** hereinafter referred to as CONSULTANT.

WHEREAS, the COUNTY desires to engage the CONSULTANT to provide design and construction phase for the rehabilitation or replacement of the headworks structure, the RAS/WAS pumps, and the dewatering bed (with a vacuum truck unloading platform) at the COUNTY's Sykes Creek Regional Wastewater Treatment Facility (WWTF), as further described herein;

and **WHEREAS**, the CONSULTANT desires to provide such professional services in accordance with this Agreement, and has represented to the COUNTY that it has the competency and experience to perform such services in accordance with the terms and conditions as set forth herein;

and **WHEREAS**, the CONSULTANT has been selected to perform these professional services pursuant to the provisions of Section 287.055, Florida Statutes and Brevard County Policy BCC-26 (Acquisition of Consultant Professional Services)

and **WHEREAS,** the provisions of such services shall mutually benefit the parties hereto and the residents of Brevard County, Florida

NOW THEREFORE, in consideration of the mutual terms and conditions, promises, covenants, and payments hereinafter set forth, the COUNTY and CONSULTANT hereby agree as follows:

SECTION I. BACKGROUND AND INTENT

Brevard County Utility Services Department (BCUSD) desires to rehabilitate, replace, and construct improvements to the existing headworks structure, the existing RAS/WAS pumps, and the existing dewatering bed (with the construction of a vacuum truck unloading platform) at the Sykes Creek Regional WWTF. The CONSULTANT will provide professional engineering services to: design a new headworks structure and demolition of the existing the headworks structure, the replacement of the existing RAS/WAS pumps, and the replacement of the dewatering bed (with a vacuum truck unloading platform); prepare bid documents; obtain required permits; provide bidding assistance; assist in contractor pre-qualification and selection; provide construction management services; review shop drawings; answer requests for information; prepare record drawings; provide operation and maintenance manuals; and certify completion of construction. The County requests that designs shall be consistent with modern occupational health and safety requirements.

The improvements are further defined within the scope of work included herein.

SECTION II. PROJECT REPRESENTATIVES

For Brevard County Utility Services:	Mark W. Reagan, PE; 321-633-2089
For Consultant: Jones Edmunds:	Michael L. Clark, PE; 321-269-2950

SECTION III. SCOPE OF WORK

Provisions of comprehensive planning, design, permitting and services during construction for rehabilitation and replacement of the headworks structure, the RAS/WAS pumps, and the dewatering bed (with a vacuum truck unloading platform) at the Sykes Creek Regional WWTF as detailed below. Note, the Scope of Work assumes design of one set of Contract Documents and the fee estimate assumes some economy based on this assumption.

Task 1 - Preliminary Engineering: The CONSULTANT will prepare a preliminary design which addresses the following:

A. Collect and review available data from the COUNTY.
B. Perform a topographic survey (with geographic positions or State Plane Coordinates and a permanent benchmark on NAVD88 datum) of the site - surface and sub-surface.
C. Perform a geotechnical evaluation of the site.
D. Assess the existing electrical system at the headworks.
E. Perform hydraulic modeling of the lift stations directly connected to the Sykes Creek Regional WWTF.
F. Perform a split flow structure analysis, including a feasibility assessment based on the impacts to the current design and construction costs.
G. Perform an environmental assessment for the demolition of the existing headworks.
H. Develop a preliminary opinion of whether to anticipate environmental impacts.
I. Prepare conceptual layouts and site plans for COUNTY review.
J. Prepare a draft and final preliminary design report memo summarizing Task 1 A. through 1. I. and include a preliminary opinion of cost for the project.
K. Attend a preliminary design review meeting after draft preliminary design report is completed.

Task 2 - Final Design: The CONSULTANT will perform the following:

A. Prepare Contract Documents consistent with COUNTY standard criteria. Drawings shall include plan sheets and detail drawings as required. Contract Documents are defined in the COUNTY's General Conditions of the Construction Contract and include, but are not limited to, the Drawings, Specifications, and front-end documents (Bid, Agreement, General Conditions, Supplementary Conditions, and Post Bid Documentation).
B. Lettering size of plans shall be suitable for one-half size reduced drawings.
C. Prepare 60% design documents including site plans, by-pass plans, demolition plans, equipment selections with calculations, and opinion of probable cost.
    i. The design should replace the existing headworks structure with a new headworks structure, including all appurtenances, screens, grit removal, conveyors, and all auxiliary components (i.e., instrumentation and controls, electrical, etc.). In addition, the design should demolish the existing headworks structure.
    ii. The design should replace all four RAS pumps (Nos. 1-4), including the associated discharge piping and three WAS pumps (Nos. 2-4). The three new WAS pumps will be mechanically driven diaphragm pumps to match the remaining existing pump. Three new adjustable-speed drives (ASDs) will be included for the new RAS pumps, with one recently installed ASD to remain in service. The design will also include the addition of the necessary design components to prevent the existing gravity collection system from backing up into the existing floor drains and the necessary design components to prevent groundwater seepage into the facility. Rehabilitation includes replacing pump room entrance doors and re-coating piping surfaces.
    iii. The design should add a vacuum truck unloading platform adjacent to the existing drying beds that utilizes a sloped concrete slab design, a sump drain

system, and an on-site pumping station. The design of the vacuum truck unloading platform will incorporate features from the COUNTY's selection in during Task 1.

D. Attend a 60% design review meeting with the COUNTY.
E. Prepare a detailed sequence of construction for the headworks to allow for safe and expeditious yard piping tie-ins to the existing influent force mains and the oxidation ditch piping.
F. Prepare 90% design documents, including technical specifications, incorporating COUNTY Staff 60% review comments in the Contract Documents.
G. Preparation and submittal of permit applications at the 90% stage. Permit fees are to be paid by COUNTY. The following permits are anticipated:
    i. Florida Department of Environmental Protection (FDEP) domestic wastewater facility permit
    ii. Brevard County Site Plan
H. Prepare responses to Requests for Additional Information (RAI). One RAI is expected for each application.
I. Submit final design drawings and specifications incorporating comments from the 90% design review and permitting agency comments.
J. Submittal of a CONSULTANT's opinion of probable cost at the final design submittal. The cost estimate shall be itemized with unit costs indicated as appropriate.

Task 3 - Bidding Assistance: The CONSULTANT will assist the COUNTY in the public bidding of the project by completing the following work items (assumes one bid):

A. Preparation of bidding documents per COUNTY standards. The County will provide MS Word files of Divisions 0 and 1 specifications for modification by the Consultant.
B. Compilation of electronic files of bid documents in PDF format with Division 0 and 1 specifications in MS Word format for COUNTY'S use in advertisement and distribution of documents by the COUNTY.
C. Attend pre-bid meeting.
D. Addressing of potential bidder questions.
E. Preparation of answers to questions for the COUNTY'S use in preparation and distribution of addenda by the COUNTY.
F. Review of bids.
G. Investigate bidder's qualifications.
H. Prepare a written recommendation for award of the construction contract.

Task 4 - Construction Support Services: The CONSULTANT will provide the following services:

A. Attend the preconstruction conference.
B. Review and approve shop drawings/materials submittals.
C. Address Contractor questions/requests for information (RFI).
D. Provide field inspections at critical points in the construction. One field inspection per month, one start-up, and one final inspection are expected.
E. Provide field directives to the Contractor.
F. Review and approve Contractor pay requests.

G. Determine substantial completion.
H. Review, approve, and submit final record drawings with X-refs and plot styles with geographic positions or State Plane Coordinates a permanent benchmark on NAVD88 datum.
I. Approve and submit operation and maintenance manuals.
J. Coordinate execution of final paperwork to close out the project.
K. Prepare certificates of completion for the COUNTY to submit to permitting agencies.

SECTION IV. COUNTY'S RESPONSIBILITY

The following items, and others, shall be provided by the COUNTY in order to assist in the completion of the above mentioned tasks:

1. Reasonable access to the site.
2. Reasonable access to operations, maintenance, and CONSULTANT'S staff.
3. AutoCAD drawings of COUNTY design standards.
4. Copies of available record drawings.
5. Copies of available design and construction documents.
6. Copies of available operating reports and maintenance records.
7. MS Word template for Division 0 and 1 specifications.
8. Advertisement and distribution of bid packages.
9. Submittal of permit applications prepared by the CONSULTANT.
10. Payment of permit fees.
11. Coordination with other COUNTY offices and federal and state regulatory agencies.
12. Coordination with construction contractor for connection to COUNTY SCADA.
13. Day-to-day resident observation of construction and coordination with CONSULTANT.

SECTION V. CONSULTANT SERVICES NOT INCLUDED

The scope of work excludes design of any improvements outside of this scope of work; environmental services related to asbestos-containing materials (for existing structures and demolition), unknown threatened and endangered species, wetlands, or regulated solid wastes encountered on the site, operational phase assistance, day-to-day resident observation during construction, and all other work not specifically mentioned.

SECTION VI. DELIVERABLES

The following results shall be delivered by the CONSULTANT:

All deliverables shall be provided only in electronic PDF format unless otherwise noted.

General:

1. Monthly activity reports.
2. Meeting minutes from meetings and conferences with COUNTY staff and regulatory agencies.
3. Timely invoices concurrent with the work.

Task 1 - Preliminary Engineering:

A. Topographic survey with geographic positions or State Plane Coordinates and a permanent benchmark on NAVD88 datum.
B. Results of geotechnical survey.
C. Hydraulic modeling results.
D. Headworks flow split findings.
E. Environmental assessment.
F. Electrical assessment.
G. Preliminary site plans and proposed layouts.
H. Preliminary Design Report

Task 2 - Final Design

A. 60% design drawings in PDF format with technical specifications in PDF format.
B. Permit applications as applicable (County R/W, FDOT R/W, FDEP, EPA, SJRWMD, other). Provide in PDF and hard copies as required.
C. 90% design drawings and technical specifications.

D. Final design drawings in PDF and AutoCAD format with X-refs and plot styles and technical specifications in PDF format.
E. CONSULTANT'S opinion of probable cost at 60% and final design.

Task 3 - Bidding Assistance

A. Specification Divisions 0 and 1 in PDF and MS Word format.
B. Two hard copies of ready-to-bid, signed and sealed, full size final drawings.
C. One hard copy of ready-to-bid signed and sealed final design specifications.
D. Answers to bidder's questions as applicable.
E. Written recommendation for award of the construction contract.

Task 4 - Construction Support Services

A. Approved shop drawings (two sets).
B. Responses to RFIs as applicable.
C. Record drawings (as-builts) in PDF format and AutoCAD format with X-refs and plot styles with geographic positions or State Plane Coordinates a permanent benchmark on NAVD88 datum.
D. Operation and maintenance manuals (two hard copies and one PDF).
E. Certificates of Completion (one hard copy and one PDF of each).

SECTION VII. ESTIMATED SCHEDULE

The CONSULTANT will complete the following tasks per the following schedule, following the Notice to Proceed (NTP):

Milestone	Calendar Days to Complete	Sum of Days from NTP
Mobilization	0	0
Preliminary design (Preliminary design report, site plan, and survey)	78	78
COUNTY review of preliminary design	14	92
60% design	90	182
COUNTY review of 60% design	14	196
90% design (Including permit applications)	45	241
COUNTY review of 90% design	14	255
Final design (100% plans and specifications including Divisions 0 and 1)	16	271

NOTE: The estimated time for construction is 360 days from the Contractor's Notice to Proceed. The COUNTY may suspend the CONSULTANT schedule for real estate acquisition, environmental remediation, coordination with other projects, or unforeseen circumstances causing delay.

SECTION VIII. BASIS OF COMPENSATION

For the scope of work described in Section III of this agreement, compensation from the COUNTY to the CONSULTANT shall be on the basis as indicated in the attached Exhibit A, a lump sum not to exceed ***two hundred ninety two thousand and one hundred fifty three dollars*** **($292,153)** without written authorization, to be billed as follows:

TASK	DESCRIPTION	FEE	BASIS
1	Preliminary Engineering		
1.1	Headworks	$33,158	
1.2	RAS/WAS Pumps	$9,552	
1.3	Dewatering Bed/Vacuum Truck Unloading Platform	$4,853	
--	*Subtotal*	$47,563	Lump Sum
2	Final Design		
2.1	Headworks	$115,109	
2.2	RAS/WAS Pumps	$42,811	
2.3	Dewatering Bed/Vacuum Truck Unloading Platform	$13,153	
--	*Subtotal*	$171,073	Lump Sum
3	Bidding Assistance		
3.1	Headworks	$3,455	
3.2	RAS/WAS Pumps	$1,513	
3.3	Dewatering Bed/Vacuum Truck Unloading Platform	$1,513	
--	*Subtotal*	$6,481	Lump Sum
4	Construction Support Services		
4.1	Headworks	$39,620	
4.2	RAS/WAS Pumps	$13,708	
4.3	Dewatering Bed/Vacuum Truck Unloading Platform	$13,708	
	Subtotal	$67,036	Lump Sum
--	**Total**	$292,153	Lump Sum

Note: The fee for the scope of work shall not exceed the amounts shown in the table above for each specific task and subtask.

SECTION IX - PAYMENT, PARTIAL PAYMENTS AND RESOLUTION OF DISPUTES

All payment requests shall follow the requirements as established within Sections 218.70 through 218.79 - Florida Statutes 'Local Government Prompt Payment Act', and Brevard County Administrative Order AO-33 "Prompt Payment of Invoices".

The COUNTY shall make payments to the CONSULTANT for all milestones completed and deliverables submitted under the authorized work, and to the satisfaction of the COUNTY, to the date of the statement.

A. The CONSULTANT shall submit signed invoices to the COUNTY's project manager.

B. The amount of each invoice submitted shall be the amount due for all eligible services performed to date in connection with authorized work, as certified by the CONSULTANT. Each invoice shall include any authorized work performed during the invoice date of service, must reference the particular Task name, and must include the invoice date, invoice number, and a list of the itemized charges.

C. The CONSULTANT's invoice shall be submitted along with the progress report for that billing period.

D. COUNTY's Project Manager shall review the statement and notify the CONSULTANT in writing within ten (10) days from receipt of the invoice if any amounts requested are disputed or lack adequate support or documentation. COUNTY shall indicate in writing what corrective action is needed and the time by which a corrected invoice should be received by the COUNTY.

E. In the event a dispute occurs between the CONSULTANT and the COUNTY concerning payment request or an invoice, such disagreement shall be resolved by

a Dispute Committee consisting of representatives of the County Manager's Office, Purchasing and the County Attorney.

F. Proceedings to resolve any disputed invoice shall commence no later than forty-five (45) days after the date on which a payment request or proper invoice was received by the COUNTY and shall follow requirements of Florida Statutes 218.70. through 218.79. Final decision by the COUNTY shall be concluded no later than sixty (60) days after the date on which the payment request or proper invoice was received by the COUNTY.

G. If the dispute is resolved in favor of the COUNTY, then interest charges shall begin to accrue fifteen (15) days after the COUNTY'"S final decision. If the dispute is resolved in favor of the CONSULTANT, the interest shall begin to accrue as of the original date the payment became due.

I. No later than thirty (30) days from acceptance by Project Manager of all the work or services covered by the submitted invoice, the COUNTY shall pay the CONSULTANT the amount due for any undisputed work.

J. The COUNTY is a tax exempt entity and shall not be charged or invoiced for the payment of taxes for work performed under this CONTRACT.

K. Payment of the Final Invoice shall not constitute evidence of COUNTY's acceptance of work.

L. Final invoice shall be clearly marked as such in bold letters. The Final invoice shall include a report of all the payments made to the CONSULTANT and each Sub-contractor and the amount for the final invoice.

M. Where termination of the CONTRACT is a termination for convenience and not for cause any reasonable and unavoidable costs incurred due to such termination

(such as cancelling orders for equipment, materials or services) such payment shall be borne by the COUNTY.

SECTION X - INDEMNIFICATION & INSURANCE

The CONSULTANT agrees to indemnify and hold the COUNTY harmless against liability for bodily injury, sickness, disease, death or personal injury or damage to property or loss of use and reasonable attorney fees resulting there from, to the extent caused by negligent acts, errors or omissions of the CONSULTANT or other persons employed or utilized by the CONSULTANT in the performance of this CONTRACT. To the extent allowable by law, the CONSULTANT agrees to indemnify and pay on behalf of the COUNTY the reasonable cost of the COUNTY'S legal defense as may be selected by the COUNTY, for the defense of all claims described in the hold harmless clause, herein. It is agreed by the parties hereto that specific consideration has been paid under this CONTRACT for this hold harmless provision. Such payment on behalf of the COUNTY shall be in addition to any and all other legal remedies available to the COUNTY and shall not be considered to be the COUNTY'S exclusive remedy.

The CONSULTANT shall provide the following described insurance policies with insurers acceptable to the COUNTY. The insurance coverage and limits required must be evidenced by properly executed Certificates of Insurance submitted to the COUNTY prior to award of this CONTRACT. These policies of insurance shall cover the CONSULTANT for claims, demands, and expenses, including defense and causes for action for general damages, bodily injury and property damage arising out of or to the extent caused by negligent acts, errors or omissions of the CONSULTANT. Said policies shall provide limits in the amount not less than $1,000,000.00 per occurrence, with the exception of Professional Liability which shall provide limits of $1,000,000.00 per claim, to cover claims arising in connection with any

particular accident or occurrence.

The CONSULTANT shall also provide and maintain Workers' Compensation insurance (for statutory limits) as required by Florida Statutes, Chapter 440. All policies shall be endorsed to provide COUNTY thirty (30) days prior written notice of any changes or cancellations of said policies. Certificate of Insurance will be provided and maintained with the COUNTY throughout the term of this CONTRACT. These insurance requirements shall not relieve or limit the liability of the CONSULTANT. The COUNTY does not in any way represent that these types or amounts of insurance are sufficient or adequate to protect the CONSULTANT'S interests or liabilities, but are merely minimums.

SECTION XI – ATTORNEY'S FEES

In the event any action is taken to enforce the terms of this CONTRACT, each party shall bear its own attorney's fees and costs, and any trial shall be non-jury.

SECTION XII - CONTINGENT FEES

The CONSULTANT warrants that they have not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT to solicit or secure this CONTRACT and that they have not paid or agreed to pay any person, company, individual or firm, other than a bona fide employee working solely for the CONSULTANT any fee, commission, percentage, brokerage or contingent fee, gift or any other consideration, contingent upon, or resulting from award or making of this CONTRACT. For any breach or violation of this provision, the COUNTY shall have the right to terminate this CONTRACT, without liability, and, at its discretion, to deduct from the CONTRACT price or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration and any

damages and shall be responsible for reporting the details of such breach or violation to the proper legal authorities where and when appropriate.

SECTION XIII - DEFAULT

In the event the CONSULTANT fails to comply with the provisions of this CONTRACT, the COUNTY may declare the CONSULTANT in default by written notification. Upon receipt of notification, CONSULTANT will be provided ten (10) days in which to cure. In the event that the CONSULTANT is unable to cure and partial payment has been made for professional services not completed or defectively performed, the CONSULTANT shall return any sums due to the COUNTY as a result of CONSULTANT'S default within ten (10) days after notice and demand that said sums are due. The CONSULTANT shall not be compensated on a percentage of any deficient professional services which have been performed at the time the COUNTY declares a default. The COUNTY shall pay for that portion, if any, of the performed work which is used or useful by any other consultant retained by the COUNTY to finish the work to the extent that the COUNTY does not incur additional costs.

SECTION XIV - RIGHT OF APPEAL

All services shall be performed by the CONSULTANT to current reasonable professional standards and practices and to the reasonable requirements of the COUNTY. The COUNTY shall decide and dispose of all claims, questions and disputes arising under this CONTRACT. Such determination shall be final, conclusive and binding upon the parties hereto unless such determination is clearly arbitrary or unreasonable. In the event the CONSULTANT does not concur with the decisions of the COUNTY, within ten (10) days after determination by the COUNTY, the CONSULTANT shall present any such objections in writing to the COUNTY

and, upon request, any adverse determination shall be referred to an appeal board comprised of a representative of the Purchasing Department, County Manager's Office and another COUNTY representative designated by the County Manager for review and disposition at a hearing to be held within ten (10) days after receipt of the appeal. This paragraph does not constitute a waiver of either party's right to proceed in a court of competent jurisdiction, provided that prior to filing any suit the CONSULTANT goes through the appeal process established in this CONTRACT and provided further that the CONSULTANT strictly abides by the ten-day time deadline set forth in this paragraph.

SECTION XV - SUCCESSORS AND ASSIGNS

The COUNTY and CONSULTANT each binds itself and its partners, successors, executors, administrators and assigns to the other party of this CONTRACT and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this CONTRACT.

Neither the COUNTY nor the CONSULTANT shall assign, sublet or transfer any rights under or interest in (including, but without limitation, monies that may become due or monies that are due) this CONTRACT without the prior written consent of the other, except to the extent that any assignment, subletting or transfer is mandated by law or the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this CONTRACT. Nothing contained in this CONTRACT shall be construed as giving any rights or benefits to any person, party, or entity other than the COUNTY and the CONSULTANT, and all duties and responsibilities undertaken pursuant to

this CONTRACT will be the sole and exclusive benefit of the COUNTY and the CONSULTANT, and not for the benefit of any other party.

SECTION XVI- TERMINATION/MODIFICATION OF CONTRACT

A. In the event the CONSULTANT disregards the authority of the COUNTY or violates the provisions of this CONTRACT, or otherwise fails to comply with any provisions of this CONTRACT or if the progress or quality of the work is unsatisfactory, Director or designee may serve written notice to CONSULTANT and if CONSULTANT fails within a period of ten (10) calendar days to correct such failure, COUNTY may terminate this CONTRACT upon thirty (30) days written notice to CONSULTANT. Upon termination CONSULTANT shall immediately cease performance of this CONTRACT and shall deliver to COUNTY all completed or partially completed work including but not limited to all original papers, records, drawings, models, and other materials set forth and described in this CONTRACT, within thirty (30) calendar days of the termination date established in the written Notice.

   The CONSULTANT may terminate this CONTRACT for any reason upon thirty (30) days written notice.

B. In the event of termination by the COUNTY, the COUNTY'S sole obligation to the CONSULTANT shall be payment for those portions of satisfactorily and completely performed work previously authorized and shall be determined on the basis of the work performed by the CONSULTANT, or the percentage of work complete as estimated by the CONSULTANT and agreed upon by the COUNTY up to the time of termination. In the event of such termination, the COUNTY may, without penalty or

other obligation to the CONSULTANT, elect to employ other persons to perform the same or similar services.

C. In the event of any form of claim, dispute, or controversy by or between the parties to this CONTRACT, the parties expressly and unequivocally agree to engage in good faith efforts to meet in person to resolve any and all such differences as provided for in this CONTRACT. Absent such resolution of any/all such dispute(s), the parties expressly agree to engage in pre-suit mediation in accordance with the applicable rules of procedure for such mediation as may be in force in the Judicial Circuit Courts in Brevard County.

D The terms of this CONTRACT may be modified upon the mutual Agreement of the CONSULTANT and the COUNTY as confirmed in writing.

E. In the event that the CONSULTANT changes its name, merges with another company, becomes a subsidiary or makes other substantial change in structure or in the principals or project managers of the CONSULTANT, the COUNTY reserves the right to terminate this CONTRACT subject to the terms prescribed above.

F. In the event of termination of this CONTRACT the CONSULTANT agrees to surrender any and all documents prepared by the CONSULTANT for the COUNTY in connection with this CONTRACT, of which, the COUNTY shall have full ownership thereof, CONSULTANT may retain copies of such documents for record purposes.

SECTION XVII - INDEPENDENT CONTRACTOR

The CONSULTANT shall perform the services under this CONTRACT as an independent contractor and nothing contained herein shall be construed to be inconsistent with

this relationship or status. Nothing in this CONTRACT shall be interpreted or construed to constitute the CONSULTANT or any of its agents or employees to be the agent, employees or representative of the COUNTY.

SECTION XVIII - AUDIT RIGHTS

The COUNTY reserves the right to audit the records of the CONSULTANT related to this CONTRACT at any time during the prosecution of the work included herein and for a period of five years after final payment is made. The CONSULTANT agrees to provide copies of any records necessary to substantiate payment requests to the COUNTY as may be requested by the COUNTY, solely at the cost of reproduction.

SECTION XIX – UNAUTHORIZED ALIEN WORKERS

Brevard County will not intentionally award publicly funded CONTRACTS to any contractor who knowingly employs unauthorized alien workers, constituting a violation of the employment provisions contained in 8 U.S.C. §1324 of the Immigration Nationality Act ("INA"). The COUNTY shall consider a violation of the INA as grounds for unilateral cancellation of this CONTRACT by the COUNTY.

SECTION XX – EMPLOYMENT

The CONSULTANT shall not engage the services of any person or persons now employed by the COUNTY, including any department, agency, board of commission thereof, to provide services relating to the CONTRACT without the written consent from the COUNTY.

SECTION XXI - PUBLIC ENTITY CRIMES

A person or affiliate who has been placed on the convicted vendor list following a conviction for a public crime may not perform work as a contractor, supplier, sub-contractor, or CONSULTANT under a CONTRACT with a public entity, and may not transfer business with any public entity in excess of the threshold amount provided in section 287.017 F.S. for CATEGORY TWO for a period of thirty six (36) months from the date of being placed on the convicted vendor list.

SECTION XXII – PROFESSIONAL STAFF, LICENSING AND SUBCONTRACTING

CONSULTANT was selected in part because of the involvement of certain individuals employed by the CONSULTANT and identified on the Statement of Qualifications of the CONSULTANT. The CONSULTANT agrees that the persons identified in such document shall not be removed for the project without prior written approval by the COUNTY.

CONSULTANT shall notify COUNTY in the event of key personnel changes, which might affect this CONTRACT. Notification shall be made within ten (10) days prior to the changes. Any such request shall be supported by comprehensive documents outlining the reason(s) for the proposed substitution and include the specific qualifications of the proposed substitute. COUNTY has the right to reject proposed changes in key personnel. Further, COUNTY, in lieu of approving a substitution, may initiate other actions under the CONTRACT, including termination.

CONSULTANT shall at all times during the term of this CONTRACT at its own cost and expense, maintain such licenses as are required for the performance of work referenced herein by this CONTRACT.

CONSULTANT shall maintain an adequate and competent staff of professional engineers and/or architects licensed within the State of Florida.

The CONSULTANT shall not sub-contract, assign, or transfer any work under this CONTRACT without the prior written approval of the COUNTY. When applicable, the CONSULTANT shall cause the names of any sub-contracted firms responsible for major portions (or separate specialty) of the work to be inserted in the pertinent documents or data.

Approval by COUNTY of any sub-contractor of any work shall not relieve CONSULTANT of any responsibility for, or liability in connection with fulfillment of its obligations under this CONTRACT.

SECTION XXIII - OWNERSHIP OF DOCUMENTS

All documents including but not limited to: detailed reports, tracing, disks, plans, models, programs, specifications, maps, contract documents, record documents, original field survey, data notes, and other tangible work products developed by the CONSULTANT pursuant to this CONTRACT shall be delivered to and shall become the property of the COUNTY without restrictions or limitations upon their use or distribution and shall be made available by the CONSULTANT at any time upon request by the COUNTY. When each individual section of work requested pursuant to this CONTRACT is complete, all of the above work products shall be delivered to the COUNTY for its use.

The CONSULTANT shall not be liable for any damages, injury or costs associated with the COUNTY use or distribution of these documents for purposes other than those originally intended by the CONSULTANT.

SECTION XXIV - REUSE OF DOCUMENTS

The CONSULTANT may not reuse data or work products developed by the CONSULTANT for the COUNTY without express written permission of the COUNTY.

Any plans which the CONSULTANT provides under this CONTRACT shall contain a statement that they are subject to reuse restrictions in accordance with the provisions of Florida Statutes 287.055.

SECTION XXV - QUALITY CONTROL

The CONSULTANT shall perform all services with the standard of care and skill ordinarily performed by like professionals performing similar work.

When necessary, the COUNTY may request additional data collection or re-analysis of data at no expense to the COUNTY. If the original data collected or data analysis is found to be accurate and reasonable, the CONSULTANT shall be compensated for the additional work in accordance with Section VIII of this Agreement.

SECTION XXVI - NON EXCLUSIVE CONTRACT

The parties acknowledge that this CONTRACT is not an exclusive CONTRACT and the COUNTY may employ other engineers, professional or technical personnel to furnish services for the COUNTY, as the COUNTY, in its sole discretion, finds is in the public interest.

The COUNTY reserves the right to assign such work to the CONSULTANT as it may approve in the sole discretion of the COUNTY.

SECTION XXVII - TRUTH-IN-NEGOTIATIONS

In accordance with the provisions of Chapter 287.055, Florida Statutes, the CONSULTANT agrees to execute a truth-in-negotiations certificate stating that wage rates and other factual unit costs supporting the compensation of this CONTRACT are accurate, complete, and current at the time of contracting; and agrees the original CONTRACT price and

any additions may be adjusted to exclude any significant sums by which the COUNTY determines that such CONTRACT price was increased due to inaccurate, incomplete or non-current wage rates and other factual unit costs. All such CONTRACT adjustments shall be made within one (1) year following the end of the CONTRACT.

SECTION XXVIII - DISADVANTAGE BUSINESS ENTERPRISES/EQUAL OPPORTUNITY EMPLOYMENT

The CONSULTANT shall endeavor to meet the minority business enterprise procurement goal set forth in F.S. 287.042.

During the performance of this CONTRACT the CONSULTANT will not discriminate against any employee or applicant for employment because of race, color, sex, age religion, ancestry, handicap, marital status or national origin. The CONSULTANT will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard of race, color, sex, age religion, ancestry, handicap, marital status or national origin.

SECTION XXIX - INTEREST OF COMMISSIONERS AND OTHERS

No officers, members or employees of the COUNTY, and no members of its governing body, and no other public official of the governing body of the locality or localities in which services for the facilities are situated or carried out, who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of this project, shall participate in any decision relating to this CONTRACT which affects their personal interest, or have any personal or pecuniary interest, direct or indirect, in this CONTRACT or the proceeds thereof.

SECTION XXX - INTEREST OF CONSULTANT

The CONSULTANT covenants that it presently has no conflict of interest and shall not acquire any interest, direct or indirect, which shall conflict in any manner or degree with the performance of services required to be performed under this CONTRACT. The CONSULTANT further covenants that, in the performance of this CONTRACT, no person having any such interest shall be employed.

SECTION XXXI - ENTIRETY OF CONTRACT

This writing, together signed Notices to Proceed that may follow, embody the entire CONTRACT and understanding between the parties hereto, and there are no other CONTRACTs and understandings, oral or written, with reference to the subject matter hereof that are not merged herein.

This CONTRACT supersedes all prior agreements, CONTRACTS, proposals, representations, negotiations, letters or other communications between the COUNTY and the CONSULTANT pertaining to services whether written or oral.

No alteration, change, or modification of the terms of this CONTRACT shall be valid unless made in writing, signed by both parties hereto as an addendum to this CONTRACT.

This CONTRACT, regardless of where executed, shall be governed by and construed according to the laws of the State of Florida.

SECTION XXXII - NOTICES

Any notices, or other written communications pertaining to the enforcement of provisions contained within this CONTRACT from the CONSULTANT to the COUNTY shall

be considered delivered when posted by certified mail or delivered in person to the following address:

Brevard County Manager's Office
Attn: Stockton Whitten, County Manager
2725 Judge Fran Jamieson Way, Bldg C
Viera, FL 32940

Any notices, or other written communications pertaining to the enforcement of provisions contained within this CONTRACT from the COUNTY to the CONSULTANT shall be considered delivered when posted by certified mail to the CONSULTANT at the last address left on file with the COUNTY or delivered in person to said CONSULTANT or the CONSULTANT'S authorized representative.

SECTION XXXIII – NON-LIABILITY OF INDIVIDUAL ENGINEERS

This Agreement is a professional services contract which meets the requirements of and is subject to Chapter 558, Florida Statutes. Accordingly,

PURSUANT TO SECTION 558.0035, FLORIDA STATUTES, AN INDIVIDUAL EMPLOYEE OR AGENT OF CONSULTANT MAY NOT BE HELD INDIVIDUALLY LIABLE FOR NEGLIGENCE.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals this 18 day of August, 2015.

ATTEST:

BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA

By: _____
Robin Fisher, Chairman

As approved by the Board on 8/18/15

ATTEST:

JONES EDMUNDS & ASSOCIATES, INC.

JONES, EDMUNDS & ASSOCIATES, INC. CORPORATE SEAL 1974 FLORIDA

By: _____
Kenneth S. Vogel, PE
Senior Vice President

Reviewed for legal form and content: _____
County Attorney

TRUTH-IN-NEGOTIATION CERTIFICATE AND AFFIDAVIT

Before me, the undersigned authority, personally appeared Affiant, who being first duly sworn, deposes and says:

1. That the undersigned firm is furnishing this Truth in Negotiation Certificate pursuant to Section 287.055(5)(a) of the Florida Statutes for the undersigned firm to receive a CONTRACT for professional services with the Board of County Commissioners of Brevard County, Florida.

2. That the undersigned firm is a corporation which engages in furnishing professional engineering services and is entering into a CONTRACT with the Board of County Commissioners of Brevard County, Florida to provide professional services for a project known as the Continuing Consultant.

3. That the undersigned firm has furnished the Board of County Commissioners of Brevard County, Florida a detailed analysis of the cost of the professional services required for the project.

4. That the wage rate information and other factual unit costs which the undersigned firm furnished were accurate, complete and current at the time the undersigned firm and the Board of County Commissions entered into the CONTRACT for professional services on the project.

5. That the CONTRACT which the undersigned firm and Brevard County entered into on this job contained a provision that the original CONTRACT price and any additions thereto shall be adjusted to include any significant sums by which the Board of County Commissioners determines the CONTRACT price was increased due to inaccurate, incomplete

or non-current wage rates or other factual unit costs and that all such CONTRACT adjustments shall be made within one year following the end of the CONTRACT.

FURTHER AFFIANT SAYETH NAUGHT.

By: Kenneth Vogel
Title: Senior Vice President

STATE OF FLORIDA
COUNTY OF ALACHUA

The foregoing instrument was acknowledged before me by Kenneth S. Vogel, PE, Senior Vice President of Jones Edmunds & Associates, Inc., who has produced N/A as identification or is **personally known to me**.

WITNESS my hand and official seal in the State and County last aforesaid this 14 day of August, 2015.

(SEAL)

J. L. MCGREGOR
Notary Public - State of Florida
My Comm. Expires Aug 26, 2017
Commission # FF 029146
Bonded Through National Notary Assn.

Signature

JL McGregor
Notary Name (typed or printed)

VENDORS OF RECORD LIST
FY 2013/14

COMMODITY	EST.$ ANNUALLY	VENDOR(S)	AGREEMENT EXPIRATION / OTHER	JUSTIFICATION
State Contracts, Cooperative Contracts and other Agency Contracts				
A/C SUPPLIES	$ 100,000.00	Johnstone Supply; Interline Brands; P.E.C.O. Enterprises	11/19/16	School Board ITB#14-B-023-DR
Club Car and E-Z-GO Equpment	$ 100,000.00	E-Z-GO; Jeffery Allen	12/31/2018 12/31/15	National IPA via City of Tuscon #130795 New York State Contract #22186
COMPUTER HARDWARE (DELL)	$ 500,000.00	DELL MARKETING L.P.	12/31/14	(WSCA) 250-WSCA-10-ACS Master Price Agreement Number B27160
Construction, Industrial, Agricultural, & Lawn Equipment	$ 285,000.00	WESCO TURF SUPPLY FOR TORO PRODUCTS PRIMARY; RING POWER FOR FECON PRODUCTS; JOHN DEERE FOR DEERE PRODUCTS; STIHL FOR STIHL SOUTHEAST; OTHERS LISTED.	06/30/15	STATE CONTRACT #760-000-10-1
Fencing	$ 120,000.00	ALL-RITE, MOSSY OAK, EAST COAST FENCE	01/22/16	School Board ITB#13-B-035-LL
FIRE EQUIPMENT & SUPPLIES	$ 185,000.00	A ONE FIRE, BENNETT, DANA SAFETY, ELITE, MUNICIPAL EQUIPMENT, MUNICIPAL EMERGENCY, NAFECO, PIERCE, TEN-8 FIRE, PRO-AM SAFETY, FISHER SAFETY; BEE SAF-TEE,	06/30/15	LAKE COUNTY CONTRACT 12-0806 A-O
FUEL (DIESEL/GAS)	$ 5,000,000.00	GLOVER OIL	06/10/17	COOPERATIVE BID, SCHOOL BOARD SB 14-085-DR
FURNITURE-OFFICE AND FILES (Steel Case inc.)	$ 200,000.00	AMERICAN BUSINESS INTERIORS (PRIMARY VENDOR UTILIZED HON, HERMAN, MILLER, KIMBALL, NATIONAL OFFICE - 0THERS LISTED);	03/01/16	STATE CONTRACT #425-001-121
General Constractor Services	$ 300,000.00	C&D, CANAVERAL, DOUG WILSON, HEARD, IVEY'S, SOUTHLAND, W&J CONSTRUCTION	05/14/16	SCHOOL BOARD RFP# 13-P-039-KR
HARDWARE, MRO EQUIPMENT AND SUPPLIES	$ 207,000.00	LOWES, FASTENAL, GRAINGER (primary vendors, others listed may be utilized)	3/31/2015 11/14/15	THE COOPERATIVE PURCHASING NETWORK (TCPN) #R4954; state 445-001-11-1
HAZARDOUS COLLECTION & DISPOSAL	$ 100,000.00	EQ The Environmental Quality Co.	05/31/15	Hillsborough County #S-0124-0-2012/EM
LABORATORY SERVICES	$ 200,000.00	PACE ANALYTICAL	07/17/16	Palm Beach County # 13-242
LABORATORY SUPPLIES/SERVICES and SAFETY SUPPLIES	$ 100,000.00	FISHER SCIENTIFIC / FISHER SAFETY	12/31/2014 -STATE	Laboratory and Safety Supplies & Equipment 490-000-12-ACS
LIBRARY MATERIALS AND BOOKS	$ 1,600,000.00	BAKER & TAYLOR, BRODART, DAVIDSON TITLES, DEMCO, EBSCO, FOLLETT(BWI), INGRAM, GALE GROUP, MIDWEST, PROQUEST, RECORDED BOOKS, UNIQUE, (PRIMARY VENDORS UTILIZED, OTHERS LISTED MAY BE UTILIZED)	02/28/15	STATE CONTRACT LIBRARY MEIDA METERIALS, 715-001-07-1
MAINTENANCE AND HARDWARE SUPPLIES (INCLUDING JANITORIAL)	$70,000.00	HD SUPPLY, HOME DEPOT	07/31/17	US COMMUNITIES, COUNTY OF MARICOPA, CONTRACT # 11019
MRO: Facilities Maintenance Supplie	$100,000.00	W.W. GRAINGER	02/28/17	State Contract: ACS 450-000-11-ACS

VENDORS OF RECORD LIST
FY 2013/14

COMMODITY	EST.$ ANNUALLY	VENDOR(S)	AGREEMENT EXPIRATION / OTHER	JUSTIFICATION
OFFICE SUPPLY	$ 185,000.00	OFFICE DEPOT	10/17/14	FL STATE CONTRACT #618-000-11-1

VENDORS OF RECORD LIST
FY 2013/14

COMMODITY	EST.$ ANNUALLY	VENDOR(S)	AGREEMENT EXPIRATION / OTHER	JUSTIFICATION
Playground Equipment	$100,000.00	BCI Burke Company	11/30/14	Volusia County #CL-301RJ
PLUMBING SUPPLIES	$ 100,000.00	APPLE SPECIALTIES, BEST PLUMBING, FERGUSON, GORMAN, NORTH SOUTH SUPPLY, INTERLINE BRANDS	12/10/16	COOPERATIVE BID, SCHOOL BOARD #14-045-DW
POLYMER	$ 180,000.00	FORT BEND	09/30/15	BAY COUNTY #12-39(AWT)
PUMP & MOTOR REPAIRS (ELECTRIC)	$ 50,000.00	C & C ELECTRIC	09/05/15	CITY OF DELTONA #PW 13-17
PUMP & MOTOR REPAIR SERVICES	$ 100,000.00	FL ARMATURE WORKS, INC.	02/07/15	THE TOHO WATER AUTHORITY #12-006
RADIO MAINTENANCE & REPAIR, 800 MHZ	$ 500,000.00	COMMUNICATIONS INTERNATIONAL	06/30/21	FL STATE CONTRACT 725-001-01-1
TIRES & SERVICES	$ 450,000.00	GOODYEAR, CONTINENTAL, FIRESTONE, BRIDGESTONE, MICHELIN, BF GOODRICH, UNIROYAL	02/28/15	FL Sheriff's Association Bid 14/15-06-0131 STATE CONTRACT #863-000-10-1
State Contracts, Cooperative Contracts and other Agency Contracts (Continued)				
VEHICLES (LIGHT TRUCKS, VANS AND CARS)	$ 500,000.00	Alan Jay Chevrolet; Duval Ford; Don Reid Ford	09/30/14	FL SHERIFF'S ASSOCIATION BID 13-21-0904; 13-11-0904
WATER/WASTEWATER SANITARY SEWER CURED-IN-PLACE PIPE	$ 300,000.00	INSITUFORM	07/16/15	MIAMI-DADE COUNTY RPQ NO: P0130
WATER/WATEWATER - MANHOLE LINERS	$ 300,000.00	The Hinterland Group	01/14/15	Palm Beach County KMA WUD12-001A
Sole Source including original equipment manufacturer and sole authorized distibutors				
ABS BRAND PUMPS, MIXERS,AERATORS, AND HST'S	$ 120,000.00	HYDRA SERVICES INC	CONTINUING	OEM AND ONLY AUTHORIZED DISTRIBUTOR AND REPAIR PROVIDER. (PREVIOUSLY ABS CO.,
Auto, Truck, Heavy Equipment, Mower Parts	$ 125,000.00	NORTRAX EQUIPMENT, ROBINSON EQUIPMENT, BENNETT TRUCK EQUIPMENT, GREAT SOUTHERN EQUIPMENT	CONTINUING	Distributor - NORTRAX: SOLE AUTHORIZED DISTRIBUTOR FOR COMPACTION AMERICA (BOMAG) PRODUCTS, JOHN DEERE AND GENUINE TIGER PARTS FOR BREVARD COUNTY; ROBINSON SOLE AUTHORIZED DEALER KUBOTA, BUSH HOG, HENRY MITCHEM EQUIPMENT, MASSEY FERGUSON; BENNETT - AUTHORIZED
FIRE EQUIPMENT	$ 100,000.00	TEN-8 FIRE EQUIPMENT INC	AUTHORIZED DISTRIBUTOR	SOLE AUTHORIZED DISTRIBUTOR FOR PIERCE PARTS AND SERVICE BREVARD COUNTY;

VENDORS OF RECORD LIST
FY 2013/14

COMMODITY	EST.$ ANNUALLY	VENDOR(S)	AGREEMENT EXPIRATION / OTHER	JUSTIFICATION
GFI FARE COLLECTION EQUIPMENT AND SOFTWARE	$ 100,000.00	SPX GENFARE	CONTINUING	OEM AND SOLE DISTRIBUTOR OF PROPRIETARY SOFTWARE NEEDED TO INTERFACE TRiM AND MCR TO THE FAREBOX AND GFI FARE COLLECTION SYSTEM

VENDORS OF RECORD LIST
FY 2013/14

COMMODITY	EST.$ ANNUALLY	VENDOR(S)	AGREEMENT EXPIRATION / OTHER	JUSTIFICATION
GRADALL HYDRAULIC EXCAVATOR SERVICE AND PARTS	$ 100,000.00	GREAT SOUTHERN EQUIPMENT	SOLE AUTHORIZED DISTRIBUTOR AND SERVICE CENTER	ONLY AUTHORIZED DISTRIBUTOR FOR SALES, SERVICE AND PARTS FOR GRADALL HYDRAULIC EXCAVATOR PRODUCTS, KAWASAKI LOADERS, KOBELCO EXCAVATORS, SAKAI COMPACTION
HEAVY EQUIPMENT AND PARTS, GENERATORS AND GPS SOFTWARE	$ 230,000.00	RINGPOWER CORPORATION	AUTHORIZED DISTRIBUTOR	SOLE AUTHORIZED DISTRIBUTOR CATERPILLAR PRODUCTS AND SERVICE FOR BREVARD COUNTY
HYDRAULIC HOSE, FITTINGS AND EQUIPMENT	$ 75,000.00	CENTRAL HYDRAULICS	AUTHORIZED DISTRIBUTOR	SOLE AUTHORIZED DISTRIBUTOR FOR EATON HYDRAULICS AEROQUIP PRODUCTS FOR BREVARD COUNTY
INTEGRATED LIBRARY SOFTWARE SYSTEM	$ 108,000.00	The Library Corporation	CONTINUING	OEM, Proprietary Software. No other vendor may provide CARL*X Sotware
LIBRARY DIGITAL MATERIALS	$ 150,000.00	OVERDRIVE	CONTINUING	MANUFACTURER AND SOLE PROVIDER OF OVERDRIVE DIGITAL LIBRARY SYSTEM
LIFEPAK 12 DEFIBRILLATOR & AED PRODUCTS	$ 150,000.00	PHYSIO-CONTROL, INC	SOLE SOURCE	SOLE SOURCE MANUFACTURE AND HAS NO DEALERS OR RESELLERS FOR BREVARD COUNTY
MOSQUITO CONTROL CHEMICALS	$ 300,000.00	CLARKE MOSQUITO CONTROL	CONTINUING	MANUFACTURER AND SOLE SOURCE OF BIOMIST, DUET, MOSQUITOMIST, ANVIL, COCOBEAR, NATULAR, VECTOBACK, VECTOLEX, VECTOMAX AND AN ALTOSID AUTHORIZED DISTRIBUTOR.
Sole Source including original equipment manufacturer and sole authorized distibutors (Continued)				
MOSQUITO CONTROL CHEMICALS	$ 400,000.00	ADAPCO	CONTINUING	SOLE AUTHORIZED DISTRIBUTOR FOR DIBROM, AGNIQUE, FOURSTAR, AQUABAC, SPHERATAX, AND SCOURGE. AN AUTHORIZED DISTRIBUTOR FOR BVA, ZENIVEX AND ALTOSID
MOSQUITO CONTROL CHEMICALS	$ 150,000.00	UNIVAR USA	CONTINUING	MANUFACTURER AND SOLE DISTRIBUTOR OF MASTERLINE KONTROL, MASTERLINE AQUACONTROL, MASTERLINE LARVICIDE OIL, MASTERLINE BIFENTHRIN, AND AUTHORIZED DISTRIBUTOR OF ALTOSID AND ZENIVEX
MOSQUITO CONTROL CHEMICALS	$ 100,000.00	ALL PRO VECTAR	CONTINUING	SOLE MANUFACTURER AND DISTRIBUTOR OF EVOLUER, ENVION, AND PROVECT
PHARMECUTICALS	$ 200,000.00	AVENTIS(Merial), BAYER,PFIZER, GLAXO-KLINE, NORVARTIS, MERCK	CONTINUING	PROPRIETARY & SOLE SOURCED DISTRIBUTORS. CONTROLLED MEDICINE THAT MUST BE DIRECT

VENDORS OF RECORD LIST
FY 2013/14

COMMODITY	EST.$ ANNUALLY	VENDOR(S)	AGREEMENT EXPIRATION / OTHER	JUSTIFICATION
POSI-SHELL ENVIRONMENTAL COATING (SUPPLIES & EQUIPMENT)	$130,000.00	LSC ENVIRONMENTAL PRODUCTS	AUTHORIZED DISTRIBUTOR	SOLE AUTHORIZED DISTRIBUTOR POSI-SHELL PRODUCTS AND SERVICE FOR BREVARD COUNTY
TORO TURF EQUIPMENT & GOLF COURSE IRRIGATION PARTS	$ 100,000.00	WESCO TURF SUPPLY	CONTINUING	SOLE AUTHORIZED DISTRIBUTOR FOR TORO TURF EQUIPMENT AND PARTS AND GOLF COURSE IRRIGATION PARTS FOR BREVARD COUNTY; BOARD STANDARDIZATION RECEIVED FOR TORO IRRIGATION PARTS
VAC-CON SEWER TRUCK PARTS, AND SERVICE	$ 120,000.00	SOUTHERN SEWER EQUIPMENT SALES (SSES)	CONTINUING	SOLE AUTHORIZED VAC-CON DEALER FOR SALES, PARTS AND SERVICE IN THE STATE OF FLORIDA, EXCLUDING PANHANDLE.
WATER/WASTEWATER & SOLID WASTE MWI PUMPS AND PARTS	$ 125,000.00	MWI PUMPS	CONTINUING	OEM AND SOLE PROVIDER OF MWI PUMPS AND PARTS
WATER/WASTEWATER GA INDUSTRIES ENGINEERED VALVE PRODUCTS, PARTS AND SERVICES	$ 100,000.00	TOM EVANS ENVIRONMENTAL	CONTINUING	SOLE EXCLUSIVE FACTORY AUTHORIZED REPRESENTATIVE FOR GA INDUSTRIES
WATER/WASTEWATER SULZER ABS PUMPS AND PARTS	$ 120,000.00	HYDRA SERVICES INC	CONTINUING	SOLE AUTHORIZED SUPPLIER FOR ALL SULZER ABS PRODUCTS FOR STATE OF FLORIDA, EXCLUDING COUNTIES OF SARASOTA, DESOTO, CHARLOTTE, GLADES, LEE, HENDRY, COLLIER, AND MONROE
WATER/WASTEWATER TELEMENTRY EQUIPMENT BRISTOL SCADA INCLUDING COMPONENTS OF CONTROLWAVE PAC, MICRO RTUS AND OPEN BSI AND OPEN ENTERPRISE SOFTWARE	$ 250,000.00	EMERSON PROCESS MANAGEMENT POWER & WATER SOLUTIONS, INC.	CONTINUING	OEM - BOARD STANDARDIZED EQUIPMENT 1991 - SOLE MANUFACTURER. SOLE AUTHORIZED ENTITY FOR SALES OF PRODUCTS TO ALL WATER AND WASTEWATER CUSTOMERS.
Other				

VENDORS OF RECORD LIST
FY 2013/14

COMMODITY	EST.$ ANNUALLY	VENDOR(S)	AGREEMENT EXPIRATION / OTHER	JUSTIFICATION
GOLF RETAIL SUPPLIES	$ 135,000.00	ADAMS GOLF LTD, AHEAD HEADGEAR, AM PLAYER, AMERICAN DRY GOODS, ANTIGUA GROUP, ATLAS PEN & PENCIL,BAG BOY, BRIDGESTONE, CALLAWAY GOLF, CAYMAN GOLF, CHILLIWEAR, DEVANT, EASY PICKER, EISINGER-SMITH, FLAK, FLORIDA SPACE COAST GOLF ASSOCIATION, FOOTJOY, GEAR FOR SPORTS, GLOBAL GOLF, ,HORNUNGS, I. STERN & CO, MARTINI GOLF TEES, MOBILE PRO, NIKE, PING, PUKKA GOLF, ST. ANDREWS PRODUCTS, STERLING CUT GLASS, TEAM EFFORT, TIFOSI OPTICS, TITLEIST, TOWN TALK, US GLOVE	RETAIL SALES	RETAIL SUPPLIES FOR RESALE (AVERAGE MARK-UP OF 30% REPRESENTS GROSS PROFIT TO THE COUNTY)

Meeting Date
September 16, 2014

AGENDA	
Section	Consent
Item No.	III.C.2

AGENDA REPORT

BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

SUBJECT:	PERMISSION TO ISSUE ANNUAL SUPPLY BIDS, PROPOSALS AND REQUEST FOR QUALIFICATIONS (FY 2014/2015) AND/OR NEGOTIATE COMPETITIVE AGREEMENTS
DEPT/OFFICE:	CENTRAL SERVICES DEPARTMENT/PURCHASING SERVICES

Requested Action:

It is requested the Board grant Purchasing Services approval to perform the following actions regarding the attached list of commodities and services for fiscal year 2014/2015.

1. Solicit competitive bids, quotes and/or negotiate competitive agreements and award to lowest, responsive and most qualified supplier.
2. Solicit competitive proposals and requests for qualifications, establish selection/negotiation committees approved by the County Manager, or designee; and award contracts and/or open purchase orders with the best-ranked proposer.
3. Exercise renewal options upon evaluation of supplier performance, and recommendation from user departments/offices. This establishes the continuance of the contract is favorable prior to extension of the agreement.
4. Authorize the Chairman to execute contracts and contract renewals over $100,000 in annual value.

Summary Explanation & Background:

Purchasing Services estimates the annual needs of the County for items or groups of items where there is an opportunity to achieve savings by using formal competitive processes (formal bids, quotes proposals, and request for qualifications). Annual competitions establish a source, a firm price and a performance period on high-volume, repetitive materials and continuing services.

Approval of this action will eliminate repetitive Board action granting permission to purchase routinely used items and services and will eliminate an estimated several thousand individual purchase order transactions. Also to expedite the award process, the County Manager currently has Board authorization to solicit, award and execute contracts up to $100,000. Award recommendations will be made by a selection committee consisting of user agency representatives approved by the County Manager, or designee, for evaluation of proposals; and Purchasing and user agency staff members for determining responsive and responsible bids.

The competitive procurement method (competitive bid vs. competitive proposal) will be determined by the individual services or commodity requirements. Acquisition of services for recurring continuing professional consultant contracts will be solicited in accordance with Policy BCC-27 and Florida Statutes §287.055, "Consultants' Competitive Negotiation Act". Florida Statute §287.055 allows the County to enter into

Continued, Page 2

Clerk to the Board instruction: Return one copy to Department

Exhibits Attached: Annual Procurement Commodity and Services List (FY 2014/2015)

Contract /Agreement (If attached): Reviewed by County Attorney	Yes ☐	No ☐	PR ☐

County Manager	Assistant County Manager Mel Scott	Department Director / Extension
Stockton Whitten	Assistant County Manager Venetta Valdengo	Teresa Camarata/ext.5-5492

SUBJECT: PERMISSION TO ISSUE ANNUAL SUPPLY BIDS, QUOTES AND PROPOSALS (FY 2014/2015) AND/OR NEGOTIATE COMPETITIVE AGREEMENTS

SUMMARY EXPLAINATION & BACKGROUND, CONTINUED

continuing contracts for professional services for projects in which the estimated construction cost of each individual project under the contract does not exceed $2 million, if the professional services under the contract does not exceed $200,000. Firms providing professional services under continuing contracts shall not be required to bid against one another.

Annual negotiated competitive agreements/discounts establish a firm source period, and price on high volume materials and services, significantly reducing the number of repetitive, expensive daily purchase transactions through the utilization of open purchase orders or purchase card.

The evaluation of renewal options utilizes factors such as market data, level of competition available, inflation and vendor performance. The using agencies and the Purchasing Manager or designee will document recommendations of exercising renewal options in the official bid or proposal files.

Formal contract renewals will be in accordance with AO-29, Contract Administration.

Fiscal Impact FY 14/15: Minimizing administrative costs by reducing and consolidating Board actions for competitive annual procurement of commodities and services insures efficient use of available funds and the timely provision of commodities and services necessary to provide for the health, education, social needs and enhance the quality of life of the residents of Brevard County. Establishment of costs associated with these commodities/services is allocated to individual agencies' funding sources. Funds will be encumbered through user initiated blanket purchase orders.

Name: Contact: Leslie. Rothering, Purchasing Services
Phone: x5-6038, leslie.rothering@brevardcounty.us

ANNUAL BID/QUOTE/PROPOSAL LIST
FY 2014/2015

BIDS	RENEWAL OPTIONS	ESTIMATED ANNUAL EXPENDITURES
AGRICULTURAL EQUIPMENT OEM REPLACEMENT PARTS	1 YR W/ 1 YR OPTION.	$80,000.00
ALARM MONITORING*	1 YR W/ 3 -1 YR OPTIONS	$66,000.00
APPRAISALS & APPRAISAL REVIEW SERVICES*	NONE	VARIED
ASPHALTIC CONCRETE	1 YR W/ 3-1 YR OPTIONS	$3,000,000.00
AUTOMOTIVE EQUIPMENT AND BATTERIES	1 YR W/ 1 YR OPTION.	$190,000.00
AUTOMOTIVE BODY REPAIRS	1 YR W/ 1 YR OPTION.	$65,000.00
AUTOMOTIVE PARTS (including Ford & Chevy OEM)	1 YR W/ 1 YR OPTION.	$330,000.00
BIO-MEDICAL WASTE COLLECTION AND DISPOSAL	2 YR W/2-1YR OPTION	$86,000.00
CARPET CLEANING	1 YR W/2-1 YR OPTIONS	$95,000.00
CEMENT--BULK PORTLAND & BAGS	1 YR W/ 1 YR OPTION.	$100,000.00
CERTIFIED BASE ROCK	1 YR W/ 1 YR OPTION.	$215,000.00
CHEMICALS --AGRICULTURAL & AQUATIC & FERTILIERS	1 YR W/ 1 YR OPTION.	$275,000.00
CONCRETE CRUSHING - ONSITE	1 YR W/ 1 YR OPTION.	$100,000.00
CONCRETE PIPE	1 YR W/ 1 YR OPTION.	$420,000.00
CONCRETE SIDEWALK, GUTTER & CURB CONST.	1 YR W/ 1 YR OPTION.	$400,000.00
DRAWBRIDGE MAINTENANCE	1 YR W/ 3-1 YR OPTION.	$85,000.00
ELECTRICAL SERVICES	1 YR W/ 1 YR OPTION.	$150,000.00
EMERGENCY WATER & WASTEWATER REPAIRS	1 YR W/1 YR OPTION	$300,000.00
FENCING	1 YR W/ 1 YR OPTION	$167,000.00
FILL DIRT --SELECT COMMON FILL	1 YR W/ 1 YR OPTION.	$800,000.00
FIRE ENGINGE OUTFITTING EQUIPMENT	1 YR W/1 YR OPTION	$200,000.00
GENERATOR PREVENTATIVE MAINTENANCE AND REPAIR SERVICES	1 YR W/2-1 YR OPTION	$75,000.00
GRASSING SERVICES (SEED,MULCH, SOD)	1 YR W/ 1 YR OPTION.	$360,000.00
HVAC AIR CONDITION SERVICES	1 YR W/ 1 YR OPTION.	$450,000.00
JANITORIAL SUPPLIES (incl. CAN LINERS)	1 YR W/ 1 YR OPTION.	$200,000.00
LABORATORY SERVICES	1 YR W/ 1 YR OPTION.	$200,000.00
LANDFILL GAS REPAIRS	1YR W/ 2 1 YR OPTION	$250,000.00
LAWN/GROUND MAINTENANCE & MGMT*	1 YR W/ 1 YR OPTION.	$400,000.00
LIMEROCK FOR SOLID WASTE	1 YR W/ 1 YR OPTION.	$100,000.00
LUBRICATING OILS	1 YR W/ 1 YR OPTION.	$127,000.00
MANHOLES, INLETS & GRATES (PRE-FABRICATED)	1 YR W/ 1 YR OPTION.	$100,000.00
MED. EXAM. REMOVAL & TRANSPORT OF BODIES	1 YR W /5- 1 YR OPTIONS	$113,000.00
MEDICAL DIRECTOR SERVICES	1 YR W/ 4-1 YR OPTIONS	$89,000.00
MEDICAL SUPPLIES inc. Pharmaceuticals, Controlled Drugs and Gloves	1 YR W/ 1 YR OPTION.	$900,000.00
MIX-IN PLACE ROAD RECYCLING	1 YR W/ 2-1 YR OPTION.	$205,000.00
MULCHING SERVICES	1 YR W/ 2-1 YR OPTION.	$1,500,000.00
OFFICE SUPPLIES	1 YR W/ 1 YR OPTION.	$185,000.00

ANNUAL BID/QUOTE/PROPOSAL LIST
FY 2014/2015

BIDS	RENEWAL OPTIONS	ESTIMATED ANNUAL EXPENDITURES
PAINT SUPPLIES AND /OR SERVICES	1 YR W/ 1 YR OPTION.	$150,000.00
PERSONAL PROTECTION EQUIPMENT	1 YR W/2 (1YR) OPTIONS	$200,000.00
PIPE - CURED IN PLACE	3 YR W/1-YR OPTION	$400,000.00
PLUMBING SERVICES (HOURLY RATES)	1 YR W/ 1 YR OPTION.	$100,000.00
POLYMER	1 YR W/ 2 YR OPTION.	$200,000.00
PUMP AND COMPRESSOR REPAIR	1 YR W/ 1 YR OPTION.	$200,000.00
RECYCLING ELECTRONICS	1 YR W/ 2-1 YR OPTION.	$285,000.00
ROAD & SHOULDER EXCAVATION	1 YR W/ 1 YR OPTION.	$50,000.00
ROAD CONSTRUCTION --MISC. MATERIALS	1 YR W/ 1 YR OPTION.	$300,000.00
ROAD STRIPING PAINT AND THERMOPLASTIC	1 YR W/ 2 YR OPTION.	$200,000.00
ROOFING/GUTTER MATERIALS AND SERVICES	1 YR W/ 1 YR OPTION.	$300,000.00
SCRAP METAL	2 YR W 1- 2 YR OPTION	$340,000.00
SECURITY SERVICES* (VARIOUS DEPTS)	1 YR W/4-1 YR OPTION	$600,000.00
SELF CONTAINED BREATHING APPARATUS CYLINDERS AND PACKS	1 YR	$250,000.00
SEPTAGE TREATMENT & DISPOSAL	1 YR W/2-1 YR OPTIONS	$200,000.00
SOIL CEMENT PUG-MILL MIX	1 YR W/ 1 YR OPTION.	$90,000.00
SUMMER FOOD SERVICE PROGRAM	1 YR W/4-1 YR RENEWALS PER FDOA GUIDELINES	$78,000.00
TEMPORARY SERVICES	1 YR W/ 1 YR OPTION.	$300,000.00
TIRE REMOVAL AND DISPOSAL (SHREDDING)	1 YR W/ 1 YR OPTION.	$138,000.00
TRAFFIC SIGN MATERIALS	1 YR W 1YR OPTION	$100,000.00
TRAFFIC SIGNAL/STREET LIGHTING MAINT.&CONST.	3 YR W/ 2-1 YR OPTION.	$200,000.00
TRAINING - FIRE RESCUE	1 YR W/ 1 YR OPTION.	$178,000.00
TREATMENT AND DISPOSAL OF DE-WATERED BIOSOLIDS	1 YR W/ 2-1 YR OPTION.	$370,000.00
TREE REMOVALS	1 YR W/ 1 YR OPTION.	$100,000.00
TRUCKING SERVICES (MATERIAL PER YD/PER MILE)	1 YR W/ 1 YR OPTION.	$92,000.00
UNIFORM PURCHASE (FIRE RESCUE)	1 YR W/ 1 YR OPTION.	$157,000.00
VETERINARY SUPPLIES*	1YR W/ 1YR OPTION	$200,000.00
WATER RESOURCES CHEMICALS	1 YR W/1 YR OPTION	$100,000.00
ADVERTISING SERVICES FOR TDO	2 YR W/ 3-1 YR OPTIONS	$250,000.00
ANTENNA AND TOWER MAINTENANCE	1 YR W/4-1 YR OPTIONS	$300,000.00
AUCTIONEER SERVICES	2 YR W/ 1 YR OPTION	% OF SALES
BILLING & MAILING SERVICE	3YR W/3-1YR OPTION	$980,000.00

ANNUAL BID/QUOTE/PROPOSAL LIST
FY 2014/2015

PROPOSALS	RENEWAL OPTIONS	ESTIMATED ANNUAL EXPENDITURES
BUS MAINTENANCE FOR SCAT	3 YR W/two (2) 1 YR. OPTIONS	$2,700,000.00
COPY MACHINE RENTAL	5 YR W/1 YR OPTION	$450,000.00
DEBT COLLECTION	3 YEARS	% OF TOTAL COLLECTED
DISASTER DEBRIS MANAGEMENT	5 YEARS	VARIED
DISASTER DEBRIS REMOVAL	5 YEARS	$690,000.00
FOOD CONCESSION AT SPESSARD HOLLAND BEACH	5 YR W/ (2) 36 Mos. RENEWALS	REVENUE
FULLFILLMENT AND PHONE ANSWERING SERVICES FOR TDO *	3 YR W/ 2-1 YR OPTIONS.	$115,000.00
GOLF COURSE CONCESSION	5 YR W/ (2) 36 Mos. RENEWALS	REVENUE
GOLF COURSE MAINTENANCE	5 YR W/ (2) 36 Mos. RENEWALS	$1,600,000.00
INSURANCE SERVICES*	VARIED	VARIED
JANITORIAL SERVICES*	1 YR W/ 3 YR OPTION.	$478,400.00
LAUNDRY CONCESSION FOR PARKS & REC	5 YR W/ (2)-1 YR OPTIONS	REVENUE
MAIL/COURIER MANAGEMENT SERVICES	1 YR W/ 4-1 YR OPTIONS	$431,000.00
MARKETING SERVICES FOR SCAT	3 YR W/ 1 2 YR OPTIONS	$570,000.00
PHYSICAL EXAMINATIONS	2 YR W/ 2-1 YR OPTIONS	$250,000.00
PIER CONCESSION	5 YR W/ (2) 3 YR OPTIONS	REVENUE
PUBLIC & MEDIA RELATIONS FOR TDO	2 YR W/3-1 YR OPTIONS	$210,000.00
SAP SUPPORT SERVICES	1 YR W/2-1 YR OPTIONS	$100,000.00
SCRAP METAL	5 yr Agreement	REVENUE
SEASONAL RECREATION WORKERS	3 YR W/2-1 YR OPTIONS	$1,290,000.00
SECURITY SERVICES* (VARIOUS DEPTS)	1 YR W/ 2-1 YR OPTION.	$535,000.00
SPORTS PROMOTION FOR TDC	3 YR W/ 2 YR OPTION	$218,000.00
STRUCTURED CABLING	2 YR W/3-1 YR OPTIONS	$50,000.00
TISSUE & EYE REMOVAL SERVICES	3 YR W/2-1 YR OPTIONS	REVENUE
VACATION PLANNERS FOR TDC	3 YR w/1 2YR OPTION	$50,000.00
VENDING MACHINE SERVICES (Facilities/Parks)	1 YR WITH 4/ 1 YR OPTIONS	REVENUE
WEBSITE DESIGN/MAINTENANCE FOR TDC	3 YR W/1-2 YR OPTION	$40,000.00

ANNUAL BID/QUOTE/PROPOSAL LIST
FY 2014/2015

REQUEST FOR QUALIFICATIONS	RENEWAL OPTIONS	ESTIMATED ANNUAL EXPENDITURES
CONTINUING CONSULTANT ENGINEERING SERVICES - SOLID WASTE	3-5 YEARS TOTAL (including renewals)	Selection will be made in accordance with the Florida Consultants Competitive Negotiations Act (§ 287.055, F.S.) and Brevard County Policy BCC-26 at negotiated rates.
CONTINUING CONSULTANT ENGINEERING SERVICES - UTILITY SERVICES		
CONTINUING CONSULTANT ENGINEERING SERVICES - HOUSING & HUMAN SERVICES		
CONTINUING CONSULTANT- PROFESSIONAL COASTAL ENGINEERING NRMO		
CONTINUING CONSULTANT- PROFESSIONAL ECOLOGICAL ENGINEERING NRMO		
CONTINUING CONSULTANT- PROFESSIONAL ENVIRONMENTAL SCIENCE ENGINEERING NRMO		
CONTINUING CONSULTANT- PROFESSIONAL CIVIL ENGINEERING NRMO		
CONTINUING CONSULTANT ENGINEERING SERVICES - PUBLIC WORKS		
CONTINUING CONSULTANT APPRAISAL SERVICES		
CONTINUING CONSULTANT GEOTECHNICAL SERVICES		
CONTINIUNING CONSTRUCTION MANAGEMENT SERVICES		
CONTINUING CONSULTANT - A/E DESIGN SERVICES		
CONTINUING ENGINEERING SERVICES FOR MECHANICAL/ELECTRICAL/PLUMBING DESIGN		
CONTINUING ENGINEERING SERVICES STRUCTURAL ENGINEERING DESIGN SERVICES		
CONTINUING ROOFING CONTRACTINGS SERVICES		
CONTINUING ROOFING CONSULTANT SERVICES		
Services may be bid or quoted depending on usage or performance experience.		
CONSULTANT ENGINEERING SERVICES - UTILITY SERVICES APPROVED CIP PROJECTS THAT EXCEED CONTINUING CONSULTANT DOLLAR THRESHOLD	PER PROJECT BASIS	Selection will be made in accordance with the Florida Consultants Competitive Negotiations Act (§ 287.055, F.S.) and Brevard County Policy BCC-26 at negotiated costs.

CONTRACT FOR SERVICES

THIS AGREEMENT by and between the Board of County Commissioners of Brevard County, Florida, a political subdivision of the State of Florida (hereinafter the "County"), and PennCredit having its primary business location at 916 South 14th St., Harrisburg, PA 17104 (hereinafter the "Contractor").

WITNESSETH:

WHEREAS, the County is desirous of obtaining the services of an experience, knowledgeable and qualified company to perform debt collection services in accordance with all applicable federal, state, and local laws, rules and regulations, and

WHEREAS, the County prepared a Request for Proposal (P-3-15-04) for Debt Collection Services; and

WHEREAS, the Contractor submitted a proposal to the County and was selected by the County as the best and most qualified applicant; and

WHEREAS, the provision of such services shall mutually benefit the parties hereto and the residents of Brevard County, Florida.

NOW THEREFORE, in consideration of the covenants herein contained, it is mutually agreed between the parties as follows:

1. SCOPE OF THE WORK: Unless modified by future amendments to this Agreement, the terms and conditions of this document will be binding on the parties. The Contractor shall furnish all labor, materials, equipment, machinery, tools, apparatus and transportation as needed to perform the following services:
    a. The Contractor shall undertake collection of delinquent accounts immediately upon receipt from County using agencies.
    b. The Contractor shall have the ability and equipment for collecting in the State of Florida as well as out-of-state collections.
    c. The Contractor shall perform collection activities including, but not limited to, formally demanding payment of each collection item and/or seeking an arrangement satisfactory to the County under which the collection item will be paid.
    d. The Contractor shall be responsible for performing collection activities subject to all applicable, federal, state, and local laws, rules, and regulations.
    e. The Contractor shall provide electronic and prompt remittance of collections and all collection substantiating documentation to the County.
    f. The Contractor shall provide maintenance of appropriate records, including financial records that can be audited.
    g. The Contractor shall provide electronic communications allowing access to account status by designated County staff.
    h. The Contractor shall provide each County using agency periodic performance and management reports detailing individual account information.
    i. The Contractor shall initiate Credit Agency notifications for any accounts as previously approved by the County.
    j. The Contractor shall not litigate or compromise any undisputed bill for less than its full value.
    k. The Contractor shall submit any disputed amount to the appropriate County using agency for review and research before continuing with the collection process.
    l. The Contractor shall refer all bills it deems to be collectible through litigation to the appropriate County using agency for authorization.
    m. Unless otherwise stated, all uncollected accounts will be canceled and returned to the appropriate County using agency 360 days after the date of assignment.
    n. The Contractor will be required to acknowledge all accounts received by the Contractor in any calendar month.

o. The County will review and have final approval of all printed formats of collection notices and telephone scripts used by the Contractor for collection of past due accounts.
p. The Contractor shall provide the following reports electronically to the appropriate County using agency or shall provide real-time electronic access to such information for each account assigned to the Contractor:
    i. Acknowledgement Report – Number of files and dollar amount received from the County using agency: Daily
    ii. Collection Report – Number of accounts/Listing of Accounts and amount remitted, and date of collection: Daily
    iii. Cancel and Return Report Inventory Listing: Weekly
    iv. Inventory Listing: Weekly
    v. Credit Reporting Service Notification: Weekly
    vi. Other reports that may directly relate to the scope of services or other such reports mutually agreed upon may be requested as needed.
q. The Contractor shall submit a uniform fee for all accounts. The Contractor will retain the collection fee and report that amount with each transmittal of collections to the County.
r. The Contractor will describe forms of payment allowed for payment by debtors. If the Contractor allows payment by check, the Contractor will specify the period for check clearance and remittance to the appropriate County using agency. The debtor will also be informed of this time period.
s. The Contractor, with prior approval of the appropriate County using agency, shall accept partial payments upon the County using agency's acceptance of an established payment schedule between the Contractor and the payee.

2. COLLECTION DATA: The County shall furnish or provide the Contractor with the following:
    a. Provide name, case number(s), last known address, date of birth, social security number, mail forwarding information, etc., if known, from the information currently available to the County.
    b. Provide access to the Contractor, with proper notification, to all reports concerning any of the collection items.
    c. Case information will be automated transmittal by tape, diskette, or electronic, to the Contractor. The automated transmittal will assure both speed and accuracy of the information transfer.

3. TERM: The term of the Agreement shall begin February 1, 2015 and continue through January 31, 2018.

4. PAYMENTS:
    a. With the exception of the provisions as stated in (b) of this section, County shall pay the Contractor for Services provided under this Agreement, on a contingency basis, the sum of 12.7% of actual amounts collected where files are submitted by the County to the Contractor electronically or by magnetic media. Where, under prior authorization of the County, the Contractor provides legal services required in the collection of accounts, the County shall pay the Contractor, on a contingency basis, the sum of 20% of the actual amounts collected. Payment to the County of collected items shall be as follows: Wire transfer on a weekly basis with the County. This weekly wire transfer would involve funds collected net of the Contractor's contingent fee. Any cost associated with the wire transfer will be paid for by the Contractor. If necessary, other methods may be agreed upon between the Contractor and the County. The County reserves the right to deduct from any contractor invoice, an amount for defective or non-conforming work, or for work not provided but invoiced. The County shall remit payment to the Contractor for payments of assigned accounts received directly by County offices in accordance with the Florida Prompt Payment Act, Florida Statute section 218.70, et seq.
    b. No contingency fee shall be withheld or charged for any account where payment is received directly by the County within 15 days of referral to the Contractor by the County. The Contractor and County agree that any payments received by the County within 15 days of referral to the Contractor shall be deemed non-commissionable.

5. REPORTS: As full or partial payment of collection items are collected by the Contractor, they shall be remitted to the County within thirty (30) days of receipt. Each remittance shall be accompanied by a dated report for each Agency for whom collection was performed. Each report shall detail each collection item included in the remittance, state the name of the person from whom collected, amount collected, amount remitted, unpaid balance of the collection item, and case or other identifying number or information. The County will provide a monthly listing of all payments received directly by the County for inclusion into the Contractor's report. In addition to the reports to be provided to each Using Agency for whom collection was performed and submitted with remittances, the Contractor will provide monthly, a copy of that report and a report briefly stating the status of collection efforts to the Central Services Director. Reports shall also detail the amount collected and the fee amount deducted. The failure of the Using Agency to promptly supply data to the Contractor shall not delay the reports of collection provided to the other departments.

6. INDEMNIFICATION: The Contractor shall indemnify and hold harmless the County, its elected representatives, officers, volunteers, agents and employees from and against any and all claims, losses, liabilities, or damages, demands and actions including payment of reasonable attorney's fees, arising out of or resulting from the negligent performance or failure of performance of the Contractor's obligations under this Agreement. Contractor shall not be liable for any claims, losses, liabilities, or damages, demands and actions to the extent caused by the negligence or willful misconduct of County, its elected representatives, offices, volunteers, agents or employees. It is the intent of the parties that, where the negligence or willful misconduct of the County, its elected representatives, officers, volunteers, agents or employees, is determined to have been contributory, the principals of comparative negligence as applied in the State of Florida shall be followed and each party shall bear the proportionate cost attributable to its own negligence or willful misconduct. In no event will Contractor be liable for lost profits/ revenues from transferred accounts, unless such collections have been received by Contractor and a loss is directly attributed to Contractor's negligent actions or omissions, or liable to County or third parties for any special, incidental or consequential damages, except as provided by law, or for the uncollectability of any account under any circumstances. This Section shall survive the termination or expiration of the Agreement.

7. MODIFICATIONS TO CONTRACT: This contract, together with any exhibits, task assignments and schedules constitute the entire contract between the County and the Contractor and supersedes all prior written or oral understandings. This contract and any exhibits, task assignments and schedules may only be amended, supplemented or canceled by a written instrument duly executed by the parties hereto.

8. INSURANCE: The Contractor, at its own expense, shall keep in force and at all times maintain during the term of this Agreement:

   a) Commercial General Liability policy with minimum limits of $1,000,000 including coverage for bodily injury, property damage and personal injury. Such policies of insurance shall insure the Contractor in the amount of $1,000,000 to cover any and all liability claims arising in connection with any particular occurrence. The Commercial General Liability certificate of insurance shall indicate that the policy have been endorsed to cover the County as an additional insured

   b) Professional Liability Insurance (including Errors and Omissions) with minimum limits of $1,000,000 per occurrence, if occurrence form is available; or claims made form with "tail coverage" extending three (3) years beyond completion and acceptance of the project with proof of "tail coverage" Contractor shall submit annually to the COUNTY a current Certificate of Insurance proving claims made insurance remains in force throughout the same three (3) year period.

   c) Comprehensive Insurance covering employee dishonesty and theft, disappearance and destruction of money and securities with minimum limits of $250,000 per occurrence.

d) Workers' Compensation Coverage: Full and complete Workers' Compensation Coverage, as required by State of Florida Law, shall be provided for Contractor's employees.

d) Insurance Certificates: Each policy shall require that thirty (30) days prior to expiration, cancellation, non-renewal or any material change in coverage or limits, a notice thereof shall be given to County by certified mail to: Brevard County Purchasing Department, 2725 Judge Fran Jamieson Way, Building C, Suite C303, Viera, FL 32940. Contractor shall also notify County, in a like manner, within twenty-four (24) hours after receipt, of any notices of expiration, cancellation, non-renewal or material change in coverage received by said Contractor from its insurer; and nothing contained herein shall absolve Contractor of this requirement to provide notice.

Companies issuing the insurance policy, or policies, shall have no recourse against County for payment of premiums or assessments for any deductibles which all are at the sole responsibility and risk of Contractor.

The term "County" or "Brevard County" shall include all authorities, boards, bureaus, commissions, divisions, departments, and offices of County and individual members, employees thereof in their official capacities, and/or while acting on behalf of Brevard County.

The policy clause "Other Insurance" shall not apply to any insurance coverage currently held by County to any such future coverage, or to County's Self-Insured Retention of whatever nature.

9. ATTORNEY'S FEES: In the event of any legal action to enforce the terms of this contract each party shall bear its own attorney's fees and costs.

10. GOVERNING LAW: This agreement shall be governed, interpreted and construed according to the laws of the State of Florida.

11. COMPLIANCE WITH STATUTES: It shall be the Contractor's responsibility to be aware of and comply with all federal, state and local laws.

12. VENUE: Venue for any legal action by any party to this agreement to interpret, construe or enforce this Agreement shall be in a court of competent jurisdiction in and for Brevard County, Florida and any trial shall be non-jury.

13. ASSIGNMENTS: Contractor shall not assign any portion of this agreement without the written permission of the County.

14. TERMINATION: If the Contractor fails to properly perform the conditions of the Contract, in the sole opinion of the County, the County will communicate to the Contractor in writing the problem(s) that exist. The Contractor shall have up to thirty (30) calendar days to rectify the problem(s). If the same or other problems persist or recur the County may immediately cancel the contract by advising the Contractor in writing. The County reserves the right to cancel the contract without cause with a minimum thirty (30) days written notice. Termination or cancellation of the Contract shall not relieve the Contractor of any obligations for any deliverables entered into prior to the termination to the Contract (i.e. reports, statements of accounts, etc. required and not received). Termination or cancellation of the Contract shall not relieve the Contractor of any obligations or liabilities resulting from acts committed by the Contractor prior to the termination of the Contract. Unless termination is a result of misconduct, upon any termination of this Agreement, (a) Contractor will continue its collection efforts with respect to the accounts assigned prior to and existing on the date of termination for a period of ninety (90) days; (b) Contractor will continue its collection efforts with respect to all accounts that have been referred by Contractor to an attorney for the commencement of a lawsuit for collection and all accounts where payment arrangements are being met according to agreed-upon terms, until the conclusion of such lawsuit or payment arrangement; and (c) County will pay Contractor the contingency fee with respect to the collections referenced in (a) and (b) above,

regardless of when the collections are received and whether received by County or Contractor through litigation. If termination is due to misconduct, all accounts shall be immediately returned to the County and no more payments will be due to the Contractor for any payments received after the effective date of termination.

15. INDEPENDENT CONTRACTOR: The contractor shall perform the services under this agreement as an independent contractor and nothing contained herein shall be construed to be inconsistent with this relationship or status. Nothing in this agreement shall be interpreted or construed to constitute the Contractor or any of its agents or employees to be the agent, employee or representative of the County.

16. RIGHT TO AUDIT RECORDS: In the performance of this Agreement, the Contractor shall keep books, records, and accounts of all activities related to the Agreement in compliance with generally accepted accounting procedures. All documents, papers, books, records and accounts made or received by the Contractor in conjunction with the Agreement and the performance of this Agreement shall be open to inspection during regular business hours by an authorized representative of the office and shall be retained by the Contractor for a period of three (3) years after termination of this Agreement, unless such records are exempt from section 24(a) of Article I of the State Constitution and section 119.07(1) Florida Statutes.

17. UNAUTHORIZED ALIEN WORKERS: Brevard County will not intentionally award publicly-funded contracts to any contractor who knowingly employs unauthorized alien workers, constituting a violation of the employment provisions contained in 8 U.S.C. Section 1324a(e)(Section 274A(e) of the Immigration and Nationality Act "INA"). The County shall consider a contractors intentional employment of unauthorized aliens as grounds for immediate termination of this Agreement.

18. FEDERAL TAX ID NUMBER: The Contractor shall provide to the County their Federal Tax ID Number or, if the Contractor is a sole proprietor, a Social Security Number.

19. EMPLOYMENT: The Contractor shall not engage the services of any person or persons now employed by the County, including any department, agency, board or commission thereof, to provide services relating to this contract without written consent from the County.

20. PUBLIC ENTITY CRIMES: 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 contractor, supplier, subcontractor, or consultant under a contract with a public entity, and may not transact business with any public entity in excess of the threshold amount provided in s. 287.017 for CATEGORY TWO for a period of thirty six (36) months from the date of being placed on the convicted vendor list.

21. USE BY OTHER GOVERNMENTAL ORGANIZATIONS: Should another governmental organization in the State of Florida desire one or more of the herein described Debt Collection Services through the cooperative use of this Agreement, the Contractor may provide such service(s) to such organization for the same compensation outlined in the Agreement. Notwithstanding any provision to the contrary, the County, or any of its User Departments shall not be responsible for the provision of staff or the costs of such services. Any other governmental organization shall be responsible for execution of its own requirements with the Contractor.

22. CONSTRUCTION OF AGREEMENT: The parties hereby acknowledge that they fully reviewed this agreement, its attachments and had the opportunity to consult with legal counsel of their choice, and that this agreement shall not be construed against any party as if they were the drafter of this Agreement.

23. NOTICE: Notice under this agreement shall be given by certified mail or hand delivery as follows: Leslie Rothering, Purchasing Services Manager, 2725 Judge Fran Jamieson Way, Bldg. C, Viera,

Florida 32940 and Notice shall be given to the Contractor by certified mail or hand delivery as follows: Rhett Donagher, Manager of Sales and Marketing, 916 S. 14th St, Harrisburg, PA 17104

END OF PAGE

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals on the day and year first above written.

ATTEST:

Scott Ellis, Clerk

BOARD OF COUNTY COMMISSIONERS OF
BREVARD COUNTY, FLORIDA

By: _____
Robin L. Fisher, Chairman
Brevard County Commission

As approved by Board on September 16, 2014

Reviewed for legal form and content: Alexander L. Nelson
Assistant County Attorney

CONTRACTOR

By: _____
Signature

Date: 1/29/15

Thomas F. Foley, Jr., COO
Name & Title, Typed or Printed

Penn Credit Corporation
Name of Company, Corp., etc.

916 S. 14th Street
Mailing Address

Harrisburg, PA 17104
City, State, Zip

800-800-3328 ext. 3003
Area Code/Telephone Number

SEAL

ATTEST:

_____
Signature

Steven Standridge - Technical Writer
Name & Title, Typed or Printed

BREVARD COUNTY
BOARD OF COUNTY COMMISSIONERS

INITIAL CONTRACT FORM

SECTION I

The following information must be completed on all new contracts submitted to the Board.

1. Contractor: PennCredit	
2. Fund/Account #:	**Division Name:** Purchasing Services
4. Contract Description: Debt Collection Services	
5. Contract Monitor: Leslie Rothering	**6. Mail Stop #:** 83
7. Dept./Office Director: Teresa Camarata	**8. Contract Type:**
ACTION DATE:	**ACTION REQUIREMENT:** *Contract Approval*

SECTION II

The following departments must approve all contracts submitted to the Board:

	APPROVAL			
COUNTY OFFICE	**YES**	**NO**	**INITIALS**	**DATE**
User Agency	X		LAR	12/05/14
Risk Management	✓		JLS	12/17/2014
County Attorney				

If any office denies approval, the package will be returned immediately to the User Agency.

NOTE: *This form should be attached to all new contracts being submitted to the Board for approval. After the contract has been approved, the contract package, including this form, will go to the Clerk to the Board. The Clerk's office will return the Initial Contract Form to department for contract to be entered into the Contract Management System. See AO-29 for additional information.*

AO-29: EXHIBIT I

RECEIVED
DEC 19 2014
Brevard County
Purchasing Services

BREVARD COUNTY
BOARD OF COUNTY COMMISSIONERS

INITIAL CONTRACT FORM

SECTION I

The following information must be completed on all new contracts submitted to the Board.

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SECTION II

The following departments must approve all contracts submitted to the Board:

	APPROVAL			
COUNTY OFFICE	**YES**	**NO**	**INITIALS**	**DATE**
User Agency	X		LAR	12/05/14
Risk Management				
County Attorney	LKK		LKK	1/22/15

If any office denies approval, the package will be returned immediately to the User Agency.

NOTE: *This form should be attached to all new contracts being submitted to the Board for approval. After the contract has been approved, the contract package, including this form, will go to the Clerk to the Board. The Clerk's office will return the Initial Contract Form to department for contract to be entered into the Contract Management System. See AO-29 for additional information.*

AO-29: EXHIBIT I

CONTINUING
CONSTRUCTION MANAGER (AT RISK)
SERVICES AGREEMENT

This is an Agreement entered into this 14th day of July 2015, by and between **BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS**, a political subdivision of the State of Florida, hereinafter referred to as COUNTY, and **IVEY'S CONSTRUCTION, INCORPORATED** whose address is 4060 N. Courtenay Parkway, Merritt Island, Florida 32953, a corporation under the laws of the State of Florida, hereinafter referred to as CONSTRUCTION MANAGER.

For and in consideration of the mutual agreement hereinafter contained, the COUNTY hereby retains the CONSTRUCTION MANAGER and the CONSTRUCTION MANAGER hereby covenants to provide Continuing Construction Manager (At Risk) services for Projects ($1 - $2,000,000 each).

ARTICLE 1

1.1 The CONSTRUCTION MANAGER agrees to furnish its best skill and judgement and to cooperate with the Architect/Engineer, where applicable, in furthering the interest of the COUNTY. The CONSTRUCTION MANAGER agrees to furnish efficient business administration and supervision and to use its best efforts to complete the Project(s) in an expeditious and economical manner consistent with the interests of the COUNTY.

1.2 The Construction Team: The CONSTRUCTION MANAGER, the COUNTY and the Architect/Engineer (the "Construction Team") will work as a team through construction completion. The CONSTRUCTION MANAGER shall provide leadership to the Construction Team on all matters relating to construction. The Architect/Engineer will provide leadership to the Construction Team on all matters relating to design.

ARTICLE 2

2.1 The CONSTRUCTION MANAGER'S basic services under this Agreement include construction management services for projects ($1 - $2,000,000). For each proposed Project, the COUNTY and the CONSTRUCTION MANAGER shall enter into a separate "Agreement Between Owner and Construction Manager" (Attachment "A").

2.2 Selection for each proposed Project will be per Florida Statute 287.055, and Qualification Based Selection Criteria approved by the Board of County Commissioners, as follows:

A. Ability of firms professional personnel given the project's special characteristics;
B. Willingness to meet time and budget requirements;
C. Physical location of firm;
D. Recent, current, and projected workload of the firms available under the continuing contract;
E. Volume of work previously awarded to the firm by the Board of County Commissioners, provided distribution does not violate the principles of selection of the most qualified firm for the project;
F. Previous Board of County Commissioners experience, including staff evaluations on file with Brevard County Facilities Construction and Brevard County Purchasing Services.

2.3 The Contract Time for performance of each proposed Project shall be established in the "Agreement Between Owner and Construction Manager" for each proposed Project, including the Notice to Proceed.

2.4 This Agreement shall remain in effect for a period of one (1) year, and may be renewed for an additional three (3) one-year increments at the COUNTY's option, based upon satisfactory performance of the CONSTRUCTION MANAGER.

2.5 The Guaranteed Maximum Price (GMP) for each proposed Project shall include the Cost of the Work required by the Contract Documents, and the CONSTRUCTION MANAGER'S fee. The GMP will be negotiated based on Contract Documents, Plans and Specifications for each proposed Project provided by the COUNTY.

2.6 Insurance, Payment and Performance Bonds will be provided to the COUNTY by the CONSTRUCTION MANAGER for each proposed Project in accordance with the initial Request for Proposal #P-3-11-04.

ARTICLE 3

3.1 The COUNTY and CONSTRUCTION MANAGER respectively bind themselves, their partners, successors, assigns and legal representatives to this Agreement and to the partners, successors, assigns and legal representatives of other party with respect to all covenants of this Agreement. Neither the COUNTY nor the CONSTRUCTION MANAGER shall assign this Agreement without written consent of the other.

3.2 This Agreement shall be governed by the laws of the State of Florida.

IN WITNESS WHEREOF, the parties have affixed their signatures, effective on the date first written above.

BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

By: _____
Robin Fisher, Chair

As Approved By The Board On: SEP 16 2014

Attest: _____
Scott Ellis, Clerk of Circuit Court

IVEY'S CONSTRUCTION

By: _____

Title: President

Reviewed for legal form and content:

_____
Deputy County Attorney

6/19/15
Date

ATTACHMENT "A"

AGREEMENT
BETWEEN OWNER AND CONSTRUCTION MANAGER

THIS AGREEMENT made the ____ day of _____ in the year Two Thousand _____ between the **BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS**, a political subdivision of the State of Florida whose address is 2725 Judge Fran Jamieson Way, Viera, Florida 32940 (hereinafter referred to as "Owner"), and _____ whose address is _____ (hereinafter referred to as "Construction Manager"), a company licensed to do business in the State of Florida.

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. The Construction Manager covenants with the Owner to furnish the best skill and judgment and to cooperate with the Architect/Engineer in furthering the interests of the Owner. The Construction Manager agrees to furnish efficient business administration and superintendence and use its best efforts to complete the Project in 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 Design 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 **Attachment "A"** attached.

1.2 Scope of Work – A general description of the Work/Project to be built/constructed/installed under this Agreement (**Attachment "B"**).

1.3 Definitions:

Project - The Project is the total work to be performed under this Agreement. The Project consists of planning, design review, permitting, construction (which includes all labor, equipment, material and supervision) and code inspection necessary to build/construct and complete the Scope of Work identified in Attachment "B" (Scope of Work).

Owner - Brevard County Board of County Commissioners, Central Services

Department - Facilities, 2725 Judge Fran Jamieson Way, Building A, 2nd Floor, Viera, Florida 32940, (321) 633-2050; facsimile (321) 633-2101. For the purposes of this agreement, the Owner may also include the County Manager or the Project Manager with regard to the performance of designated functions and duties specified for each under the terms and provisions of this agreement.

Contract Documents - Consist of this Agreement with attachments, Scope of Work, the drawings, the specifications, the GMP, any Conditions of the Contract between the Owner and the Construction Manager (General, Special, Supplementary and other conditions), permit conditions, if any, grant specifications, any addenda to the foregoing listed documents and all change orders, amendments or modifications as provided in Article 10, whether or not any of the foregoing listed documents have been attached hereto.

Permitting Authority - All applicable Federal, State, County and local agencies responsible for permitting and code inspections on projects administered by the Owner.

Construction Manager –

Architect/Engineer –

Project Director - The person designated by the Owner to provide direct interface with the Construction Manager with respect to the Owner's responsibilities. Joan Van Sickle, Construction Manager, is the designated Project Director, and _____ is the designated Construction Coordinator.

Owner's Representatives - The Project Director and his/her supervisors and/or designees.

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

Guaranteed Maximum Price (GMP) - The Guaranteed Maximum Price for the construction of the project, which shall be subject to adjustments only as provided herein. GMP includes Cost of the Work and Construction Manager's fee for Construction Phase services. The Guaranteed Maximum Price does include the cost for Owner direct purchases, however, all Owner direct purchases will be deducted in one deductive change order in accordance with **Attachment "C"** (Direct Purchasing Procedure) at the end of the project.

Substantial Completion - the point in the construction where all essential elements of the Project are sufficiently complete in conformance with the Contract, that the OWNER has both the occupancy of the Project, as evidenced by a Certificate of Occupancy issued by the governmental authority with jurisdiction and the beneficial use of the Project for its intended purpose where

only minor punch list items are required for final completion. Substantial Completion shall not be deemed to have occurred where 1) latent defects are revealed subsequent to use and occupation of the project by the OWNER or 2) where the scope of substantial defects in workmanship or materials are not readily observable or discoverable when use and occupancy of the project commenced or 3) the failure to meet grant specifications, if any.

1.4 Extent of Agreement - This Agreement for Construction Management services for the construction of the _____ between the Owner and the Construction Manager supersedes any prior negotiations, representations or agreements. The drawings, specifications and other descriptive documents defining the work to be included under this construction contract are identified in **Attachment "D"**. The Construction Manager shall obtain from the Owner three (3) sets of signed, sealed and dated drawings, specifications and other documents upon which the GMP is based; 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 (1) set of the documents to the Project Director along with his GMP proposal, while keeping one (1) set for himself and returning one (1) set to the Architect/Engineer.

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.

ARTICLE 2

CONSTRUCTION MANAGER'S RESPONSIBILITIES

Construction Manager shall perform all services described in this Article. The services to be provided under Paragraph 2.1 constitute the Pre-Construction Phase services. The services to be provided under Paragraph 2.2 thru 2.9 constitute the Construction Phase services. The parties acknowledge the Construction Phase shall commence before the Pre-Construction Phase is completed, and to a certain extent both phases shall proceed concurrently.

2.1 PRE-CONSTRUCTION PHASE

2.1.1 Preliminary Evaluation - Construction Manager shall provide a preliminary evaluation of Owner's program and Project budget requirements, each in terms of the other.

2.1.2 Consultation - Construction Manager will provide Design Disciplines Construction Documents Plans and Specifications review at all design milestones and a final constructability review. The review at each milestone will identify areas of omission, overlapping and identify documents to be modified in order to clarify the construction details. The review will also include the coordination and

interface of the contract document's General Conditions, Special Conditions, trade contractor bid packages and site utilization planning during construction. Reviews shall be completed and comments provided within five (5) business days. As part of the design review, Construction Manager will provide Value Engineering and construction alternatives, identifying to the Owner and Architect options for systems and components that are cost effective, ease of maintainability and efficiency to be considered.

Construction Manager, with Architect, has scheduled and attended, and will continue to jointly schedule and attend, **weekly** progress meetings (*or as determined by the Project Director or Project Manager*) with Owner and Architect. Construction Manager has and will continue to consult with Owner and Architect regarding site use and improvements, and the selection of materials, building systems and equipment. Construction Manager has provided and will continue to provide recommendations on construction feasibility; actions designated to minimize adverse effects of labor or material shortages; time requirements for procurement, installation and construction completion; and factors related to construction cost including estimates of alternative designs or materials, preliminary budgets and possible economies.

2.1.3 Preliminary Project Schedule - Construction Manager has prepared a Preliminary Project Schedule, a copy of which is attached as **Attachment "E"**. Construction Manager shall coordinate and integrate the Preliminary Project Schedule with the services and activities of Owner, Architect and Construction Manager. The Construction Manager shall 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 Total Project Schedule. The schedule shall include all phases of construction work, material supplies, long lead procurement, approval of shop drawings, change orders in progress, schedules for change orders, and performance of testing requirements. The Construction Manager shall advise the Owner, its representatives and the Architect/Engineer of their required participation in any meeting or inspection giving each at least one (1) week notice unless such notice is made impossible by conditions beyond the Construction Manager's control. The Construction Manager shall hold jobsite meetings at least once each week with the Construction Team and at least once each week with the subcontractors and the Architect/Engineer field representatives, and Owner or more frequently as required by work progress, to review progress, discuss problems and their solutions and coordinate future work with all subcontractors.

2.1.4 Subcontractors and Suppliers - Construction Manager shall continue to develop subcontractor interest in the Project and shall furnish to Owner and Architect for their information a list of possible subcontractors, including suppliers who are to

furnish materials or equipment fabricated to a special design, from whom proposals will be requested for each principal portion of the Project. Owner will promptly reply in writing to Construction Manager if Owner has an objection to any such subcontractor or supplier. The receipt of such list shall not require Owner to investigate the qualifications of proposed subcontractors or suppliers, nor shall it waive the rights of Owner to later object to or reject any proposed subcontractor or supplier.

2.1.5 Long Lead and Owner Direct Procurement - The Construction Manager shall review the design for the purpose of identifying long lead and Owner direct procurement items (machinery, equipment, materials and supplies). When each item is identified the Construction Manager shall notify the subcontractors, the Project Director, and the Owner of the required procurement and schedule. Such information shall be included in the bid documents and made a part of all affected subcontracts. 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 Invitation for Bids. The Construction Manager shall keep informed of the progress of the respective subcontractors and/or suppliers, manufacturing or fabricating such items and notify the Project Director, Owner and Architect/Engineer of any problems or prospective delay in delivery.

2.1.6 Extent of Responsibility - The recommendations and advice of Construction Manager concerning design alternatives shall be subject to the review and approval of Owner and Owner's professional consultants. It is not Construction Manager's responsibility to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations. However, if Construction Manager recognizes that portions of the Drawings and Specifications are at variance therewith, Construction Manager shall promptly notify Owner and Architect in writing.

2.1.7 Equal Employment Opportunity and Affirmative Action - Construction Manager shall comply with applicable laws, regulations and special requirements of the Contract Documents regarding equal employment opportunity and affirmative action programs.

2.1.8 Separate Contracts Planning - The Construction Manager shall review the design with the Architect/Engineer and make recommendations to the Owner and to the Architect/Engineer with respect to dividing the work in such manner as will permit the Construction Manager to take bids and award separate construction subcontracts on the current schedule while the design is being completed. The Construction Manager shall take into consideration such factors as natural and practical lines of severability, sequencing, effectiveness, access and availability constraints, total time for completion, construction market conditions, availability of labor and materials, community relations and any other factors pertinent to saving time and cost by overlapping design and construction that are authorized

by the Owner.

2.2 CONSTRUCTION PHASE

2.2.1 Interfacing -

(1) The Construction Manager shall take such measures as are appropriate to provide that all construction requirements will be covered in the separate subcontracts for procurement of long lead items, the separate construction subcontracts and the general conditions items performed without duplication or overlap, sequenced to maintain completion of all work on schedule. Particular attention shall be given to provide that each bid package clearly identifies the work included in that particular separate subcontract, its schedule for start and completion and its relationship to other separate subcontractors.

(b) Subcontractor Interfacing - The Construction Manager shall be the single point of interface with all Subcontractors for the Owner, and all of its agents and representatives, including the Architect/Engineer. The Construction Manager shall negotiate all change orders, field orders and request for proposals, with all affected Subcontractors and shall review the costs of those proposals and advise the Owner and Architect/Engineer of their validity and reasonableness, acting in the Owner's best interest prior to requesting approval of each change order from the Owner. Before any work is begun on any change order, an executed Authorization to Initiate Work form from the Owner must be issued. However, when health and safety are threatened, the Construction Manager shall act immediately to remove the threat to health and safety. The Construction Manager shall also carefully review all shop drawings and then forward the same to the Architect/Engineer for review and actions. The Architect/Engineer will transmit them back to the Construction Manager who will then issue the shop drawings to the affected Subcontractor for fabrication or revision. The Construction Manager shall maintain a suspense control system to promote expeditious handling. The Construction Manager shall request the Architect/Engineer to make interpretations of the drawings or specifications requested of the Construction Manager by the Subcontractors and shall maintain a suspense control system to promote timely response. The Construction Manager shall advise the Project Director and Architect/Engineer when timely response is not occurring on any of the above.

2.2.2 Solicitation of Bids

(1) Without assuming responsibilities of the Architect/Engineer, the Construction Manager shall prepare Invitations for Bids (or Request For Proposals, when applicable) for all procurements of long lead times,

materials and services for Subcontractor contracts and for site utilities.

(2) 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.

(3) For each separate subcontractor or construction trade contract used in this project, the Construction Manager shall, unless waived by the 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.

(4) In accordance with Article 2.4.2 the Construction Manager shall open and review all bids and enter into contract(s) with those low bidders determined to be most qualified by the Construction Manager. The Construction Manager shall make every effort to follow the County's Pre-Qualification Ordinance 98-37 (**Attachment "F"**) for applicable subcontract trades.

2.2.3 Bonds - For those projects where the cost will exceed $100,000.00, 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 (**Attachment "G" and "H"**), certified copies of the recorded 100% Public Construction Performance Bond and 100% Public Construction Payment Bond each in an amount not less than the total construction cost (GMP) as defined in Article 9 and inclusive of the construction fee. *Payment and Performance Bonds shall be recorded (by the Construction Manager) in the official record of the County in which the project is located.* The Contractor must provide a copy of the bond(s) to all subcontractors and notify them of deadlines to make claims under the bonds.

2.2.4 Quality Control - The Construction Manager shall develop and maintain a program, acceptable to the Owner and Architect/Engineer, to assure quality control of the construction (*this may include personnel if approved by the Owner*). The Construction Manager shall have a qualified and competent Superintendent to supervise the work of all Subcontractors providing instructions to each when their work does not conform to the requirements of the plans and specifications and shall continue to exert 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 and 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.

2.3 Guaranteed Maximum Price (GMP) and Contract Time

2.3.1 Construction Manager acknowledges and agrees the Drawings and Specifications are sufficiently complete for Construction Manager to propose a Guaranteed Maximum Price (GMP), which is the total not to exceed sum of the Construction Manager's Fee and the Cost of the Project. Accordingly, the Guaranteed Maximum Price (GMP) is hereby established at $_____. *The final approved GMP spread sheet is hereby attached as* **Attachment "I"** *to and shall become a part of this Agreement between Owner and Construction Manager.*

2.3.2 The Cost of the Work shall include Construction Manager's contingency, a sum agreed to by all parties for the Manager's use to cover costs arising from unforeseen conditions in the project. Construction Manager's contingency is hereby established as a separate line item of $_____ within the Guaranteed Maximum Price.

2.3.3 Basis of Guaranteed Maximum Price (GMP)
The Guaranteed Maximum Price, herein established is based upon the following:

.1 The list of the Drawings and Specifications, including all addenda thereto, and the Conditions of the Contract, which are identified in the Attachments to this Agreement.

.2 The list of clarifications and assumptions made by Construction Manager in the preparation of its Guaranteed Maximum Price proposal to supplement the information contained in the Drawings and Specifications.

.3 The Preliminary Construction Schedule (**Attachment "E"**). As reflected in said Schedule, Construction Manager is to achieve Substantial Completion of the Work within ____ calendar days from issuance of Notice to Proceed. Final Completion shall be achieved within an additional ____ calendar days.

2.3.4 Included within the Guaranteed Maximum Price is the Construction Manager's fee. The Construction Manager's Fee is hereby established as $_____ for services provided in this Agreement. The sum of the Cost of the Project and the Construction Manager's Fee shall not exceed the Guaranteed Maximum Price. The Construction Manager's Fee shall constitute Construction Manager's total compensation for profit. All costs in excess of the final approved GMP (as

reduced by Owner direct purchases, if any, in accordance with **Attachment "C"**) are the responsibility of the Construction Manager. Any savings between the GMP (as reduced by Owner direct purchases) and the sum of the actual cost of the Project plus the Construction Manager's fee will be returned to the Owner.

2.3.5 Prior to issuance of the Construction Phase Notice to Proceed, Construction Manager shall not incur any costs to be reimbursed as part of the Cost of the Project, except as Owner may specifically authorize in writing.

2.3.6 The Guaranteed Maximum Price and date of Substantial Completion shall be subject to additions and deductions by a Change Order as provided in the Contract Documents.

2.3.7 The Guaranteed Maximum Price shall include in the Cost of the Project only those taxes which are enacted and in effect at the time the GMP was determined.

2.4 Construction Phase

2.4.1 General

2.4.1.1 The Construction Phase shall commence on the date identified in the Notice to Proceed to be issued by the Owner.

2.4.1.2 The Construction Manager shall cause all Work required by the Contract Documents to be properly completed in accordance with the terms of the Contract Documents and within the Contract Time.

2.4.1.3 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 and to coordinate, inspect and provide general direction of the work and progress of the subcontractors, and the Construction Manager shall provide no less than those personnel during the respective phases of construction. The Construction Manager shall not change any of those designated persons 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 reasonably withheld.

2.4.1.3.1 The Construction Manager shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during the progress of the work. The superintendent shall represent the Construction Manager and all communications given to the superintendent shall be as binding as if given to the Construction Manager.

2.4.1.3.2 The superintendent shall be in attendance at the Project site not less than

eight (8) hours per day, five (5) days per week, and any time work is being performed at the jobsite, unless the job is closed down due to a general strike or conditions beyond the control of the Construction Manager or until completion or termination of the Contract. It is understood that such superintendent shall be acceptable to the Owner and the Architect and shall be the one who will be continued in that capacity for the duration of the project, unless the Owner otherwise agrees. The superintendent shall not be employed on any other project for or by Construction Manager or any other entity during the course of the work.

2.4.1.4 Lines of Authority - The Construction Manager shall establish and maintain lines of authority for its personnel, and shall provide this description/definition to the Owner and all other affected parties such as the code inspectors of the permitting authorities, the subcontractors, 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 the Architect/Engineer may attend meetings between the Construction Manager and subcontractors, however, such attendance shall not diminish either the authority or responsibility of the Construction Manager to administer the subcontractor.

2.4.2 Administration

2.4.2.1 Those portions of the Project that Construction Manager does not customarily perform with Construction Manager's own personnel shall be performed under subcontracts or by other appropriate written agreements with Construction Manager. Construction Manager shall obtain bids from subcontractors and from suppliers of materials or equipment fabricated to a special design for the Project from the list previously reviewed and, after analyzing such bids, shall deliver such bids to the Owner and Architect for review and comment. Based upon that review and comment, Construction Manager shall then determine, subject to the reasonable objection of Architect or Owner, which bids will be accepted. Construction Manager shall not be required to contract with anyone to whom Construction Manager has reasonable objection. Notwithstanding anything herein to the contrary, Construction Manager covenants and agrees that it shall competitively bid all subcontracts. Further, with respect to all such subcontracts, Construction Manager covenants and agrees that it shall select and contract with the lowest, responsive and qualified bidder, unless otherwise consented to in writing by Owner.

2.4.2.2 Subcontracts and agreements with suppliers furnishing materials or equipment fabricated to a special design shall conform with payment provisions and shall not be awarded on the basis of cost plus a fee without prior written consent of Owner.

2.4.2.3 Construction Manager shall schedule and conduct weekly meetings at

which Owner, Architect, Construction Manager and appropriate Subcontractors can discuss the status of the Project. Construction Manager shall prepare and promptly distribute meeting minutes within two (2) business days after any such meeting is held.

2.4.2.4 Promptly after Owner's issuance of the Notice to Proceed, Construction Manager shall prepare a more detailed Project Schedule, based upon the preliminary Project Construction Schedule attached as **Attachment "E"**, including Owner's occupancy requirements. Construction Manager will submit monthly updates to the Schedule until the project is completed.

2.4.2.5 Construction Manager shall provide Monthly Written Reports to Owner on the progress of the entire Work. Construction Manager shall maintain a daily log containing a record of weather, subcontractors working on the site, number of workers, Work accomplished, problems encountered and other similar relevant data as Owner may require. The log shall be available to Owner at all times.

2.5 Professional Services - Construction Manager shall not be required to provide professional services which constitute the practice of architecture or engineering, unless such services are specifically required by the Contract Documents for a portion of the Project, or unless Construction Manager has specifically agreed in writing to provide such services. In such event, Construction Manager shall cause such services to be performed by appropriately licensed professionals.

2.6 Unsafe Materials - If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance encountered but not created or brought on the site Construction Manager shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to Owner and Architect in writing. Owner shall be responsible for obtaining the services of a licensed laboratory to verify the presence or absence of the material or substance reported by Construction Manager and, in the event such material or substance is found to be present, to verify that it has been rendered harmless.

In accordance with Florida Statute 255.40, the Owner will require that the Contractor certify (at project completion) that to the best of his/her knowledge and ability no asbestos-containing materials and/or supplies have been purchased and/or installed on this Project.

(Florida Statute 255.40 Use of asbestos in new public buildings or buildings newly constructed for lease to governmental agencies; prohibition - The use of asbestos or asbestos-based fiber materials is prohibited in any building, construction of which is commenced after September 30, 1983, which is financed with public funds or is constructed for the express purpose of being leased to any

governmental entity.)

2.7 Weather Protection - The Construction Manager will be responsible to 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. All costs associated with this shall be the responsibility of the Construction Manager.

2.8 Job Site Requirements

(1) The Construction Manager shall provide for each of the following activities as a part of the Construction Manager's Construction Phase services:

a. Maintain a log of daily activities, including manpower records, weather, delays, major decisions, etc. and require the same of subcontractors
b. Maintain a directory of companies on the Project with names, addresses, telephone numbers, emergency telephone numbers and fax numbers of key personnel.
c. Establish and enforce job rules governing parking, clean-up, use of facilities and worker discipline.
d. Provide labor relations management for a harmonious, productive Project.
e. 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.
f. Provide a quality control program.
g. Miscellaneous office supplies that support the construction efforts which are consumed by his own forces.

2.9 Job Site Administration - The Construction Manager shall provide as part of the Construction Manager's Construction Phase services, administrative functions during construction, including but not limited to, the following:

(1) 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 and delivery of materials, work sequences, inspection and testing, labor allocations, etc. Review and coordinate each Subcontractor's work. Review and implement revisions to the Schedule. Monitor and promote safety requirements.

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 document and implement the 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.

(2) Shop Drawing Submittals/Approvals - Check Shop Drawings and implement procedures for submittal and transmittal to the Architect/Engineer of such drawings for action, and closely monitor their submittal and approval process. Provide copy of all correspondence to Owner. Construction Manager will provide one (1) approved Submittal or Shop Drawing to Owner.

(3) Material and Equipment Expediting - Closely monitor material and equipment deliveries; implement inspection and follow-up procedures on commitments of all Suppliers and Subcontractors.

(4) Payments to Subcontractor - Develop and implement a procedure for review, processing, and payment of applications by Subcontractors for progress and final payments.

(5) Document Interpretation - Refer all questions for interpretation of the documents prepared by the Architect/Engineer to the Architect/Engineer.

(6) 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.

(7) Substantial Completion - The Construction Manager shall secure the Certificate of Occupancy and notify the Owner and Architect/Engineer, in writing, that the Project will be ready for inspection to determine if it is substantially complete and ready for inspection on or after a specific date, which date shall be stated in the notice. The notice shall be given at least seven (7) calendar days in advance of said date. Inspection and testing shall take place at time(s) mutually agreeable to the Construction Manager, Architect/Engineer and Owner. The inspection will be conducted jointly between the Architect/Engineer, Owner and Construction Manager's representative. The inspection shall determine if substantial completion has been accomplished and the Architect/Engineer shall produce a Certificate of Substantial Completion (**Attachment "J"**) and a written list of unfinished Work and defective work, commonly referred to as

a "Punch List", which must be finished and corrected to obtain final completion.

At the Owner's option a specific area or segment of the project may be inspected and/or determined substantially complete.

(8) Final Completion - The Construction Manager shall notify the Architect/Engineer and Owner, in writing, that the Project will be ready for final inspection on or after a specific date, which date shall be stated in the notice. This notice shall be given at least seven (7) calendar days in advance. That inspection and any necessary testing shall be conducted in the same manner as the inspection for Substantial Completion. When the Project is finally and totally complete, including the elimination of all defects, a Certificate of Final Completion (**Attachment "K"**) will be issued by the Architect/Engineer and the Project shall be submitted to the Owner for final acceptance.

The Owner and Architect/Engineer shall conduct the inspections. The Owner may elect to have other persons of its choosing also participate in the inspections. If one or more re-inspections are required, the Construction Manager shall reimburse the Owner for all costs of re-inspection or, at the Owner's option, the costs may be deducted from payments due to the Construction Manager. The Total Project Schedule shall include these notices and inspections as activities.

The Construction Manager shall secure and transmit to the Architect/Engineer all required guarantees, affidavits, releases, bonds and waivers, manuals, record drawings, and maintenance books as part of final completion (in triplicate) unless stated otherwise in the Project specifications.

(9) Start-Up - With the Owner's personnel, direct the checkout of utilities, operations, systems and equipment for readiness and assist in their initial start-up and testing by the subcontractors.

(10) Record Drawings - The Construction Manager shall monitor the progress of Work on marked-up field prints which, at Substantial Completion, shall be submitted to the Architect/Engineer who will prepare the final record drawings.

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

Contracts and Purchase Orders
Shop Drawing Submittal/Approval Logs

Equipment Purchase/Delivery Logs
Contract Drawings and Specifications with Addenda
Cost Proposal Requests
Meeting Minutes
Lab Test Reports
Contract Changes
Material Purchase Delivery Logs
"As-Built" Marked Prints
Monthly Progress Reports
Correspondence Files
Transmittal Records
Inspection Reports
Punch Lists

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 Construction Phase which will provide a smooth and successful Owner occupancy of the Project. The Construction Manager shall provide consultation and project management to facilitate Owner occupancy and provide transitional services to get the work, as completed by the contractors "on line" in such conditions as will satisfy Owner operational requirements.

The Construction Manager 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.

The Construction Manager shall catalog operational and maintenance requirements of equipment to be operated by maintenance personnel and convey these to the Owner in such a manner as to promote their usability (in triplicate). The Construction Manager shall provide operational training, in equipment use, for building operators to a maximum of eight (8) hours.

The Construction Manager shall secure required guarantees and warranties, assembled and organized (in a binder) and deliver same, in triplicate, to the Owner in a manner that will facilitate their maximum enforcement and assure their meaningful implementation.

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

(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 (1) year from the Date of Final Completion or 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. This warranty inspection will be scheduled by a representative of the Owner**.

ARTICLE 3

OWNER'S RESPONSIBILITIES

3.1 Owner's Information - The Owner shall provide full information regarding Owner's requirements for the Project.

3.2 Owner's Representative/Project Director - 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. The Owner's representative 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 upon request.

3.4 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.

3.5 Legal Services - The Owner shall furnish such legal services as may be necessary for providing the items set forth in Article 3 and such auditing services as the Owner may require.

3.6 Drawings and Specifications - The Owner will provide to the Construction Manager a reproducible set of all drawings and specifications reasonably

necessary and ready for printing.

3.7 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.

3.8 Project Fault or Defects - If the Owner becomes aware of any fault or defect in the Project or non-conformance with the drawings and specifications, the Owner shall give prompt written notice thereof to the Construction Manager and Architect/Engineer.

3.9 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.

3.10 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.

3.11 Lines of Authority - The Owner shall establish and maintain lines of authority for Owner's personnel and shall provide this definition to the Construction Manager and all other affected parties.

3.12 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

4.1 Permits, Fees and Notices - Unless otherwise provided in the Contract Documents, the Construction Manager shall secure and the Owner shall pay for any Brevard County building permit or other County permits and governmental fees and licenses necessary for proper execution of the Contract and which are legally required. Any other entity/jurisdiction permits (i.e.: City of Titusville, City of Melbourne, etc.) shall be included in the Guaranteed Maximum Price and secured and paid for by the Construction Manager. County Impact and Solid Waste fees will also be paid by the Owner. Copies of all permits shall be submitted to the Owner.

4.2 The Construction Manager shall comply with and give notices required by laws, ordinances, rules and regulations and lawful orders of public authorities bearing on performance of the work required for the Project.

4.3 It is not the Construction Manager's responsibility to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations. However, if the Construction Manager observes that portions of the Contract Documents are at variance therewith, and such variance was not discoverable during the Construction Manager's review of these documents for the purpose of determining the GMP, the Construction Manager shall promptly notify the Architect and Owner, in writing, and necessary changes shall be accomplished by appropriate modification.

4.4 If the Construction Manager performs Work knowing it to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without such notice to the Architect and Owner, the Construction Manager shall assume full responsibility for such Work and shall bear the attributable costs.

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. Nothing contained in the Contract Document shall create any contractual relation between the Owner or Architect/Engineer and any Subcontractor.

5.2 Bids/Proposals - The Construction Manager shall request and make every attempt to receive, at a minimum, three (3) bids/proposals from Subcontractors and Suppliers and will award those contracts to the most qualified and responsive low bidder after the Construction Manager and Owner have reviewed each bid/proposal and agree that the Subcontractor is qualified to perform the work.

5.3 Required Subcontractor 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 this Agreement, 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 Subcontractor's 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-subcontractor.

(1) Subcontractors must submit a complete pre-qualification form demonstrating their work experience, financial condition, and adherence to schedule. The Subcontractors financial condition must demonstrate that adequate fixed and liquid assets and equipment are available to properly perform the subcontract.

(2) Workforce - The Subcontractor must agree to perform no less than fifty 50%) percent of the Project construction work utilizing its own forces.

(3) 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 cost for such change, plus, no more than five percent (5%) for profit, and five percent (5%) for overhead.

The subcontract shall require the Subcontractor expressly agree that the foregoing constitute its 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, loss or additional compensation.

b. Each subcontract shall require that any claims by Subcontractor for delays 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 its employees and agents and its Subcontractors, agents and employees, and all other persons performing any of the work or supplying materials under this contract to the Construction Manager.

ARTICLE 6

SCHEDULE, TIME OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

6.1 At the time a Guaranteed Maximum Price (GMP) is established, as provided for in Article 7, a Project Substantial Completion Date, a Project Final Completion Date and an Owner Occupancy Date for completion of the Project in accordance with the master Project schedule, shall also be established by the Construction Team. The Construction Manager agrees to complete the construction in accordance with the agreed upon Substantial Completion Date, Final Completion Date and Owner Occupancy Date. The Construction Manager acknowledges that failure to complete the Project within the construction time set forth in the approved schedule will result in substantial damages to the Owner.

It is specifically agreed by and between the parties that the Owner may deduct a sum in the amount scheduled below from the amount of compensation to be paid the Construction Manager, Sundays and Holidays included, that the Project remains uncompleted. This amount as scheduled and agreed upon as a proper measure of liquidated damages, which the Owner will sustain per day by failure of the Construction Manager to complete the Project by the time stipulated in this Agreement, is not to be construed in any sense as a penalty provision.

Project Substantial Completion	$500 per day
Project Final Completion	$250 per day

Liquidated Damages will be assessed for each day beyond the contracted project Substantial Completion date, until actual project Substantial Completion is achieved. From the date of Substantial Completion, the Construction Manager shall be granted thirty (30) days for completion of punch list items, associated inspections and approvals, and submission and approval of required closeout documentation, at which time Final Completion shall be obtained. Final Completion liquidated damages will be assessed for each day beyond the thirty (30) days period from actual Substantial Completion.

6.2 The date of Owner Occupancy shall occur as described in Article 2.9(7) and Article 1.3, hereinabove. Warranties called for by this Agreement or by the Drawings and Specifications shall commence on the Date of Final Completion of the Project unless specified otherwise in the Project Specifications.

ARTICLE 7

GUARANTEED MAXIMUM PRICE FOR CONSTRUCTION

7.1 The Construction Manager will establish and submit in writing a Guaranteed Maximum Price to the Owner for its approval, guaranteeing the maximum price to the Owner, for the construction cost of the Project or designated part thereof, based on a review of the contract drawings and specifications. Such Guaranteed

Maximum Price will be subject to increase or deduction for changes in the Project as provided in Article 10 and for Owner direct purchases, if any, in accordance with **Attachment "C"**. All costs in excess of the final approved GMP, as adjusted up or down in accordance with the terms of this agreement, are the responsibility of the Construction Manager. Any savings between the GMP, as adjusted, and the sum of the actual cost of the Project plus the Construction Manager's fees, will be returned to the Owner. The GMP includes all taxes in the Cost of the Project which were legally enacted and in effect at the time the GMP was established.

7.2 Owner-Direct Purchases - In the event the Owner opts to make Owner Direct Purchases, as outlined in **Attachment "C"**, the Guaranteed Maximum Price shall be reduced by the cost of the materials plus applicable sales tax so that all sales tax savings accrue to the benefit of the project contingency. The Construction Manager shall diligently process all Owner Direct Purchase invoices for the project in order for the Owner to benefit from applicable vendor discounts. The Construction Manager will be required to submit all invoices to Owner in sufficient amount of time in order for the project to benefit from the vendor discount. All costs associated with missed discounts by the Construction Manager will be deducted from the Construction Manager's contract via deductive change order at project completion. Owner reserves the right to waive the Construction Manager's responsibility for missing discounts.

7.3 At the time of execution of the contract, the Construction Manager will verify the time schedule for activities and work which is adopted by the Construction Team and used to determine the Construction Manager's cost of work. Surplus funds from bids received below the applicable line items, including line items within the General Conditions, in the GMP will be set aside for contingency. Construction contingency funds will be used 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. The Architect/Owner shall verify and approve the actual costs.

If bids are received above the applicable line item in the GMP the deficiency will be taken from the contingency via an approved Authorization to Initiate Work/GMP Realignment form; 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 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 8.1.2 and 8.1.3. subject to the retainage specified in 8.1.1 below.

8.1.1 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 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. A percentage of the agreed upon Construction Phase Fee shall be paid monthly based on percentage (%) of work completed, less retainage, in accordance with subsection 12.1 below. The Construction Manager's first monthly Certificate for Payment shall be submitted no earlier than thirty (30) days following the issuance of the Notice to Proceed, and the final monthly payment shall be paid only when construction of the Project is finally completed, all original, final release of liens are received, closeout documentation has been submitted 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, subcontractors or others for whose acts the Construction Manager is responsible.

(2) Costs and Expenses Included in Construction Manager's Construction Phase Fee - The following are included in the Construction Manager's fee for services during the Construction Phase and are included in the GMP (See **Attachment "L"** for Allowable Costs, Overhead associated with the Construction Manager's Construction Phase Fee referenced in Article 8):

(a) Corporate costs including expenses and overhead and profit related to this project by the Construction Manager's principal and branch offices.
(b) Costs of all data processing, accounting, purchasing and associated staff which is performed at the home office.
(c) General operating expenses incurred in the management and supervision of the project, except as expressly included in Article 9.
(d) Salaries or other compensation of the Construction Manager's employees at his principal and branch offices.

(e) Those services set forth in Paragraph 2.1, 2.2, 2.3 and 2.4; except as expressly included in Article 9.
(f) Relocation expenses for Construction Manager's personnel.
(g) Costs of all project estimating, safety, scheduling and accounting staff.

8.1.3 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, based on a review of the contract drawings and specifications. Such Guaranteed Maximum Price will be subject to modification for changes in the Project as provide in Article 10. However, the actual price paid for the Work by the Owner shall be (1) the Cost of the Project as defined in Article 9, plus the Construction Manager's fees, or (2) the GMP, whichever is less, when the Work is complete. All costs in excess of the final approved GMP are the responsibility of the Construction Manager.

ARTICLE 9

COST OF THE PROJECT

9.1 Definition - The term Cost of the Project shall mean costs reasonably and necessarily incurred in the Project during the Construction Phase for construction services and paid by the Construction Manager which are included in the Construction Phase Fee, less Owner direct purchases made in accordance with **Attachment "C"** upon completion of the Project. Such costs shall include the items set forth below in this Article, and shall also include, but are not limited to, those set forth in **Attachment "M"** - "Allowable General Conditions".

The Owner agrees to pay the Construction Manager for the Cost of the Project subject to the limits set forth in Articles 9.2 and 9.3 plus the Construction Manager's fees stipulated in Article 8, provided the total does not to exceed the GMP.

9.2 Direct Cost Items (See **Attachment "M"** - "Allowable General Conditions")

(1) Labor wages paid for the on-site Project Superintendent directly responsible for the operation and supervision of the project, clerical and Quality Control personnel (as opposed to wages paid to management or supervisory personnel who are not part of the on-site project management) in the direct employ of the Construction Manager in the performance of the Construction Manager's work under this Agreement, acceptable salary or wage schedules and such fringe benefits, if any, as may be payable with respect thereto (labor burden not to exceed 40% for payroll and 15% for per diem).

(2) 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.

(3) Cost of the premiums for insurance above and beyond the minimum required by Brevard County ($1 million) and cost of premiums for bonds which the Construction Manager is required to procure by this Agreement specifically for the construction of this project.

(4) Sales, use, gross receipts or similar taxes related to allowable direct costs of the Project imposed by a governmental authority, and for which the Construction Manager is liable. 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.

(5) If approved by the Owner, the Construction Manager, when qualified, may self 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.

(6) 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.

(7) 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.

9.3 Allowances

Within the GMP, there may be specific items which the Construction Manager and Owner have agreed to include as allowances in the estimates until such time as the cost and schedule impact of these items can be more specifically ascertained. At the time that the Costs of the Work of allowance items becomes known (either through a subcontract price or by virtue of either (A) scope of work and cost agreed to by Construction Manager and Owner or (B) an actual buyout of the item), the GMP and Scheduled Completion Date will be adjusted (either increased or decreased) by the actual Costs of the Work and schedule impact of the item. With respect to increases and decreases to the amount of an allowance

item, Construction Manager shall be entitled to the Construction Manager's fee, subject to the limits set forth in Article 8, on the adjusted amount of such allowance, and the GMP shall be adjusted by reason thereof, by Change Order. Allowances must be agreed to by both parties. Allowances included within the GMP constitute approval of said allowances at the time the Guaranteed Maximum Price is approved.

9.4 Public Records Law and Audit Requirements

In the performance of this Contract, the Construction Manager shall keep books, records and accounts of all activities related to the Contract in compliance with generally accepted accounting procedures and in compliance with the Public Records Laws of the State of Florida (Including, but not limited to Chapter 119, Florida Statutes).

All records or documents created by Construction Manager or provided to Construction Manager by the County in connection with the activities or services provided by Construction Manager under the terms of this agreement, are public records and Construction Manager agrees to comply with any request for such public records or documents made in accordance with section 119.07 Florida Statutes.

Records, documents, books and accounts ordinarily and necessarily required for the performance of this Contract shall be kept, maintained and open to inspection by the Owner, Owner's representative, and members of the public during regular business hours.

The Construction Manager shall provide the public with access to public records on the same terms and conditions that the public agency provides the records and at a cost that does not exceed the cost provided for in Florida Statute Chapter 119 or as otherwise provided by law (see also County Administrative Order, AO-47).

The Construction Manager shall also ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.

No reports, data, programs or other materials produced, in whole or in part for the benefit and use of the County, under this Contract shall be subject to copyright by Construction Manager in the United States or any other country.

The Construction Manager shall meet all requirements for retaining public records and shall transfer, at no cost, to the Owner/County all public records in possession of the Construction Manager upon termination of the contract and

destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the Owner/County in a format that is compatible with the information technology systems of the Owner/County.

Failure to comply with the provisions of this Section 9.4, shall result in the Owner taking enforcement action against the Construction Manager including the cost to the Owner for gaining the Construction Manager's compliance which will include, but are not limited to, the gross hourly rate of the Owner's employee(s) contacts to the Construction Manager to obtain compliance with this section, litigation filing fees and attorney's fees.

ARTICLE 10

CHANGES IN THE PROJECT

10.1 Change Orders - The Owner, without invalidating this Agreement, may order Changes in the Project within the general scope of this Agreement consisting of additions, deletions or other revisions which may cause an increase or decrease in the GMP, and/or the Construction Completion Date. All changes in the Project GMP or Construction Completion Date not covered by an authorized contingency, as described in Article 7.3 must be authorized by a written Change Order or Construction Change Directive, and signed by the Owner, Architect and Construction Manager before the change is implemented. It shall be the Owner's discretion as to whether each change order requires the A/E signature. **Maximum allowable mark-up on any change order is 5% Profit, 5% Overhead, and a 2% Bond.**

10.1.1 A Construction Change Directive is a change directive signed by the Project Director and the County Manager directing an addition, deletion, or revision in the scope of work and/or schedule. The Construction Change Directive is necessary when no Agreement exists among the Architect/Engineer of record, Brevard County and the Construction Manager on the dollar amount of a necessary change in the scope of work and/or an extension of time to the construction contract. The Construction Change Directive is used (1) when an unsafe, hazardous or other similar condition exists, (2) when failure to achieve prompt resolution of the change will result in a demobilization of the Construction Manager, its subcontractors and/or agents, (3) when failure to achieve prompt resolution will result in additional cost, and/or a significant delay in completing the project. A Construction Change Directive does not change the contract price or the contract time, but is evidence that the parties expect that the change will be incorporated in a subsequently issued Change Order or be covered by an authorized contingency.

10.1.2 A Change Order is a written order to the Construction Manager signed by the Owner, Architect, and Construction Manager, issued after the execution of this Agreement, authorizing a change in the Project and/or an adjustment in the construction authorization, the Construction Manager's fee, or the Construction Completion date. Each adjustment in the GMP resulting from a change order shall be documented clearly to separate the amount attributable to the cost of the change in the Project from the original cost of the Project.

10.1.3 The increase or decrease in the Guaranteed Maximum Price resulting from Change Orders in the Project shall be determined by one 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 plus a mutually acceptable fixed or percentage fee; or
(4) by the method provided in Subparagraph 10.1.4.

10.1.4 If none of the methods set forth in Clause 10.1.3 is agreed upon, the Construction Manager, provided he receives a written order signed by the Owner, shall promptly proceed with the work required by the Construction Change Directive 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 10.1.3 above, the Construction Manager shall keep and present, in such forms 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 in the Cost of the Project and the Construction Manager's fee subject to the limits set forth in Article 7.

10.1.5 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.

10.1.6 Should the Construction Manager or his contracted subcontractors encounter:

(1) concealed conditions in the performance of the Work below the surface of the ground; or
(2) concealed or unknown conditions in an existing structure be at variance with the conditions indicated by the Drawings, Specifications, or Owner furnished information; or
(3) unknown physical conditions below the surface of the ground; or
(4) 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, then 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. and Article 11.

Upon discovery of concealed or unknown conditions, the Construction Manager shall notify the Owner and Architect/Engineer within twenty four (24) hours of discovery, and not proceed with Work until such notice has been given and a response is issued by the Owner. The Architect/Engineer will evaluate the alleged unknown or concealed condition and, if warranted, recommend to the Owner that the GMP and schedule be increased or decreased accordingly. No claim under this Article may be made unless notice, as herein provided, is given prior to Work being performed. No equitable adjustment shall be permitted if this notice provision is not complied with.

Within ten (10) calendar days of submitting its Notice, 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. Within thirty (30) days from Notice, the Construction Manager shall submit detailed schedule impact and detailed cost analysis indicating quantities, unit prices, etc.

10.1.7 The Construction Manager shall review any Owner directed change and shall respond in writing within seven (7) calendar days after receipt of the proposed change (or such other reasonable time as the Owner may direct), stating the effect of the proposed change upon the Construction Manager's Work, including any increase or decrease in the contract time or price. The Construction Manager shall furnish to the Owner an itemized breakdown of the quantities and prices used in computing the change in

Contract price.

The Owner and Architect/Engineer shall review the Construction Manager's proposal and respond to the Construction Manager within seven (7) calendar days of receipt. If a change to the Contract price and time for performance are agreed upon, both parties shall sign the Change Order. Changes to the Contract time and/or price shall be effective when signed by both parties. It shall be the Owner's discretion as to whether each change order requires the A/E signature.

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.

10.2.1 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 or 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.

10.2.2 All change orders must indicate that the Contract Time for Completion is not changed or is either increased or decreased by a specific number of days. The previous Time for Completion and, if there is one, the new Time for Completion must be stated. The Construction Manager must provide written justification for an extension of the Time for Completion to the Architect/Engineer and to the Owner. The written justification must demonstrate an anticipated actual increase in the time required to complete the Work beyond that allowed by the Contract as adjusted by prior change orders or amendments to the Contract, not just an increase or decrease in the time needed to complete some portion of the total Work. No increase to the Time for Completion shall be allowed unless the additional or changed Work increases the length of the critical path. Approved increases in time required to complete the Work shall be added to the Time for Completion. Decreases in time as a result of the change order shall be demonstrated by a decrease in the critical path of the Work if CPM scheduling is properly used and updated by the Construction Manager. If no CPM is used the Owner shall determine the appropriate decrease by the best means possible. Approved decreases in the time needed to complete the Work shall be deducted from the Contract completion date. The change to time and Contract price allowed by each change order shall include all time and monetary impacts of the change, whether the change order is considered alone or with all other changes

during the course of the project. Failure to include a change to time and Contract price in a change order shall waive any change to the time and Contract price unless the parties mutually agree in writing to postpone a determination of the change to time and price resulting from the change order. Such a determination may be postponed not more than forty five (45) days to give the Construction Manager an opportunity to demonstrate a change in the time and price needed to complete the Work.

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 (Realignment of Work)
The Owner and/or 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 affected by written order. Documentation of changes shall be determined by the Construction Team, and included in the Project Manual. Changes shall be approved by the Project Director, Architect/Engineer. It shall be the Owner's discretion as to whether a Realignment of Work requires the A/E signature. All changes or realignments of work performed within the Guaranteed Maximum Price will not include overhead, profit or General Condition additional costs, since costs are absorbed within the Guaranteed Maximum Price (GMP).

10.4 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

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.

ARTICLE 12

PAYMENTS TO THE CONSTRUCTION MANAGER

12.1 Monthly Statements - The Construction Manager shall submit to the Owner a sworn statement along with the Certificate for Payment, 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. This data shall be attached to the Certificate for Payment Form shown in **Attachment "N"**, and shall include, but not be limited, to the following:

- Daily Reports;
- Updated Project Schedule;
- Daily Red line As-Builts review;
- Provide a billing report with each payment application that shows a breakdown of costs incurred by line item. This report should correspond with the amounts being charged on the Schedule of Values.
- Provide backup copies of all invoices that the County is being billed for, including vendor invoices, payments to subcontractors, cell phone statements, insurance, petty cash receipts, etc. These invoices should be coded by the line item that they correspond to on the billing report and Schedule of Values.
- Provide backup copies and documentation of all costs incurred under General Conditions.
- Provide backup copies of all payroll that details which labor amounts were paid to whom on a weekly basis.
- Provide copies of all subcontractor agreements.
  * The amounts charged on the Payment Application must be accurate and correspond with the total dollar amount of backup provided by the Construction Manager.

Payment by the Owner to the Construction Manager of the statement amount shall be made in accordance with Florida Statute 218.735.

Ten percent of each payment shall be held by the OWNER as retainage until 50-percent completion of such Project, which shall be deemed to have occurred when 50% of the GMP, as increased or decreased from time to time, has been expended. At that time, the retainage shall be reduced to 5% and the Construction Manager shall be entitled to request payment or release of up to 50% of the previously withheld retainage amounts, provided the retainage is not the subject of a good faith dispute, the subject of a claim brought pursuant to s. 255.05, Florida Statutes or otherwise the subject of a claim or demand by the OWNER.

Owner may refuse to certify payment and withhold a Certificate for Payment in whole or in part, in accordance with subsection(s) above, to such extent as may be reasonably necessary to protect the Owner from loss because of:

(1) defective work not remedied;
(2) third party claims filed or reasonable evidence indicating probably filing of such claims;
(3) failure of Construction Manager to make payments properly to subcontractors, consultants, or for labor, materials or equipment;
(4) evidence that the Project cannot be completed for the unpaid balance of the GMP, as adjusted;
(5) evidence that the Work will not be completed by the Scheduled Completion Date, as adjusted, and that the unpaid balance would not be adequate to cover the liquidated damages for the anticipated delay;
(6) failure to carry out the Work of the Project in accordance with the Contract Documents; or

If the Owner is unwilling to certify payment in the amount of the Application for Payment submitted by the Construction Manager, Owner will provide Construction Manager with written reasons for its refusal, within three (3) calendar days. If Construction Manager and Owner cannot agree on a revised amount, Owner will, within one (1) day of the aforesaid notification, promptly issue a Certificate for Payment as to the undisputed amount with respect to which Owner concurs.

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 in accordance with Florida Statutes after an *acceptable* Certificate of Final Completion has been issued **and all contractual closeout obligations have been met by the Construction Manager**. Before issuance of final payment, the Construction Manager, subcontractors and agents shall submit original, sworn, notarized statements that all payrolls, material bills, and other indebtness connected with the Project have been paid or otherwise satisfied, warranty information is complete, Final As-Builts in AutoCad format acceptable to the Owner, have been submitted and instruction and documentation for the Owner's operating and maintenance personnel is complete.

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

12.4 Withholding Payments to Subcontractors - The Construction Manager shall not withhold payments to Subcontractors if such payments have been made to the Construction Manager. Should this occur for any reason, the Construction Manager shall immediately return such monies to the Owner, adjusting pay

requests and project bookkeeping, as required.

ARTICLE 13

INSURANCE, INDEMNITY WAIVER OF SUBROGATION

13.1 (1) Indemnification - The Construction Manager agrees to indemnify and hold harmless the County and their employees from all claims, losses and expenses, arising out of or resulting from the performance of the products or services to be contracted, provided such claim, damage, loss or expense (1) is attributable to bodily injury, sickness, disease, death or personal injury, or to property damage, including loss of use resulting therefrom, (but not loss of use for which liquidated damages are assessed under the Agreement) and (2) is caused in whole or in part by any negligent act or omission of the Construction Manager, any subcontractor, any of their employees and/or agents in the performance of this contract. The Construction Manager agrees that it will pay the costs of the County's legal defense, including fees of attorneys as may be selected by the County, and shall defend, satisfy, and pay any judgments which may be rendered against the County in connection with the above hold harmless agreement. The Construction Manager acknowledges specific consideration has been received for this hold harmless/indemnification provision.

(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.

Loss Deductible Clause - Brevard County Board of County Commissioners shall be exempt from, and in no way liable for, any sums of money which may represent a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of the Construction Manager and/or Subcontractor providing such insurance.

13.2 Insurance

(1) The Construction Manager shall not commence any construction work in connection with this Agreement until the Construction Manager has obtained all of the following types of insurance and such insurance certificate(s) have been submitted to the Owner and have been approved by the Owner, nor shall the Construction Manager allow any Subcontractor to commence work on his subcontract until all insurance

required of the Subcontractor has been so obtained and approved. All insurance policies shall be with insurers qualified and doing business in the State of Florida.

a. Worker's Compensation - Provide Worker's Compensation Insurance on behalf of all employees who are to provide a service for this project, as required under Florida Laws.

b. Commercial General Liability - Including but not limited to bodily injury, property damage and personal injury with limits of not less than $1,000,000.00 combined single limit per occurrence, including products and completed operations, to include:

1. "XCU" (Explosion, Collapse, Underground Damage) - The Construction Manager's Liability Policy shall provide "XCU" coverage.

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

3. 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.

c. Automobile Liability - Including bodily injury, property damage liability for all vehicles owned, hired, leased and non-owned with limits of not less than $1,000,000.00 combined single limit, per accident.

d. Performance and Payment Bonds - With limits of not less than 100% of the total construction cost of this project. Payment and Performance Bond shall be recorded in the official record of the County in which the project is located. These bonds shall remain in effect at least until one (1) year after the date when the final payment is approved. Any bonding company submitting a Bid Bond, Performance Bond or Payment Bond to Brevard County must be licensed to transact a fidelity and surety business in the State of Florida, and hold a Certificate of Authority from the Secretary of the Treasury under Act of Congress, approved by July 30, 1947 (U.S.C. 613), and approved by Brevard County. Acceptable surety companies shall be licensed to do business in Florida and shall have an A.M. Best Rating of "A-" and financial

size V or higher.

e. 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 canceled because of partial occupancy by the Owner prior to final acceptance of the Project.

The Construction Manager shall require each of his Subcontractors to procure and maintain insurance during the life of the respective subcontracts.

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

Certificate(s) of Insurance will be furnished to the Owner within five (5) days of Notice to Proceed. These shall be completed and signed by the authorized Resident Agent, and shall be dated and show:

(1) 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.

(2) The General Liability and Auto Liability certificates of insurance shall indicate that the policies have been endorsed to cover the County as an additional insured to the extent of liability assumed by the Construction Manager under this Agreement, and that these policies may not be canceled or modified without thirty (30) days prior written notice to the County.

(3) The insurance coverages enumerated above constitute the minimum requirements and shall in no way lessen or limit the liability of the Construction Manager under the terms of the Contract.

*Certificates of Insurance shall be submitted to the Owner within five (5) days of Notice to Proceed, and no work shall commence on site until all submitted Certificates of Insurance are acceptable to the Owner.

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 thirty (30) days by the Owner, then the Construction Manager may, upon seven (7) days written notice to the Owner, request undisputed payment for all work executed, the Construction Manager's fee 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 its obligations under this Agreement, the Owner may, after seven (7) days written notice during which period the Construction Manager fails to perform such obligations, 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 to 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 forty-five (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 cure 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 termination expenses incurred by the Owner may be deducted from any payments left owing the Construction Manager (excluding monies owed the Construction Manager for subcontract work).

14.3 Termination by Owner for Convenience

(1) If the Owner terminates this Agreement other than pursuant to Article 14.2(2) or Article 14.3(2), 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 reimburse the Construction Manager for obligations and commitments made before notice of termination was received by

the Construction Manager.

(2) After the establishment of the Guaranteed Maximum Price or at the completion of the Construction 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.

(3) Any termination by Owner for cause which is later determined to be invalid shall be considered a termination by Owner for convenience.

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.

15.3 Venue and Attorney's Fees: Venue for any legal action brought by any party to this Agreement to interpret, construe or enforce this Agreement shall be in a court of competent jurisdiction in and for Brevard County, Florida. In the event of any legal action to enforce the terms of this Agreement, each party shall bear its own attorney's fees and costs and any trial shall be non-jury.

15.4 Severability: If any provision of this Agreement is held by a Court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired.

ARTICLE 16

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

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) If the Construction Manager claims that any instructions given to him by the Architect/Engineer or by the Owner, by drawings or otherwise, involve extra Work not covered by the Contract and not discoverable with a review of the plans and specifications, then, except in emergencies endangering life or property, Construction Manager shall give the Architect/Engineer and the Owner written notice thereof before proceeding to execute the Work. Said notice shall be given promptly enough to avoid delaying the Work and in no instance later than twenty (20) calendar days after the receipt of such instructions.

The Construction Manager must submit a Notice of Claim to the Owner and to the Architect/Engineer within twenty (20) days of when the Construction Manager was or should have been aware of the occurrence of the event giving rise to the claim; and

(c) Within ten (10) days of submitting its Notice of Claim, the Construction Manager shall submit to the Owner its Request For Change Order, which shall include a written statement of all details of the claim, including a description of the work affected. Within thirty (30) days from the Notice of Claim the Construction Manager shall submit a detailed schedule impact and detailed cost analysis indicating quantities, unit prices, etc. establishing the basis for the amount of the claim.

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 section.

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 disputed matters subject to the determination by final Owner action (not actions for breach of contract or tort) the Owner's written decision following compliance with the dispute resolution procedure set forth in sections 16.4 through 16.6 below shall be final Owner action.

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 Article 16.1 above, for an extension of the scheduled construction time. In the event of a change in such work that will modify the GMP, the Construction Manager's claim for adjustment in contract sum are limited exclusively to its actual costs for such changes, including costs involved in claim preparation, plus five percent (5%)

overhead, five percent (5%) profit and a two percent (2%) bond in the General Conditions. 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.

16.4 In the event of any dispute over a proposed change order or any other matter arising out of the implementation or interpretation of this contract the following dispute resolution process shall apply.

(a) Within three (3) days after denial of a contractor's change order or contract modification request in an amount, individually or in total, less than the authorized purchasing level approved for the County Manager by the County Commission (currently at $100,000) the contractor may submit to the County Manager or a designee with experience in the oversight of construction projects for a department or business other than the department responsible for monitoring the disputed request, documentation of the contractor's position in the dispute or disagreement. The County Manager or designee, within five (5) days after the receipt of the contractor's documentation, shall review the request and make a final determination as to whether denial was arbitrary or capricious based upon the sufficiency of the work under the terms of the contract, applicable regulations and relevant construction standards. Based upon the sufficiency and degree of completion, as well as any defects in the work and the amount reasonably required, if any, to correct or repair defective work, the reviewer shall make the final determination as to whether a written change order or contract modification should be approved by the County Manager.

(b) If the denied request or disputed amount exceeds the County Manager's purchasing authority, the County Manager shall present a report, recommendation and the contractor's claim and documentation, to the County Commission for a final determination within thirty (30) days after receiving the contractor's documentation for the claim. The Commission shall make its decision using the standards specified in subparagraph (a) above.

16.5 Within thirty (30) days after denial of a request for a change order or contract modification by the project manager or engineer involving (1) an amount in excess of the County Manager's expenditure authority or (2) for the amount the contractor claims to be due at the time the project is ready for beneficial use or occupation, the County may, at the County's option in lieu of the procedure specified in subparagraph 16.4, submit the dispute to a mediator with knowledge or experience in construction management, as agreed upon by the parties. Upon referral to a mediator, the County and contractor shall each pay half the

estimated cost of the mediator, up front. Within fifteen (15) days after the date of submittal, the mediator, applying the standards set forth in subparagraph 16.4, shall investigate the dispute and submit a written recommendation for disposition of the dispute to the County Manager or a designee with the qualifications specified in subparagraph 16.4. Within fifteen (15) days after receiving the mediator's recommendation, the County Manager shall submit the recommendation to the County Commission, along with a staff report analyzing the dispute and mediator's recommendation. Based on the standards set forth in subparagraph 16.4 above, the Commission shall decide whether to grant or deny, in whole or in part, the amounts recommended by the mediator. The Commission's decision will be deemed final action on the disputed claim for the purposes of ripening the decision for judicial review. If the mediator recommends that no change order or contract modification be granted, the contractor shall reimburse the county for any amounts paid by the county to the mediator.

16.6 The deadlines for completing the dispute resolution process described in subparagraphs 16.4 and 16.5 may be extended by mutual agreement of the contractor and the county.

ARTICLE 17

OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

17.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Construction Manager claims that a delay or additional cost is involved because of such action by the Owner, the Construction Manager shall make such claim as provided in this Agreement.

17.2 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Construction Manager, who shall cooperate with them. The Construction Manager shall participate with other separate contractors and the Owner in reviewing their construction schedules when directed to do so. The Construction Manager shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Construction Manager, separate contractors and the Owner until subsequently revised.

17.3 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights which apply to the Construction Manager under the Conditions of the Contract.

17.4 The Construction Manager shall afford the Owner, and separate contractors, reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities and shall connect and coordinate the Contractor's construction and operations with the Construction Manager, as required.

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

17.6 Costs caused by delays or by improperly timed activities or defective construction shall be borne by the party responsible thereof.

17.7 The Construction Manager shall promptly remedy damage wrongfully caused by the Construction Manager to completed or partially completed construction or to property of the Owner or separate contractors.

ARTICLE 18

MISCELLANEOUS

18.1 Interest - Any monies not paid when due to either party under this contract shall not bear interest except as may be required by Section 218.70 et seq., Florida Statutes, ("The Florida Prompt Payment Act").

18.2 Harmony - Construction Manager is advised and hereby agrees to 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.

18.3 Apprentices - If the Construction Manager employs apprentices on the project, the behavior of the Construction Manager and the Owner shall be governed by the provision 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.

18.4 Minority Participation - The Construction Manager shall *diligently attempt* to award his material contracts, subcontracts and sub-subcontracts to firms having a letter of certification as a minority business from the "Office of Minority Business Assistance, Department of General Services, or any other Federal, Florida County or City certification.

18.5 Minority Employment Information - The Board of County Commissioners requires construction contracts, who would otherwise be required to file and EEO Form 1 Report under Federal Law (currently Federal law requires filing for employers with more than 15 employees), to submit an EEO Form 1 Report with the submission of their GMP. This requirement extends to any subcontractors who are required to submit the EEO Form 1 Report (over 15 employees) under Federal law. Failure to submit an EEO Form 1 Report with your GMP will be reason to declare your proposal "non-responsive" to the proposal requirements. However, the information will be used for statistical purposes only and will not be used in any way as a basis to award a contract. See **Attachment "O"**.

18.6 Public Entity Crime Affidavit attached as **Attachment "P"**.

18.7 Non-Collusion Affidavit of Prime Bidder attached as **Attachment "P"**.

18.8 Copyright Clause No reports, data, programs or other materials produced, in whole or in part for the benefit and use of the Owner, under this agreement shall be subject to copyright by Contractor in the United States or any other Country.

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

ATTEST:

BOARD OF COUNTY
COMMISSIONERS
OF BREVARD COUNTY, FLORIDA

Scott Ellis, Clerk

Robin Fisher, Chair
Brevard County Commission

As Approved By the Brevard County Commission: _____

_____
BY: Construction Manager

STATE OF FLORIDA
COUNTY OF BREVARD

The foregoing instrument was acknowledged before me this _____ day of 201__ by whose position is _____ with the firm of, a Florida Corporation, on behalf of the corporation. He/She is personally known to me or has produced _____ as identification.

(SEAL)

_____
NOTARY PUBLIC
Typed, Printed or Stamped Name

ATTACHMENT "A"

CONSTRUCTION TEAM ASSIGNED REPRESENTATIVES

Owner
Brevard County Facilities Department

Joan Van Sickle	Project Director
	Construction Coordinator
Mary Bowers	Support Services Manager/Contracts
Anissa Pratte	Special Projects Coordinator II

Architect-Engineer

Construction Manager

President
Vice President/Principal-In-Charge
Project Manager
Project Administrator
Project Superintendent
Estimator/Cost Control
Schedules

ATTACHMENT "B"

PROJECT SCOPE OF WORK

ATTACHMENT "C"

DIRECT PURCHASING PROCEDURE
CONSTRUCTION MANAGEMENT AGREEMENT

INTENT: The Owner of this Project, Brevard County, Florida, intends that these procedures govern the County's direct purchases of selected materials so that the County may take advantage of its tax exempt status. All monies which would have been payable as taxes, if not for Owner direct purchase under these procedures, will inure solely to the benefit of the Owner. The Owner's direct purchase of materials will not minimize or conflict with the Construction Manager's responsibility for the purchase, installation, coordination, storage, protection, warranty, etc. of the materials as described herein and in the plans and specifications of the Contract.

Definitions: For the purpose of these Procedures, the following words have the following definitions.

a) Contract: Construction Management Agreement by and between Construction Manager and Brevard County Board of County Commissioners, Viera, Florida for the construction of _____.

b) County Purchased Materials: Materials purchased directly by the Owner through execution and delivery of a Purchase Order.

c) GMP - Guaranteed Maximum Price established under the Contract.

d) Materials: Tangible Personal Property necessary for completion of the Project.

e) Materials Deduction Summary: Written document signed by Owner's representative and Construction Manager setting forth the amounts of County Purchased Materials, plus applicable taxes were the purchase not exempt from such taxes, as reflected in the parties' previously executed deductive change order(s) to the Contract showing deduction of such Materials from the GMP.

f) Owner: See Definition in Article I, section 1.3.

g) Owner's Representative: See Definition in Article I, section 1.3.

h) Project: See Definition in Article I, section 1.3.

i) Purchase Order: The Owner's request for Materials from a particular vendor or supplier when fully executed and delivered to the Construction Manager, and the Owner's promise to pay for the Material specified upon delivery and acceptance at the Project Site, and presentation of an invoice by the Construction Manager to the Owner certifying payment of same.

j) Material Requisition: A request by the Construction Manager to the Owner that the Owner directly purchase specific items described in sufficient detail, including quantity, grade, brand, etc., along with the vendor or material supplier and that

vendor or material supplier's quoted price for the Materials.

Overview: The Owner requires the Construction Manager (hereinafter, "Manager") to notify the Owner's Representative of Materials needed for the Project exceeding $5,000.00 in value, through a Material Requisition form. For the purpose of these Procedures, the Manager will assign to the Owner any rights the Manager may have under quotes, contracts or commitments received from the particular vendor or supplier for the Materials described in the Material Requisition. Any Materials purchased by Owner pursuant to these Procedures shall be referred to as "County Purchased Materials", and the responsibilities of the Owner and Manager relating to such County Purchased Materials shall be governed by the terms and conditions of these Procedures, which shall take precedence over other conditions and terms of the Contract Documents where inconsistencies or conflicts exist. The invoiced amount of County Purchased Materials and applicable sales tax had the purchases not been tax exempt, once finalized through the Owner's Purchase Order and after confirmation of completed delivery and acceptance pursuant to this Procedure, will be deducted from the GMP, as defined in the Contract, by deductive change order.

Owner Direct Purchasing Requirements and Procedures: When a Materials purchase for the Project is estimated to be $5,000 or greater and time will allow for an Owner Direct Purchase, Manager shall prepare a Material Requisition form, *(to be provided by the Owner)*, acceptable to Owner, and which specifically identifies the Materials which Owner may, in its discretion, elect to purchase directly. The Material Requisition form shall be complete when submitted, and all information requested provided. Along with the Material Requisition the Construction Manager must provide:

a) The name, address, telephone and fax number and contact person for the material supplier;
b) Manufacturer or brand, model or specification number of the item;
c) Quantity needed as estimated by Manager;
d) The price quoted by the supplier for the Materials identified therein;
e) Any sales tax associated with such quote if it were not purchased by a tax exempt entity;
f) Shipping and handling cost, including associated insurance;
g) Delivery dates as established by the Manager;
h) Subcontractor's written acknowledgment of these Procedures for Owner Direct Purchase of Materials.

After receipt of the Material Requisition, the Owner's Representative will determine whether the Owner will directly purchase the Materials described in the Material Requisition, and communicate consent or decline to purchase the materials to the Manager within twenty four (24) hours. Brevard County's Purchasing Division shall be the Owner's approving authority on Purchase Orders of County Purchased Materials. If the Owner consents to purchase the Materials, the Owner shall issue a Purchase Order for same. The Owner shall issue the original Purchase Order, and the Manager shall deliver the Purchase Order to the subcontractor. The Purchase Order shall require (1) that the supplier provide the required shipping, (2) that the supplier provide the required shipping and handling insurance, and (3) delivery of the County Purchased Materials on the delivery dates provided by the Manager in the Material Requisition.

The Manager shall be fully responsible for all matters relating to the receipt of County Purchased Materials under these Procedures, including, but not limited to, preparation of shop

drawings and submittals, verifying correct quantities, verifying documents of orders in a timely manner, coordinating purchases, providing and obtaining all warranties and guarantees required by the Contract Documents, inspection and acceptance of the goods at the time of delivery, and loss or damage to equipment and materials due to the negligence of the Manager. The Manager shall coordinate delivery schedules, sequence of delivery, loading orientation, and other arrangements normally required by the Manager for the Materials furnished. The Manager shall provide all services required for the unloading, handling and storage of Materials through installation. The Manager agrees to indemnify and hold the Owner harmless from any and all claims of whatever nature resulting from non-payment of goods to suppliers arising from the actions of Manager.

The Manager shall insure that County Purchased Materials conform to the Specifications, and determine prior to incorporation into the Work, if such Materials are patently defective, and whether such Materials are identical to the Material ordered and match the description on the bill of lading. As County Purchased Materials are delivered to the job site, the Manager shall inspect all shipments from the suppliers, and, if in conformance with the Purchase Order, approve the vendor's invoice for materials delivered. The Manager shall assure that each delivery of County Purchased Material is accompanied by documentation adequate to identify the Purchase Order against which the purchase is made. This documentation may consist of an itemized delivery ticket, packing slip or invoice from the supplier conforming to the Purchase Order against which the purchase is made, together with such additional information as the Owner may require. The Manager will then forward the documentation to the Owner.

If the Manager discovers defective or non-conformities in County Purchased Material upon inspection, the Manager shall not use such non-conforming or defective Materials in the Work and instead shall promptly notify the Owner of the defective or non-conforming conditions and coordinate the repair or replacement of those Materials without any undue delay or interruption to the Project. All repair, maintenance or damage-repair calls shall be forwarded to the Manager for resolution with the appropriate supplier, vendor, or subcontractor. If the Manager fails to perform such inspection, the condition of which the Manager either knew or should have known by performance of an inspection, Manager shall be responsible for all damages to the County resulting from Manager's incorporation of such Materials into the Project, including liquidated or delay damages.

On a bi-weekly basis, Manager shall be required to review invoices submitted by all suppliers of County Purchased Materials delivered to the Project Site during that month and either concur or object to the Owner's issuance of payment to the suppliers, based on Manager's records of materials delivered to the site. In order to arrange for the prompt payment to the supplier, the Manager shall provide to the Owner a list indicating the acceptance of the goods or materials within fifteen (15) days of receipt of said invoice for goods or materials. The list shall reference the applicable purchase order and include a copy of the invoices, delivery tickets, written acceptance of the delivered items, and such other documentation as may be reasonably required by the Owner. Upon receipt of the appropriate documentation in duplicate, the Owner shall prepare a check drawn to the supplier based upon the receipt of data provided. This check will be delivered directly to the supplier. If any discounts are available from the supplier or vendor, they shall accrue to the benefit of the Owner, and the amount quoted by the vendor, plus applicable tax, shall be deducted from the GMP. The Manager agrees to assist the Owner to immediately obtain partial or final releases or waivers as appropriate.

Following performance of the Purchase Orders by the suppliers, and submittal of documentation

confirming same to Owner with an invoice for payment by Owner, the Manager shall execute and deliver to the Owner at the end of each month along with the Manager's regular pay requests, a Materials Deduction Summary setting forth the full value of all County Purchased Materials, plus all taxes which would have been payable on the purchase of the Materials had they not been Owner purchased. The Materials Deduction Summary shall show all sums to be deducted by an appropriate deductive change order, and ultimately the GMP, to date. The Board of County Commissioners, or their authorized representative, shall be the approving authority for the Owner on the Materials Deduction Summary for County Purchased Materials.

The Manager shall maintain records of all County Purchased Materials incorporated into the Work. These records shall be available for inspection by the Owner upon request.

Notwithstanding the delivery of County Purchased Materials to the Project Site for the Manager's inspection, custody and incorporation into the Work, the Owner shall retain legal and equitable title to any and all County Purchased Materials. The transfer of possession of County Purchased Materials from the Owner to the Manager shall constitute a bailment for the mutual benefit of the owner and the Manager solely for the purposes set forth herein. The Owner shall be considered the bailer and the Manager the bailee of the County Purchased Materials. County Purchased Materials shall be considered returned to the Owner for purposes of their bailment at such time as they are incorporated into the Project or are returned to the vendor or supplier at the discretion of the Manager prior to payment for the Purchase Order by Owner.

The Owner shall purchase and maintain Builder's Risk Insurance sufficient to protect against any loss or damage to County Purchased Materials. Such insurance shall cover the full value of any County Purchased Materials not yet incorporated into the Project from the time the Owner first takes title to any of such County Purchased Materials and the time when the last of such County Purchased Materials is incorporated into the Project, or are returned to the vendor at the Manager's discretion prior to Owner's payment for same.

The Owner shall in no way be liable for any interruption or delay in the Project, for any defects or other problems with the Project, or any extra costs or time resulting from any delay in the delivery of, or defects in, County Purchased Materials.

ATTACHMENT "D"

DRAWINGS AND SPECIFICATIONS

ATTACHMENT "E"

CONSTRUCTION MANAGER'S
PRELIMINARY CONSTRUCTION SCHEDULE

ATTACHMENT "F"

ORDINANCE 98-37

AN ORDINANCE AMENDING CHAPTER 2 OF THE BREVARD COUNTY CODE TO CREATE ARTICLE VII, A PROCEDURE FOR PREQUALIFYING CONSTRUCTION CONTRACTORS, FOR COMPETITIVE BIDDING CRITERIA AND FOR DEBARMENT OF CONSTRUCTION CONTRACTORS AND SURETIES; PROVIDING FOR ALTERNATIVE CONSTRUCTION DELIVERY METHODS; PROVIDING FOR PREQUALIFICATION AND COMPETITIVE BIDDING CRITERIA, PROCEDURE, AND FOR A STANDARD OF PROOF; PROVIDING FOR EDITING OF THE ORDINANCE FOR INCLUSION WITHIN THE BREVARD COUNTY CODE; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Section 255.20, Fla. Stat. (1997) requires that standards and procedures for determining the lowest qualified and responsive bidder or award of a construction contract under any delivery method be established if a bidder is selected for any reason other than price; and

WHEREAS, the Board has determined that it is in the public's best interest to provide such standards and procedures so that the Board may select the most qualified and responsive bidder; and

WHEREAS, the Board has determined that it is in the public's best interest to prevent construction firms and sureties who have defaulted on a previous contract with the County from future bidding on County projects through a debarment procedure;

THEREFORE, be it ordained by the Board of County Commissioners of Brevard County, Florida as follows:

Section 1: Chapter 2 of the Brevard County Code shall be amended to create Article VII as follows:

1. DEFINITIONS: The following words shall have these meanings throughout this article:

"AFFECTED PARTY" means an individual or business which has submitted a bid, offer, proposal, quotation, or response which is rejected, or is found unqualified under the provisions of this article, or which would be selected if a low bidder was found unqualified or nonresponsive.

"BOARD" means the Board of County Commissioners of Brevard County, Florida.

"COMMITTEE" means two or more persons designated to evaluate prequalification and responsiveness criteria. Committees established by the County Manager may be intradepartmental, or include representatives of several departments interested in the administration and success of the construction project.

"DEBARMENT" means the exclusion for cause of a vendor or contractor, or subcontractor from bidding or doing business with the County on a temporary or permanent basis.

"MINOR IRREGULARITY" means a variation from the Invitation to Bid which does not affect the price of the bid, or give the bidder an advantage or benefit not enjoyed by other bidders, or does not adversely impact the interests of the agency.

"QUALIFIED BIDDER" means an individual or business which has submitted a bid, offer, proposal, quotation, or response, which has the capability in all respects to fully perform the contract requirements, and has the financial stability, honesty, integrity, skill, business judgement, experience, facilities and reliability necessary to give reasonable assurance of good faith and performance.

"REQUEST FOR QUALIFICATION" ("RFQ") means the process by which the County may prequalify individuals or businesses for a particular project before requesting bids for the project, thereby limiting the pool of bidders to these prequalified.

"RESPONSIVE BIDDER" means an individual or business which has submitted a bid, offer, proposal, quotation, or response, which conforms in all material respects to the solicitation, including but not limited to compliance with the submittal of specified insurance and bond requirements.

1. Any County contract for the construction or improvement of a public building, structure, or other public construction work that is estimated in accordance with general accounting principles to have construction costs of more than fifty thousand dollars ($50,000.00) shall be competitively awarded to the lowest, qualified and responsive bidder in accordance with this article, unless the project (1) fits within exceptions set forth in s. 255.20, Fla. Stat., as amended from time to time, (2) is a contract governed by the Consultant's Competitive Negotiation Act, or (3) is awarded under another contract delivery method authorized by this article. Nothing in this article shall be construed to require competitive award of every County construction work, nor to prohibit the Board from rejecting all bids if competitively bid, or to prevent the Board from waiving minor irregularities in any bid.

2. (a) Potential lump sum bidders responding to a request for qualifications are required to submit information required by this article and as identified in the RFQ

package. A committee identified in the RFQ package will determine whether a potential bidder is qualified and responsive as defined in this article.

(b) For projects advertised for lump sum bid without prior prequalification, the apparent low bidder, after the formal bid opening, will be required to submit the following prequalification information identified in the bid package within five (5) business days after the bid opening. Failure to provide prequalification information within this time frame may be considered as grounds for finding the apparent low bidder nonresponsive. If the apparent low bidder cannot provide adequate documents for review, or the submitted documents indicate the apparent low bidder or any subcontractors are not qualified, or if the bidder's package is determined to be nonresponsive, the Committee will reject the bidder or any of its subcontractors. In the event the bidder is found unqualified or non-responsive, the apparent second low bidder will be contacted and afforded the previous mentioned five (5) days to submit pre-qualification documents. This process will continue until the lowest qualified and responsive bidder is established. In the event that a subcontractor is found unqualified or non-responsive, the potential bidder or prime contractor will have five (5) business days to submit a substitute subcontractor for the same bid price or withdraw the original bid.

(c) In addition to lump sum contracts for construction, the Board may use the following delivery methods for construction or improvement of a public building, structure, or other public construction work: construction manager, design/build, or continuing contracts based on unit prices. The Board may also enter into continuing contracts with construction managers using the pre-qualification procedure set forth herein for potential lump sum bidders. The individual projects shall be awarded under a continuing contract using the following criteria:

> Ability of professional personnel given project's special characteristics; past performance; willingness to meet time and budget requirements; location; recent, current and projected workloads of the firms available under continuing contract; volume of work previously awarded to each firm under a continuing contract provided distribution does not violate the principle of selection of the most qualified firm for the project; previous experience on County projects.

The County Manager will establish procedures for the Board to hear any affected party with a complaint or appeal as to any recommendation or finding made pursuant to this article. Any affected party's complaint or appeal must be presented, in writing, to the County Manager's office within five (5) business days of the posting of a committee's decision.

(d) At the completion of each competitively awarded County construction project, the County department which administered the construction contract shall

complete an evaluation of the contractor's performance on a form to be established by the County Manager. The department may also complete evaluations of critical subcontractors using the same form. All such records shall be copied to the party evaluated and maintained by County Purchasing. Any party evaluated may submit a written response of any length, which response shall be filed with the evaluation.

3. Potential bidders, the apparent lowest bidder, or the person providing services under any other contract delivery method, and applicable subcontractors identified in the bid or request for qualification package for any County construction project which is to be competitively awarded shall be evaluated to determine whether the bidder and its subcontractors are qualified. In evaluating qualifications, the County shall consider the following information:

   - A Contractor's Pre-Qualification Statement for the prime contractor and subcontractors performing parts of work identified in the bidding documents as critical to the project's success. The Pre-Qualification Statement shall be provided on a form to be established by the County Manager;

   - Most current financial statement, but not more than one (1) year old, indication of bondability, or, if project is under $100,000, other evidence of financial capability as identified in the bid documents;

   - Resumes of Contractor and Subcontractor's key personnel, including project manager and superintendent levels, showing job history, education related to work to be performed and any license, training, and experience related to the work which that individual will perform;

   - List of subcontractors and suppliers, and items of work to be performed by the Contractor's own work force;

   - County evaluations of the performance on County projects;

   - References obtained from individuals or businesses with whom the contractor or subcontractor has performed work or conducted business;

   - Any other relevant qualifications, data or information identified in the bidding documents to be critical to the success of the project.

4. The County Manager will establish committees which may debar a contractor, contractor's key personnel, contractor's surety, subcontractor and subcontractor's key personnel, or any entity which key personnel are later employed or retained by in a supervisory position, from bidding on any County project under the circumstances enumerated below. The decision to disbar is

discretionary, the seriousness of the offense and all mitigating factors should be considered in making the decision to disbar. The notice of debarment shall state the time when such debarment will be lifted, if ever, and the contractor's right to appeal such debarment to the Board of County Commissioners under the Board's regular agenda. The Board reserves the power to waive or lift any committee imposed suspension or debarment.

An individual or business may be *permanently* debarred for any of the following reasons:

- Conviction or a judgment obtained in a court of competent jurisdiction for:
- Commission of a fraud or a criminal offense as an incident to obtaining, attempting to obtain, or in the performance of a pubic contract
- Violation of any Federal or State of Florida anti-trust or anti-racketeering statutes arising out of submission of bids or proposals;
- Commission of embezzlement, theft, forgery, bribery, falsification of or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which seriously and directly affects the question of present responsibility as a County contractor, subcontractor or vendor;
- If the conviction or judgment is reversed on appeal, the debarment shall be removed upon receipt of notification thereof.

Competent and substantial evidence of a violation of a County contract provision, as set forth below, when the violation is of a character so as to justify debarment action such as:

- Failure to perform in accordance with the specifications or delivery requirements in a contract;
- A history of failure to perform, or of unsatisfactory performance, in accordance with the terms of one or more contracts; provided, that such failure or unsatisfactory performance is within a reasonable period of time preceding the determination to debar. Failure to perform for unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered as a basis of debarment.

Upon adequate evidence, an individual or business may be *temporarily* debarred for a period up to three (3) years based upon substantial evidence of involvement in any of the causes cited in paragraph (b) above.

Section 2: Inclusion in Code: It is the intention of the Board of County Commissioners that the provisions of this ordinance shall become and be made a part of the Brevard County Code; and that the sections of this ordinance may be renumbered or relettered to accomplish such intentions.

Section 3: Severability: If any provision of this ordinance is held to be illegal or invalid,

the other provisions shall remain in full force and effect.

Section 4: Effective Date: This ordinance shall become effective upon filing as provided by law. A certified copy of the ordinance shall be filed with the Office of the Secretary of State, State of Florida within ten (10) days of enactment.

ATTACHMENT "G"

PUBLIC CONSTRUCTION PAYMENT BOND

BY THIS BOND, We _____ as Principal and _____, a corporation as Surety, are bound to Brevard County Board of County Commissioners, Brevard County, Florida, herein called Owner, in the sum of _____ ($), for payment of which we bind ourselves, our heirs, personal representatives, successors and assigns, jointly and severally.

THE CONDITIONS OF THIS BOND are that if Principal:

1. Promptly makes payments to all claimants, as defined in Section 255.05(1), Florida Statutes, supplying Principal with labor, materials, or supplies, used directly or indirectly by Principal in the prosecution of the work provided for in the contract dated _____, 20____, between Principal and Owner for construction of _____, the contract being attached hereto and made a part of this bond by reference, in such time and without delay, and in the manner prescribed in the contract; and
2. Pays Owner all losses, damages, expenses, costs, and attorney's fees, including appellate proceedings, that Owner sustains because of a default by Principal under the contract, then this bond is void; otherwise it remains in full force.

Any changes in or under the contract documents and compliance or noncompliance with any formalities connected with the contract does not affect Surety's obligation under this bond.

Signed and sealed this _____ day of _____, 20___.

Witness:

_____

_____
Principal Seal

Its: _____
Title

Witness:

_____

_____
Surety Seal

Its: _____
Title

ATTACHMENT "H"

PUBLIC CONSTRUCTION PERFORMANCE BOND

BY THIS BOND, We _____, as Principal and _____, a corporation as Surety, are bound to Brevard County Board of County Commissioners, Brevard County, Florida, herein called Owner, in the sum of _____ ($_____), for payment of which we bind ourselves, our heirs, personal representatives, successors and assigns, jointly and severally.

THE CONDITIONS OF THIS BOND are that if Principal:

1. Performs promptly, completely and faithfully the contract dated _____, 2010 between Principal and Owner for construction of _____, the contract being attached hereto and made a part of this bond by reference, in such time and without delay, and in the manner prescribed in the contract including the delivery, execution and performance of any warranty work required by the contract; and
2. Pays Owner all losses, damages, expenses, costs, and attorney's fees, including appellate proceedings, that Owner sustains because of default by Principal under the contract; and
3. Performs the guarantee of all work and materials furnished under the contract for the time specified in the contract, then this bond is void; otherwise it remains in full force.

Any changes in or under the contract documents and compliance or noncompliance with any formalities connected with the contract does not affect Surety's obligation under this bond.

Signed and sealed this _____ day of _____, 20___.

Witness:

_____

_____
Principal Seal

Its: _____
Title

Witness:

_____

_____
Surety Seal

Its: _____
Title

ATTACHMENT "I"

CONSTRUCTION MANAGER'S
GUARANTEED MAXIMUM PRICE

ATTACH HERE

ATTACHMENT "J"

CERTIFICATE OF SUBSTANTIAL COMPLETION

(Insert Form Here)

ATTACHMENT "K"

CERTIFICATE OF FINAL COMPLETION

PROJECT NO. & TITLE:
ARCHITECT: CONTRACTOR:
CONTRACT DATE: DATE OF FINAL COMPLETION:

CERTIFICATE OF ARCHITECT/ENGINEER

Based on my inspections and investigation of the Contractor's work under the above referenced contract, I certify that the work, in general, has been completed in accordance with the contract documents, that all matters previously brought to the Contractor's attention as incomplete or defective have been resolved pursuant to my direction, and that the Contractor has submitted the attached sworn affidavit as evidence that the Contractor has paid all labor, materials, and other charges against the project in accordance with the terms of the Contract.

A/E Firm Name: _____ By: _____

TO BE COMPLETED BY ARCHITECT/ENGINEER: DATE: DAYS:

THROUGH THE SUBSTANTIAL COMPLETION PHASE

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 NTP through Date Certified by A/E)
6. Substantial Completion Overrun (Subtract Line 4 from 5 and Enter Overrun)

THROUGH THE FINAL COMPLETION PHASE

1. Time Specified in Contract, Between Substantial and Final Completion
2. Extensions Granted by Change Orders (Days Between S.C. and Final Completion)
3. Total Days Allowable Between Substantial Completion and Final Completion (Add Lines 1 and 2)
4. Date Actually Completed and Total Days Between and Date Certified by A/E as Actually being Finally Completed).
5. Final Completion Overrun (Subtract Line)

Architect: _____ Date: _____

Project Manager: _____ Date: _____

Facilities Construction Manager: _____ Date: _____

ATTACHMENT "L"

ALLOWABLE COSTS, OVERHEAD

DESCRIPTION	EST QUANTITY	UNITS	UNIT COST	BUDGET VALUE	QUANTITY TO DATE	QUANTITY TO COMP
OFFICE PHONES						
OFFICE SUPPLIES						
POSTAGE						
GAS/OIL/LUBRICATION						
AUTOMOBILES/TRUCKS						
PROJECT MANAGER						
ESTIMATING COSTS						
EXECUTIVE LABOR COST						
ASST PROJECT MANAGER						
IN HOUSE SECRETARY						
TRAVEL EXPENDITURES						
WARRANTY EXPENSE						

ATTACHMENT "M"
(Direct Cost Items)
GENERAL CONDITIONS

SUPERINTENDENT

JOB SITE SECRETARY/CLERK

QUALITY CONTROL

SURVEY

PERMITS

IMPACT/CONNECTION FEES

CONSTRUCTION DRAWINGS/SPECS

PROGRESS PHOTOGRAPHS *(IF REQUESTED BY THE OWNER)*

JOB SITE SIGN *(IF REQUESTED BY THE OWNER)*

SPECIAL SECURITY *(IF REQUESTED BY THE OWNER)*

PAYMENT & PERFORMANCE BONDS

BUILDERS RISK INSURANCE

JOBSITE TRAILER AND SUPPORT *(IF REQUESTED BY THE OWNER)*

TEMPORARY UTILITIES *(AS APPROVED BY THE OWNER)*

TEMPORARY JOBSITE FENCING *(INITIAL INSTALLATION ONLY)*

TRASH REMOVAL/DUMP FEES, AND RECYCLING *(AS APPROVED BY THE OWNER)*

ATTACHMENT "N"

CERTIFICATE FOR PAYMENT

(INSERT FORM HERE)

ATTACHMENT "O"

MINORITY EMPLOYMENT INFORMATION

The Board of County Commissioners requires construction contracts, who would otherwise be required to file and EEO Form 1 Report under Federal Law (currently Federal law requires filing for employers with more than 15 employees), to submit an EEO Form 1 Report with the submission of their GMP. This requirement extends to any subcontractors who are required to submit the EEO Form 1 Report (over 15 employees) under Federal law. Failure to submit an Acknowledgment and/or EEO Form 1 Report with your GMP will be reason to declare your proposal "non-responsive" to the proposal requirements. However, the information will be used for statistical purposes only and will not be used in any way as a basis to award a contract.

Please fill out and sign one (1) of the following statements:

1. My Company or subcontractors are required to submit the EEO Form 1 Report and they are attached.

   Company Name:
   Signature: _____ Date: _____

2. My Company or subcontractors are not required to submit the EEO Form 1 Report.

   Company Name:
   Signature: _____ Date: _____

Company Name: _____

Company Address: _____

Company Telephone: _____

Signature: _____ Printed Signature: _____

ATTACHMENT "P"

PUBLIC ENTITY CRIME ACKNOWLEDGMENT

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/quote/proposal on a contract to provide goods or services to a public entity, may not submit a bid/quote/proposal on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids/quotes/proposals on leases of rental 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 in excess of the threshold amount provided in Section 287.017, for Category Two ($15,000) for a period of thirty six (36) months from the date of being placed on the convicted vendor list.

NON-COLLUSION AFFIDAVIT OF PRIME BIDDER

State of Florida
County of Brevard

_____, being duly sworn, deposes and says that:

(1) Affiant is _____ of _____, the Bidder that has submitted a bid/quote/proposal;

(2) Affiant is fully informed respecting the preparation and contents of the bid/quote/proposal and of all pertinent circumstances respecting such bid/quote/proposal;

(3) Such bid/quote/proposal is genuine and is not a collusive or sham bid/quote/proposal;

(4) Neither the said Bidder nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, has in any way colluded, conspired, connived or agreed, directly or indirectly with any other Bidder, firm or person to submit a collusive or sham bid/quote/proposal in connection with the Contract for which the bid/quote/proposal has been submitted or to refrain from bidding in connection with such Contract, or has in any manner, directly or indirectly, sought by Contract, or has in any manner, directly or indirectly, sought by the agreement or collusion or communication or conference with any other bidder, firm or person to fix the price or prices in the bid/quote/proposal or of any other Bidder, or to fix any overhead, profit or cost element of the bid/quote/proposal price or the bid/quote/proposal price of any other bidder, or to secure through any collusion, conspiracy, connivance or unlawful agreement any advantage against the Board of County Commissioners of Brevard County, Florida, or any person interested in the Contract; and

(5) The price or prices negotiated for the bid/quote/proposal are fair and proper and are not tainted by any collusion, conspiracy, connivance, or unlawful agreement

on the part of the Bidder or any of its agents, representatives, owners, employees, or parties of interest, including affiant.

_____
Signature

_____
Title

Subscribed and sworn to before me this ____ day of _____, 20___.

_____
Notary Public

My Commission expires: _____

CONTINUING
CONSTRUCTION MANAGER (AT RISK)
SERVICES AGREEMENT

This is an Agreement entered into this 14th day of July 2015, by and between **BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS**, a political subdivision of the State of Florida, hereinafter referred to as COUNTY, and **CANAVERAL CONSTRUCTION** whose address is 3475 North U.S.1, Mims, Florida, 32754, a corporation under the laws of the State of Florida, hereinafter referred to as CONSTRUCTION MANAGER.

For and in consideration of the mutual agreement hereinafter contained, the COUNTY hereby retains the CONSTRUCTION MANAGER and the CONSTRUCTION MANAGER hereby covenants to provide Continuing Construction Manager (At Risk) services for Projects ($1 - $1,000,000 each).

ARTICLE 1

1.1 The CONSTRUCTION MANAGER agrees to furnish its best skill and judgement and to cooperate with the Architect/Engineer, where applicable, in furthering the interest of the COUNTY. The CONSTRUCTION MANAGER agrees to furnish efficient business administration and supervision and to use its best efforts to complete the Project(s) in an expeditious and economical manner consistent with the interests of the COUNTY.

1.2 The Construction Team: The CONSTRUCTION MANAGER, the COUNTY and the Architect/Engineer (the "Construction Team") will work as a team through construction completion. The CONSTRUCTION MANAGER shall provide leadership to the Construction Team on all matters relating to construction. The Architect/Engineer will provide leadership to the Construction Team on all matters relating to design.

ARTICLE 2

2.1 The CONSTRUCTION MANAGER'S basic services under this Agreement include construction management services for projects ($1 - $1,000,000). For each proposed Project, the COUNTY and the CONSTRUCTION MANAGER shall enter into a separate "Agreement Between Owner and Construction Manager" (Attachment "A").

2.2 Selection for each proposed Project will be per Florida Statute 287.055, and Qualification Based Selection Criteria approved by the Board of County Commissioners, as follows:

A. Ability of firms professional personnel given the project's special characteristics;
B. Willingness to meet time and budget requirements;
C. Physical location of firm;
D. Recent, current, and projected workload of the firms available under the continuing contract;
E. Volume of work previously awarded to the firm by the Board of County Commissioners, provided distribution does not violate the principles of selection of the most qualified firm for the project;
F. Previous Board of County Commissioners experience, including staff evaluations on file with Brevard County Facilities Construction and Brevard County Purchasing Services.

2.3 The Contract Time for performance of each proposed Project shall be established in the "Agreement Between Owner and Construction Manager" for each proposed Project, including the Notice to Proceed.

2.4 This Agreement shall remain in effect for a period of one (1) year, and may be renewed for an additional three (3) one-year increments at the COUNTY's option, based upon satisfactory performance of the CONSTRUCTION MANAGER.

2.5 The Guaranteed Maximum Price (GMP) for each proposed Project shall include the Cost of the Work required by the Contract Documents, and the CONSTRUCTION MANAGER'S fee. The GMP will be negotiated based on Contract Documents, Plans and Specifications for each proposed Project provided by the COUNTY.

2.6 Insurance, Payment and Performance Bonds will be provided to the COUNTY by the CONSTRUCTION MANAGER for each proposed Project in accordance with the initial Request for Proposal #P-3-11-04.

ARTICLE 3

3.1 The COUNTY and CONSTRUCTION MANAGER respectively bind themselves, their partners, successors, assigns and legal representatives to this Agreement and to the partners, successors, assigns and legal representatives of other party with respect to all covenants of this Agreement. Neither the COUNTY nor the CONSTRUCTION MANAGER shall assign this Agreement without written consent of the other.

3.2 This Agreement shall be governed by the laws of the State of Florida.

IN WITNESS WHEREOF, the parties have affixed their signatures, effective on the date first written above.

BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

By: _____
Robin Fisher, Chair

As Approved By The Board On: SEP 16 2014

Attest:

_____
Scott Ellis, Clerk of Circuit Court

CANAVERAL CONSTRUCTION

By: _____

Title: PRESIDENT

Reviewed for legal form and content:

_____
Deputy County Attorney

6/19/15
Date

ATTACHMENT "A"

AGREEMENT
BETWEEN OWNER AND CONSTRUCTION MANAGER

THIS AGREEMENT made the ____ day of _____ in the year Two Thousand _____ between the **BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS**, a political subdivision of the State of Florida whose address is 2725 Judge Fran Jamieson Way, Viera, Florida 32940 (hereinafter referred to as "Owner"), and _____ whose address is _____ (hereinafter referred to as "Construction Manager"), a company licensed to do business in the State of Florida.

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. The Construction Manager covenants with the Owner to furnish the best skill and judgment and to cooperate with the Architect/Engineer in furthering the interests of the Owner. The Construction Manager agrees to furnish efficient business administration and superintendence and use its best efforts to complete the Project in 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 Design 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 **Attachment "A"** attached.

1.2 Scope of Work – A general description of the Work/Project to be built/constructed/installed under this Agreement (**Attachment "B"**).

1.3 Definitions:

Project - The Project is the total work to be performed under this Agreement. The Project consists of planning, design review, permitting, construction (which includes all labor, equipment, material and supervision) and code inspection necessary to build/construct and complete the Scope of Work identified in Attachment "B" (Scope of Work).

Owner - Brevard County Board of County Commissioners, Central Services

Department - Facilities, 2725 Judge Fran Jamieson Way, Building A, 2nd Floor, Viera, Florida 32940, (321) 633-2050; facsimile (321) 633-2101. For the purposes of this agreement, the Owner may also include the County Manager or the Project Manager with regard to the performance of designated functions and duties specified for each under the terms and provisions of this agreement.

Contract Documents - Consist of this Agreement with attachments, Scope of Work, the drawings, the specifications, the GMP, any Conditions of the Contract between the Owner and the Construction Manager (General, Special, Supplementary and other conditions), permit conditions, if any, grant specifications, any addenda to the foregoing listed documents and all change orders, amendments or modifications as provided in Article 10, whether or not any of the foregoing listed documents have been attached hereto.

Permitting Authority - All applicable Federal, State, County and local agencies responsible for permitting and code inspections on projects administered by the Owner.

Construction Manager –

Architect/Engineer –

Project Director - The person designated by the Owner to provide direct interface with the Construction Manager with respect to the Owner's responsibilities. Joan Van Sickle, Construction Manager, is the designated Project Director, and _____ is the designated Construction Coordinator.

Owner's Representatives - The Project Director and his/her supervisors and/or designees.

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

Guaranteed Maximum Price (GMP) - The Guaranteed Maximum Price for the construction of the project, which shall be subject to adjustments only as provided herein. GMP includes Cost of the Work and Construction Manager's fee for Construction Phase services. The Guaranteed Maximum Price does include the cost for Owner direct purchases, however, all Owner direct purchases will be deducted in one deductive change order in accordance with **Attachment "C"** (Direct Purchasing Procedure) at the end of the project.

Substantial Completion - the point in the construction where all essential elements of the Project are sufficiently complete in conformance with the Contract, that the OWNER has both the occupancy of the Project, as evidenced by a Certificate of Occupancy issued by the governmental authority with jurisdiction and the beneficial use of the Project for its intended purpose where

only minor punch list items are required for final completion. Substantial Completion shall not be deemed to have occurred where 1) latent defects are revealed subsequent to use and occupation of the project by the OWNER or 2) where the scope of substantial defects in workmanship or materials are not readily observable or discoverable when use and occupancy of the project commenced or 3) the failure to meet grant specifications, if any.

1.4 Extent of Agreement - This Agreement for Construction Management services for the construction of the _____ between the Owner and the Construction Manager supersedes any prior negotiations, representations or agreements. The drawings, specifications and other descriptive documents defining the work to be included under this construction contract are identified in **Attachment "D"**. The Construction Manager shall obtain from the Owner three (3) sets of signed, sealed and dated drawings, specifications and other documents upon which the GMP is based; 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 (1) set of the documents to the Project Director along with his GMP proposal, while keeping one (1) set for himself and returning one (1) set to the Architect/Engineer.

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.

ARTICLE 2

CONSTRUCTION MANAGER'S RESPONSIBILITIES

Construction Manager shall perform all services described in this Article. The services to be provided under Paragraph 2.1 constitute the Pre-Construction Phase services. The services to be provided under Paragraph 2.2 thru 2.9 constitute the Construction Phase services. The parties acknowledge the Construction Phase shall commence before the Pre-Construction Phase is completed, and to a certain extent both phases shall proceed concurrently.

2.1 PRE-CONSTRUCTION PHASE

2.1.1 Preliminary Evaluation - Construction Manager shall provide a preliminary evaluation of Owner's program and Project budget requirements, each in terms of the other.

2.1.2 Consultation - Construction Manager will provide Design Disciplines Construction Documents Plans and Specifications review at all design milestones and a final constructability review. The review at each milestone will identify areas of omission, overlapping and identify documents to be modified in order to clarify the construction details. The review will also include the coordination and

interface of the contract document's General Conditions, Special Conditions, trade contractor bid packages and site utilization planning during construction. Reviews shall be completed and comments provided within five (5) business days. As part of the design review, Construction Manager will provide Value Engineering and construction alternatives, identifying to the Owner and Architect options for systems and components that are cost effective, ease of maintainability and efficiency to be considered.

Construction Manager, with Architect, has scheduled and attended, and will continue to jointly schedule and attend, **weekly** progress meetings (*or as determined by the Project Director or Project Manager*) with Owner and Architect. Construction Manager has and will continue to consult with Owner and Architect regarding site use and improvements, and the selection of materials, building systems and equipment. Construction Manager has provided and will continue to provide recommendations on construction feasibility; actions designated to minimize adverse effects of labor or material shortages; time requirements for procurement, installation and construction completion; and factors related to construction cost including estimates of alternative designs or materials, preliminary budgets and possible economies.

2.1.3 Preliminary Project Schedule - Construction Manager has prepared a Preliminary Project Schedule, a copy of which is attached as **Attachment "E"**. Construction Manager shall coordinate and integrate the Preliminary Project Schedule with the services and activities of Owner, Architect and Construction Manager. The Construction Manager shall 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 Total Project Schedule. The schedule shall include all phases of construction work, material supplies, long lead procurement, approval of shop drawings, change orders in progress, schedules for change orders, and performance of testing requirements. The Construction Manager shall advise the Owner, its representatives and the Architect/Engineer of their required participation in any meeting or inspection giving each at least one (1) week notice unless such notice is made impossible by conditions beyond the Construction Manager's control. The Construction Manager shall hold jobsite meetings at least once each week with the Construction Team and at least once each week with the subcontractors and the Architect/Engineer field representatives, and Owner or more frequently as required by work progress, to review progress, discuss problems and their solutions and coordinate future work with all subcontractors.

2.1.4 Subcontractors and Suppliers - Construction Manager shall continue to develop subcontractor interest in the Project and shall furnish to Owner and Architect for their information a list of possible subcontractors, including suppliers who are to

furnish materials or equipment fabricated to a special design, from whom proposals will be requested for each principal portion of the Project. Owner will promptly reply in writing to Construction Manager if Owner has an objection to any such subcontractor or supplier. The receipt of such list shall not require Owner to investigate the qualifications of proposed subcontractors or suppliers, nor shall it waive the rights of Owner to later object to or reject any proposed subcontractor or supplier.

2.1.5 Long Lead and Owner Direct Procurement - The Construction Manager shall review the design for the purpose of identifying long lead and Owner direct procurement items (machinery, equipment, materials and supplies). When each item is identified the Construction Manager shall notify the subcontractors, the Project Director, and the Owner of the required procurement and schedule. Such information shall be included in the bid documents and made a part of all affected subcontracts. 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 Invitation for Bids. The Construction Manager shall keep informed of the progress of the respective subcontractors and/or suppliers, manufacturing or fabricating such items and notify the Project Director, Owner and Architect/Engineer of any problems or prospective delay in delivery.

2.1.6 Extent of Responsibility - The recommendations and advice of Construction Manager concerning design alternatives shall be subject to the review and approval of Owner and Owner's professional consultants. It is not Construction Manager's responsibility to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations. However, if Construction Manager recognizes that portions of the Drawings and Specifications are at variance therewith, Construction Manager shall promptly notify Owner and Architect in writing.

2.1.7 Equal Employment Opportunity and Affirmative Action - Construction Manager shall comply with applicable laws, regulations and special requirements of the Contract Documents regarding equal employment opportunity and affirmative action programs.

2.1.8 Separate Contracts Planning - The Construction Manager shall review the design with the Architect/Engineer and make recommendations to the Owner and to the Architect/Engineer with respect to dividing the work in such manner as will permit the Construction Manager to take bids and award separate construction subcontracts on the current schedule while the design is being completed. The Construction Manager shall take into consideration such factors as natural and practical lines of severability, sequencing, effectiveness, access and availability constraints, total time for completion, construction market conditions, availability of labor and materials, community relations and any other factors pertinent to saving time and cost by overlapping design and construction that are authorized

by the Owner.

2.2 CONSTRUCTION PHASE

2.2.1 Interfacing -

(1) The Construction Manager shall take such measures as are appropriate to provide that all construction requirements will be covered in the separate subcontracts for procurement of long lead items, the separate construction subcontracts and the general conditions items performed without duplication or overlap, sequenced to maintain completion of all work on schedule. Particular attention shall be given to provide that each bid package clearly identifies the work included in that particular separate subcontract, its schedule for start and completion and its relationship to other separate subcontractors.

(b) Subcontractor Interfacing - The Construction Manager shall be the single point of interface with all Subcontractors for the Owner, and all of its agents and representatives, including the Architect/Engineer. The Construction Manager shall negotiate all change orders, field orders and request for proposals, with all affected Subcontractors and shall review the costs of those proposals and advise the Owner and Architect/Engineer of their validity and reasonableness, acting in the Owner's best interest prior to requesting approval of each change order from the Owner. Before any work is begun on any change order, an executed Authorization to Initiate Work form from the Owner must be issued. However, when health and safety are threatened, the Construction Manager shall act immediately to remove the threat to health and safety. The Construction Manager shall also carefully review all shop drawings and then forward the same to the Architect/Engineer for review and actions. The Architect/Engineer will transmit them back to the Construction Manager who will then issue the shop drawings to the affected Subcontractor for fabrication or revision. The Construction Manager shall maintain a suspense control system to promote expeditious handling. The Construction Manager shall request the Architect/Engineer to make interpretations of the drawings or specifications requested of the Construction Manager by the Subcontractors and shall maintain a suspense control system to promote timely response. The Construction Manager shall advise the Project Director and Architect/Engineer when timely response is not occurring on any of the above.

2.2.2 Solicitation of Bids

(1) Without assuming responsibilities of the Architect/Engineer, the Construction Manager shall prepare Invitations for Bids (or Request For Proposals, when applicable) for all procurements of long lead times,

materials and services for Subcontractor contracts and for site utilities.

(2) 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.

(3) For each separate subcontractor or construction trade contract used in this project, the Construction Manager shall, unless waived by the 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.

(4) In accordance with Article 2.4.2 the Construction Manager shall open and review all bids and enter into contract(s) with those low bidders determined to be most qualified by the Construction Manager. The Construction Manager shall make every effort to follow the County's Pre-Qualification Ordinance 98-37 (**Attachment "F"**) for applicable subcontract trades.

2.2.3 Bonds - For those projects where the cost will exceed $100,000.00, 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 (**Attachment "G" and "H"**), certified copies of the recorded 100% Public Construction Performance Bond and 100% Public Construction Payment Bond each in an amount not less than the total construction cost (GMP) as defined in Article 9 and inclusive of the construction fee. *Payment and Performance Bonds shall be recorded (by the Construction Manager) in the official record of the County in which the project is located.* The Contractor must provide a copy of the bond(s) to all subcontractors and notify them of deadlines to make claims under the bonds.

2.2.4 Quality Control - The Construction Manager shall develop and maintain a program, acceptable to the Owner and Architect/Engineer, to assure quality control of the construction (*this may include personnel if approved by the Owner*). The Construction Manager shall have a qualified and competent Superintendent to supervise the work of all Subcontractors providing instructions to each when their work does not conform to the requirements of the plans and specifications and shall continue to exert 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 and 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.

2.3 Guaranteed Maximum Price (GMP) and Contract Time

2.3.1 Construction Manager acknowledges and agrees the Drawings and Specifications are sufficiently complete for Construction Manager to propose a Guaranteed Maximum Price (GMP), which is the total not to exceed sum of the Construction Manager's Fee and the Cost of the Project. Accordingly, the Guaranteed Maximum Price (GMP) is hereby established at $_____. *The final approved GMP spread sheet is hereby attached as* **Attachment "I"** *to and shall become a part of this Agreement between Owner and Construction Manager.*

2.3.2 The Cost of the Work shall include Construction Manager's contingency, a sum agreed to by all parties for the Manager's use to cover costs arising from unforeseen conditions in the project. Construction Manager's contingency is hereby established as a separate line item of $_____ within the Guaranteed Maximum Price.

2.3.3 Basis of Guaranteed Maximum Price (GMP)
The Guaranteed Maximum Price, herein established is based upon the following:

.1 The list of the Drawings and Specifications, including all addenda thereto, and the Conditions of the Contract, which are identified in the Attachments to this Agreement.

.2 The list of clarifications and assumptions made by Construction Manager in the preparation of its Guaranteed Maximum Price proposal to supplement the information contained in the Drawings and Specifications.

.3 The Preliminary Construction Schedule (**Attachment "E"**). As reflected in said Schedule, Construction Manager is to achieve Substantial Completion of the Work within ____ calendar days from issuance of Notice to Proceed. Final Completion shall be achieved within an additional ____ calendar days.

2.3.4 Included within the Guaranteed Maximum Price is the Construction Manager's fee. The Construction Manager's Fee is hereby established as $_____ for services provided in this Agreement. The sum of the Cost of the Project and the Construction Manager's Fee shall not exceed the Guaranteed Maximum Price. The Construction Manager's Fee shall constitute Construction Manager's total compensation for profit. All costs in excess of the final approved GMP (as

reduced by Owner direct purchases, if any, in accordance with **Attachment "C"**) are the responsibility of the Construction Manager. Any savings between the GMP (as reduced by Owner direct purchases) and the sum of the actual cost of the Project plus the Construction Manager's fee will be returned to the Owner.

2.3.5 Prior to issuance of the Construction Phase Notice to Proceed, Construction Manager shall not incur any costs to be reimbursed as part of the Cost of the Project, except as Owner may specifically authorize in writing.

2.3.6 The Guaranteed Maximum Price and date of Substantial Completion shall be subject to additions and deductions by a Change Order as provided in the Contract Documents.

2.3.7 The Guaranteed Maximum Price shall include in the Cost of the Project only those taxes which are enacted and in effect at the time the GMP was determined.

2.4 Construction Phase

2.4.1 General

2.4.1.1 The Construction Phase shall commence on the date identified in the Notice to Proceed to be issued by the Owner.

2.4.1.2 The Construction Manager shall cause all Work required by the Contract Documents to be properly completed in accordance with the terms of the Contract Documents and within the Contract Time.

2.4.1.3 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 and to coordinate, inspect and provide general direction of the work and progress of the subcontractors, and the Construction Manager shall provide no less than those personnel during the respective phases of construction. The Construction Manager shall not change any of those designated persons 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 reasonably withheld.

2.4.1.3.1 The Construction Manager shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during the progress of the work. The superintendent shall represent the Construction Manager and all communications given to the superintendent shall be as binding as if given to the Construction Manager.

2.4.1.3.2 The superintendent shall be in attendance at the Project site not less than

eight (8) hours per day, five (5) days per week, and any time work is being performed at the jobsite, unless the job is closed down due to a general strike or conditions beyond the control of the Construction Manager or until completion or termination of the Contract. It is understood that such superintendent shall be acceptable to the Owner and the Architect and shall be the one who will be continued in that capacity for the duration of the project, unless the Owner otherwise agrees. The superintendent shall not be employed on any other project for or by Construction Manager or any other entity during the course of the work.

2.4.1.4 Lines of Authority - The Construction Manager shall establish and maintain lines of authority for its personnel, and shall provide this description/definition to the Owner and all other affected parties such as the code inspectors of the permitting authorities, the subcontractors, 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 the Architect/Engineer may attend meetings between the Construction Manager and subcontractors, however, such attendance shall not diminish either the authority or responsibility of the Construction Manager to administer the subcontractor.

2.4.2 Administration

2.4.2.1 Those portions of the Project that Construction Manager does not customarily perform with Construction Manager's own personnel shall be performed under subcontracts or by other appropriate written agreements with Construction Manager. Construction Manager shall obtain bids from subcontractors and from suppliers of materials or equipment fabricated to a special design for the Project from the list previously reviewed and, after analyzing such bids, shall deliver such bids to the Owner and Architect for review and comment. Based upon that review and comment, Construction Manager shall then determine, subject to the reasonable objection of Architect or Owner, which bids will be accepted. Construction Manager shall not be required to contract with anyone to whom Construction Manager has reasonable objection. Notwithstanding anything herein to the contrary, Construction Manager covenants and agrees that it shall competitively bid all subcontracts. Further, with respect to all such subcontracts, Construction Manager covenants and agrees that it shall select and contract with the lowest, responsive and qualified bidder, unless otherwise consented to in writing by Owner.

2.4.2.2 Subcontracts and agreements with suppliers furnishing materials or equipment fabricated to a special design shall conform with payment provisions and shall not be awarded on the basis of cost plus a fee without prior written consent of Owner.

2.4.2.3 Construction Manager shall schedule and conduct weekly meetings at

which Owner, Architect, Construction Manager and appropriate Subcontractors can discuss the status of the Project. Construction Manager shall prepare and promptly distribute meeting minutes within two (2) business days after any such meeting is held.

2.4.2.4 Promptly after Owner's issuance of the Notice to Proceed, Construction Manager shall prepare a more detailed Project Schedule, based upon the preliminary Project Construction Schedule attached as **Attachment "E"**, including Owner's occupancy requirements. Construction Manager will submit monthly updates to the Schedule until the project is completed.

2.4.2.5 Construction Manager shall provide Monthly Written Reports to Owner on the progress of the entire Work. Construction Manager shall maintain a daily log containing a record of weather, subcontractors working on the site, number of workers, Work accomplished, problems encountered and other similar relevant data as Owner may require. The log shall be available to Owner at all times.

2.5 Professional Services - Construction Manager shall not be required to provide professional services which constitute the practice of architecture or engineering, unless such services are specifically required by the Contract Documents for a portion of the Project, or unless Construction Manager has specifically agreed in writing to provide such services. In such event, Construction Manager shall cause such services to be performed by appropriately licensed professionals.

2.6 Unsafe Materials - If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance encountered but not created or brought on the site Construction Manager shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to Owner and Architect in writing. Owner shall be responsible for obtaining the services of a licensed laboratory to verify the presence or absence of the material or substance reported by Construction Manager and, in the event such material or substance is found to be present, to verify that it has been rendered harmless.

In accordance with Florida Statute 255.40, the Owner will require that the Contractor certify (at project completion) that to the best of his/her knowledge and ability no asbestos-containing materials and/or supplies have been purchased and/or installed on this Project.

(Florida Statute 255.40 Use of asbestos in new public buildings or buildings newly constructed for lease to governmental agencies; prohibition - The use of asbestos or asbestos-based fiber materials is prohibited in any building, construction of which is commenced after September 30, 1983, which is financed with public funds or is constructed for the express purpose of being leased to any

governmental entity.)

2.7 Weather Protection - The Construction Manager will be responsible to 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. All costs associated with this shall be the responsibility of the Construction Manager.

2.8 Job Site Requirements

(1) The Construction Manager shall provide for each of the following activities as a part of the Construction Manager's Construction Phase services:

a. Maintain a log of daily activities, including manpower records, weather, delays, major decisions, etc. and require the same of subcontractors
b. Maintain a directory of companies on the Project with names, addresses, telephone numbers, emergency telephone numbers and fax numbers of key personnel.
c. Establish and enforce job rules governing parking, clean-up, use of facilities and worker discipline.
d. Provide labor relations management for a harmonious, productive Project.
e. 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.
f. Provide a quality control program.
g. Miscellaneous office supplies that support the construction efforts which are consumed by his own forces.

2.9 Job Site Administration - The Construction Manager shall provide as part of the Construction Manager's Construction Phase services, administrative functions during construction, including but not limited to, the following:

(1) 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 and delivery of materials, work sequences, inspection and testing, labor allocations, etc. Review and coordinate each Subcontractor's work. Review and implement revisions to the Schedule. Monitor and promote safety requirements.

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 document and implement the 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.

(2) Shop Drawing Submittals/Approvals - Check Shop Drawings and implement procedures for submittal and transmittal to the Architect/Engineer of such drawings for action, and closely monitor their submittal and approval process. Provide copy of all correspondence to Owner. Construction Manager will provide one (1) approved Submittal or Shop Drawing to Owner.

(3) Material and Equipment Expediting - Closely monitor material and equipment deliveries; implement inspection and follow-up procedures on commitments of all Suppliers and Subcontractors.

(4) Payments to Subcontractor - Develop and implement a procedure for review, processing, and payment of applications by Subcontractors for progress and final payments.

(5) Document Interpretation - Refer all questions for interpretation of the documents prepared by the Architect/Engineer to the Architect/Engineer.

(6) 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.

(7) Substantial Completion - The Construction Manager shall secure the Certificate of Occupancy and notify the Owner and Architect/Engineer, in writing, that the Project will be ready for inspection to determine if it is substantially complete and ready for inspection on or after a specific date, which date shall be stated in the notice. The notice shall be given at least seven (7) calendar days in advance of said date. Inspection and testing shall take place at time(s) mutually agreeable to the Construction Manager, Architect/Engineer and Owner. The inspection will be conducted jointly between the Architect/Engineer, Owner and Construction Manager's representative. The inspection shall determine if substantial completion has been accomplished and the Architect/Engineer shall produce a Certificate of Substantial Completion (**Attachment "J"**) and a written list of unfinished Work and defective work, commonly referred to as

a "Punch List", which must be finished and corrected to obtain final completion.

At the Owner's option a specific area or segment of the project may be inspected and/or determined substantially complete.

(8) Final Completion - The Construction Manager shall notify the Architect/Engineer and Owner, in writing, that the Project will be ready for final inspection on or after a specific date, which date shall be stated in the notice. This notice shall be given at least seven (7) calendar days in advance. That inspection and any necessary testing shall be conducted in the same manner as the inspection for Substantial Completion. When the Project is finally and totally complete, including the elimination of all defects, a Certificate of Final Completion (**Attachment "K"**) will be issued by the Architect/Engineer and the Project shall be submitted to the Owner for final acceptance.

The Owner and Architect/Engineer shall conduct the inspections. The Owner may elect to have other persons of its choosing also participate in the inspections. If one or more re-inspections are required, the Construction Manager shall reimburse the Owner for all costs of re-inspection or, at the Owner's option, the costs may be deducted from payments due to the Construction Manager. The Total Project Schedule shall include these notices and inspections as activities.

The Construction Manager shall secure and transmit to the Architect/Engineer all required guarantees, affidavits, releases, bonds and waivers, manuals, record drawings, and maintenance books as part of final completion (in triplicate) unless stated otherwise in the Project specifications.

(9) Start-Up - With the Owner's personnel, direct the checkout of utilities, operations, systems and equipment for readiness and assist in their initial start-up and testing by the subcontractors.

(10) Record Drawings - The Construction Manager shall monitor the progress of Work on marked-up field prints which, at Substantial Completion, shall be submitted to the Architect/Engineer who will prepare the final record drawings.

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

Contracts and Purchase Orders
Shop Drawing Submittal/Approval Logs

Equipment Purchase/Delivery Logs
Contract Drawings and Specifications with Addenda
Cost Proposal Requests
Meeting Minutes
Lab Test Reports
Contract Changes
Material Purchase Delivery Logs
"As-Built" Marked Prints
Monthly Progress Reports
Correspondence Files
Transmittal Records
Inspection Reports
Punch Lists

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 Construction Phase which will provide a smooth and successful Owner occupancy of the Project. The Construction Manager shall provide consultation and project management to facilitate Owner occupancy and provide transitional services to get the work, as completed by the contractors "on line" in such conditions as will satisfy Owner operational requirements.

The Construction Manager 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.

The Construction Manager shall catalog operational and maintenance requirements of equipment to be operated by maintenance personnel and convey these to the Owner in such a manner as to promote their usability (in triplicate). The Construction Manager shall provide operational training, in equipment use, for building operators to a maximum of eight (8) hours.

The Construction Manager shall secure required guarantees and warranties, assembled and organized (in a binder) and deliver same, in triplicate, to the Owner in a manner that will facilitate their maximum enforcement and assure their meaningful implementation.

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

(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 (1) year from the Date of Final Completion or 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. This warranty inspection will be scheduled by a representative of the Owner**.

ARTICLE 3

OWNER'S RESPONSIBILITIES

3.1 Owner's Information - The Owner shall provide full information regarding Owner's requirements for the Project.

3.2 Owner's Representative/Project Director - 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. The Owner's representative 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 upon request.

3.4 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.

3.5 Legal Services - The Owner shall furnish such legal services as may be necessary for providing the items set forth in Article 3 and such auditing services as the Owner may require.

3.6 Drawings and Specifications - The Owner will provide to the Construction Manager a reproducible set of all drawings and specifications reasonably

necessary and ready for printing.

3.7 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.

3.8 Project Fault or Defects - If the Owner becomes aware of any fault or defect in the Project or non-conformance with the drawings and specifications, the Owner shall give prompt written notice thereof to the Construction Manager and Architect/Engineer.

3.9 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.

3.10 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.

3.11 Lines of Authority - The Owner shall establish and maintain lines of authority for Owner's personnel and shall provide this definition to the Construction Manager and all other affected parties.

3.12 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

4.1 Permits, Fees and Notices - Unless otherwise provided in the Contract Documents, the Construction Manager shall secure and the Owner shall pay for any Brevard County building permit or other County permits and governmental fees and licenses necessary for proper execution of the Contract and which are legally required. Any other entity/jurisdiction permits (i.e.: City of Titusville, City of Melbourne, etc.) shall be included in the Guaranteed Maximum Price and secured and paid for by the Construction Manager. County Impact and Solid Waste fees will also be paid by the Owner. Copies of all permits shall be submitted to the Owner.

4.2 The Construction Manager shall comply with and give notices required by laws, ordinances, rules and regulations and lawful orders of public authorities bearing on performance of the work required for the Project.

4.3 It is not the Construction Manager's responsibility to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations. However, if the Construction Manager observes that portions of the Contract Documents are at variance therewith, and such variance was not discoverable during the Construction Manager's review of these documents for the purpose of determining the GMP, the Construction Manager shall promptly notify the Architect and Owner, in writing, and necessary changes shall be accomplished by appropriate modification.

4.4 If the Construction Manager performs Work knowing it to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without such notice to the Architect and Owner, the Construction Manager shall assume full responsibility for such Work and shall bear the attributable costs.

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. Nothing contained in the Contract Document shall create any contractual relation between the Owner or Architect/Engineer and any Subcontractor.

5.2 Bids/Proposals - The Construction Manager shall request and make every attempt to receive, at a minimum, three (3) bids/proposals from Subcontractors and Suppliers and will award those contracts to the most qualified and responsive low bidder after the Construction Manager and Owner have reviewed each bid/proposal and agree that the Subcontractor is qualified to perform the work.

5.3 Required Subcontractor 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 this Agreement, 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 Subcontractor's 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-subcontractor.

(1) Subcontractors must submit a complete pre-qualification form demonstrating their work experience, financial condition, and adherence to schedule. The Subcontractors financial condition must demonstrate that adequate fixed and liquid assets and equipment are available to properly perform the subcontract.

(2) Workforce - The Subcontractor must agree to perform no less than fifty 50%) percent of the Project construction work utilizing its own forces.

(3) 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 cost for such change, plus, no more than five percent (5%) for profit, and five percent (5%) for overhead.

The subcontract shall require the Subcontractor expressly agree that the foregoing constitute its 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, loss or additional compensation.

b. Each subcontract shall require that any claims by Subcontractor for delays 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 its employees and agents and its Subcontractors, agents and employees, and all other persons performing any of the work or supplying materials under this contract to the Construction Manager.

ARTICLE 6

SCHEDULE, TIME OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

6.1 At the time a Guaranteed Maximum Price (GMP) is established, as provided for in Article 7, a Project Substantial Completion Date, a Project Final Completion Date and an Owner Occupancy Date for completion of the Project in accordance with the master Project schedule, shall also be established by the Construction Team. The Construction Manager agrees to complete the construction in accordance with the agreed upon Substantial Completion Date, Final Completion Date and Owner Occupancy Date. The Construction Manager acknowledges that failure to complete the Project within the construction time set forth in the approved schedule will result in substantial damages to the Owner.

It is specifically agreed by and between the parties that the Owner may deduct a sum in the amount scheduled below from the amount of compensation to be paid the Construction Manager, Sundays and Holidays included, that the Project remains uncompleted. This amount as scheduled and agreed upon as a proper measure of liquidated damages, which the Owner will sustain per day by failure of the Construction Manager to complete the Project by the time stipulated in this Agreement, is not to be construed in any sense as a penalty provision.

Project Substantial Completion	$500 per day
Project Final Completion	$250 per day

Liquidated Damages will be assessed for each day beyond the contracted project Substantial Completion date, until actual project Substantial Completion is achieved. From the date of Substantial Completion, the Construction Manager shall be granted thirty (30) days for completion of punch list items, associated inspections and approvals, and submission and approval of required closeout documentation, at which time Final Completion shall be obtained. Final Completion liquidated damages will be assessed for each day beyond the thirty (30) days period from actual Substantial Completion.

6.2 The date of Owner Occupancy shall occur as described in Article 2.9(7) and Article 1.3, hereinabove. Warranties called for by this Agreement or by the Drawings and Specifications shall commence on the Date of Final Completion of the Project unless specified otherwise in the Project Specifications.

ARTICLE 7

GUARANTEED MAXIMUM PRICE FOR CONSTRUCTION

7.1 The Construction Manager will establish and submit in writing a Guaranteed Maximum Price to the Owner for its approval, guaranteeing the maximum price to the Owner, for the construction cost of the Project or designated part thereof, based on a review of the contract drawings and specifications. Such Guaranteed

Maximum Price will be subject to increase or deduction for changes in the Project as provided in Article 10 and for Owner direct purchases, if any, in accordance with **Attachment "C"**. All costs in excess of the final approved GMP, as adjusted up or down in accordance with the terms of this agreement, are the responsibility of the Construction Manager. Any savings between the GMP, as adjusted, and the sum of the actual cost of the Project plus the Construction Manager's fees, will be returned to the Owner. The GMP includes all taxes in the Cost of the Project which were legally enacted and in effect at the time the GMP was established.

7.2 Owner-Direct Purchases - In the event the Owner opts to make Owner Direct Purchases, as outlined in **Attachment "C"**, the Guaranteed Maximum Price shall be reduced by the cost of the materials plus applicable sales tax so that all sales tax savings accrue to the benefit of the project contingency. The Construction Manager shall diligently process all Owner Direct Purchase invoices for the project in order for the Owner to benefit from applicable vendor discounts. The Construction Manager will be required to submit all invoices to Owner in sufficient amount of time in order for the project to benefit from the vendor discount. All costs associated with missed discounts by the Construction Manager will be deducted from the Construction Manager's contract via deductive change order at project completion. Owner reserves the right to waive the Construction Manager's responsibility for missing discounts.

7.3 At the time of execution of the contract, the Construction Manager will verify the time schedule for activities and work which is adopted by the Construction Team and used to determine the Construction Manager's cost of work. Surplus funds from bids received below the applicable line items, including line items within the General Conditions, in the GMP will be set aside for contingency. Construction contingency funds will be used 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. The Architect/Owner shall verify and approve the actual costs.

If bids are received above the applicable line item in the GMP the deficiency will be taken from the contingency via an approved Authorization to Initiate Work/GMP Realignment form; 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 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 8.1.2 and 8.1.3. subject to the retainage specified in 8.1.1 below.

8.1.1 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 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. A percentage of the agreed upon Construction Phase Fee shall be paid monthly based on percentage (%) of work completed, less retainage, in accordance with subsection 12.1 below. The Construction Manager's first monthly Certificate for Payment shall be submitted no earlier than thirty (30) days following the issuance of the Notice to Proceed, and the final monthly payment shall be paid only when construction of the Project is finally completed, all original, final release of liens are received, closeout documentation has been submitted 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, subcontractors or others for whose acts the Construction Manager is responsible.

(2) Costs and Expenses Included in Construction Manager's Construction Phase Fee - The following are included in the Construction Manager's fee for services during the Construction Phase and are included in the GMP (See **Attachment "L"** for Allowable Costs, Overhead associated with the Construction Manager's Construction Phase Fee referenced in Article 8):

(a) Corporate costs including expenses and overhead and profit related to this project by the Construction Manager's principal and branch offices.
(b) Costs of all data processing, accounting, purchasing and associated staff which is performed at the home office.
(c) General operating expenses incurred in the management and supervision of the project, except as expressly included in Article 9.
(d) Salaries or other compensation of the Construction Manager's employees at his principal and branch offices.

(e) Those services set forth in Paragraph 2.1, 2.2, 2.3 and 2.4; except as expressly included in Article 9.
(f) Relocation expenses for Construction Manager's personnel.
(g) Costs of all project estimating, safety, scheduling and accounting staff.

8.1.3 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, based on a review of the contract drawings and specifications. Such Guaranteed Maximum Price will be subject to modification for changes in the Project as provide in Article 10. However, the actual price paid for the Work by the Owner shall be (1) the Cost of the Project as defined in Article 9, plus the Construction Manager's fees, or (2) the GMP, whichever is less, when the Work is complete. All costs in excess of the final approved GMP are the responsibility of the Construction Manager.

ARTICLE 9

COST OF THE PROJECT

9.1 Definition - The term Cost of the Project shall mean costs reasonably and necessarily incurred in the Project during the Construction Phase for construction services and paid by the Construction Manager which are included in the Construction Phase Fee, less Owner direct purchases made in accordance with **Attachment "C"** upon completion of the Project. Such costs shall include the items set forth below in this Article, and shall also include, but are not limited to, those set forth in **Attachment "M"** - "Allowable General Conditions".

The Owner agrees to pay the Construction Manager for the Cost of the Project subject to the limits set forth in Articles 9.2 and 9.3 plus the Construction Manager's fees stipulated in Article 8, provided the total does not to exceed the GMP.

9.2 Direct Cost Items (See **Attachment "M"** - "Allowable General Conditions")

(1) Labor wages paid for the on-site Project Superintendent directly responsible for the operation and supervision of the project, clerical and Quality Control personnel (as opposed to wages paid to management or supervisory personnel who are not part of the on-site project management) in the direct employ of the Construction Manager in the performance of the Construction Manager's work under this Agreement, acceptable salary or wage schedules and such fringe benefits, if any, as may be payable with respect thereto (labor burden not to exceed 40% for payroll and 15% for per diem).

(2) 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.

(3) Cost of the premiums for insurance above and beyond the minimum required by Brevard County ($1 million) and cost of premiums for bonds which the Construction Manager is required to procure by this Agreement specifically for the construction of this project.

(4) Sales, use, gross receipts or similar taxes related to allowable direct costs of the Project imposed by a governmental authority, and for which the Construction Manager is liable. 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.

(5) If approved by the Owner, the Construction Manager, when qualified, may self 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.

(6) 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.

(7) 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.

9.3 Allowances

Within the GMP, there may be specific items which the Construction Manager and Owner have agreed to include as allowances in the estimates until such time as the cost and schedule impact of these items can be more specifically ascertained. At the time that the Costs of the Work of allowance items becomes known (either through a subcontract price or by virtue of either (A) scope of work and cost agreed to by Construction Manager and Owner or (B) an actual buyout of the item), the GMP and Scheduled Completion Date will be adjusted (either increased or decreased) by the actual Costs of the Work and schedule impact of the item. With respect to increases and decreases to the amount of an allowance

item, Construction Manager shall be entitled to the Construction Manager's fee, subject to the limits set forth in Article 8, on the adjusted amount of such allowance, and the GMP shall be adjusted by reason thereof, by Change Order. Allowances must be agreed to by both parties. Allowances included within the GMP constitute approval of said allowances at the time the Guaranteed Maximum Price is approved.

9.4 Public Records Law and Audit Requirements

In the performance of this Contract, the Construction Manager shall keep books, records and accounts of all activities related to the Contract in compliance with generally accepted accounting procedures and in compliance with the Public Records Laws of the State of Florida (Including, but not limited to Chapter 119, Florida Statutes).

All records or documents created by Construction Manager or provided to Construction Manager by the County in connection with the activities or services provided by Construction Manager under the terms of this agreement, are public records and Construction Manager agrees to comply with any request for such public records or documents made in accordance with section 119.07 Florida Statutes.

Records, documents, books and accounts ordinarily and necessarily required for the performance of this Contract shall be kept, maintained and open to inspection by the Owner, Owner's representative, and members of the public during regular business hours.

The Construction Manager shall provide the public with access to public records on the same terms and conditions that the public agency provides the records and at a cost that does not exceed the cost provided for in Florida Statute Chapter 119 or as otherwise provided by law (see also County Administrative Order, AO-47).

The Construction Manager shall also ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.

No reports, data, programs or other materials produced, in whole or in part for the benefit and use of the County, under this Contract shall be subject to copyright by Construction Manager in the United States or any other country.

The Construction Manager shall meet all requirements for retaining public records and shall transfer, at no cost, to the Owner/County all public records in possession of the Construction Manager upon termination of the contract and

destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the Owner/County in a format that is compatible with the information technology systems of the Owner/County.

Failure to comply with the provisions of this Section 9.4, shall result in the Owner taking enforcement action against the Construction Manager including the cost to the Owner for gaining the Construction Manager's compliance which will include, but are not limited to, the gross hourly rate of the Owner's employee(s) contacts to the Construction Manager to obtain compliance with this section, litigation filing fees and attorney's fees.

ARTICLE 10

CHANGES IN THE PROJECT

10.1 Change Orders - The Owner, without invalidating this Agreement, may order Changes in the Project within the general scope of this Agreement consisting of additions, deletions or other revisions which may cause an increase or decrease in the GMP, and/or the Construction Completion Date. All changes in the Project GMP or Construction Completion Date not covered by an authorized contingency, as described in Article 7.3 must be authorized by a written Change Order or Construction Change Directive, and signed by the Owner, Architect and Construction Manager before the change is implemented. It shall be the Owner's discretion as to whether each change order requires the A/E signature. **Maximum allowable mark-up on any change order is 5% Profit, 5% Overhead, and a 2% Bond.**

10.1.1 A Construction Change Directive is a change directive signed by the Project Director and the County Manager directing an addition, deletion, or revision in the scope of work and/or schedule. The Construction Change Directive is necessary when no Agreement exists among the Architect/Engineer of record, Brevard County and the Construction Manager on the dollar amount of a necessary change in the scope of work and/or an extension of time to the construction contract. The Construction Change Directive is used (1) when an unsafe, hazardous or other similar condition exists, (2) when failure to achieve prompt resolution of the change will result in a demobilization of the Construction Manager, its subcontractors and/or agents, (3) when failure to achieve prompt resolution will result in additional cost, and/or a significant delay in completing the project. A Construction Change Directive does not change the contract price or the contract time, but is evidence that the parties expect that the change will be incorporated in a subsequently issued Change Order or be covered by an authorized contingency.

10.1.2 A Change Order is a written order to the Construction Manager signed by the Owner, Architect, and Construction Manager, issued after the execution of this Agreement, authorizing a change in the Project and/or an adjustment in the construction authorization, the Construction Manager's fee, or the Construction Completion date. Each adjustment in the GMP resulting from a change order shall be documented clearly to separate the amount attributable to the cost of the change in the Project from the original cost of the Project.

10.1.3 The increase or decrease in the Guaranteed Maximum Price resulting from Change Orders in the Project shall be determined by one 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 plus a mutually acceptable fixed or percentage fee; or
(4) by the method provided in Subparagraph 10.1.4.

10.1.4 If none of the methods set forth in Clause 10.1.3 is agreed upon, the Construction Manager, provided he receives a written order signed by the Owner, shall promptly proceed with the work required by the Construction Change Directive 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 10.1.3 above, the Construction Manager shall keep and present, in such forms 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 in the Cost of the Project and the Construction Manager's fee subject to the limits set forth in Article 7.

10.1.5 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.

10.1.6 Should the Construction Manager or his contracted subcontractors encounter:

(1) concealed conditions in the performance of the Work below the surface of the ground; or
(2) concealed or unknown conditions in an existing structure be at variance with the conditions indicated by the Drawings, Specifications, or Owner furnished information; or
(3) unknown physical conditions below the surface of the ground; or
(4) 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, then 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. and Article 11.

Upon discovery of concealed or unknown conditions, the Construction Manager shall notify the Owner and Architect/Engineer within twenty four (24) hours of discovery, and not proceed with Work until such notice has been given and a response is issued by the Owner. The Architect/Engineer will evaluate the alleged unknown or concealed condition and, if warranted, recommend to the Owner that the GMP and schedule be increased or decreased accordingly. No claim under this Article may be made unless notice, as herein provided, is given prior to Work being performed. No equitable adjustment shall be permitted if this notice provision is not complied with.

Within ten (10) calendar days of submitting its Notice, 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. Within thirty (30) days from Notice, the Construction Manager shall submit detailed schedule impact and detailed cost analysis indicating quantities, unit prices, etc.

10.1.7 The Construction Manager shall review any Owner directed change and shall respond in writing within seven (7) calendar days after receipt of the proposed change (or such other reasonable time as the Owner may direct), stating the effect of the proposed change upon the Construction Manager's Work, including any increase or decrease in the contract time or price. The Construction Manager shall furnish to the Owner an itemized breakdown of the quantities and prices used in computing the change in

Contract price.

The Owner and Architect/Engineer shall review the Construction Manager's proposal and respond to the Construction Manager within seven (7) calendar days of receipt. If a change to the Contract price and time for performance are agreed upon, both parties shall sign the Change Order. Changes to the Contract time and/or price shall be effective when signed by both parties. It shall be the Owner's discretion as to whether each change order requires the A/E signature.

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.

10.2.1 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 or 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.

10.2.2 All change orders must indicate that the Contract Time for Completion is not changed or is either increased or decreased by a specific number of days. The previous Time for Completion and, if there is one, the new Time for Completion must be stated. The Construction Manager must provide written justification for an extension of the Time for Completion to the Architect/Engineer and to the Owner. The written justification must demonstrate an anticipated actual increase in the time required to complete the Work beyond that allowed by the Contract as adjusted by prior change orders or amendments to the Contract, not just an increase or decrease in the time needed to complete some portion of the total Work. No increase to the Time for Completion shall be allowed unless the additional or changed Work increases the length of the critical path. Approved increases in time required to complete the Work shall be added to the Time for Completion. Decreases in time as a result of the change order shall be demonstrated by a decrease in the critical path of the Work if CPM scheduling is properly used and updated by the Construction Manager. If no CPM is used the Owner shall determine the appropriate decrease by the best means possible. Approved decreases in the time needed to complete the Work shall be deducted from the Contract completion date. The change to time and Contract price allowed by each change order shall include all time and monetary impacts of the change, whether the change order is considered alone or with all other changes

during the course of the project. Failure to include a change to time and Contract price in a change order shall waive any change to the time and Contract price unless the parties mutually agree in writing to postpone a determination of the change to time and price resulting from the change order. Such a determination may be postponed not more than forty five (45) days to give the Construction Manager an opportunity to demonstrate a change in the time and price needed to complete the Work.

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 (Realignment of Work)
The Owner and/or 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 affected by written order. Documentation of changes shall be determined by the Construction Team, and included in the Project Manual. Changes shall be approved by the Project Director, Architect/Engineer. It shall be the Owner's discretion as to whether a Realignment of Work requires the A/E signature. All changes or realignments of work performed within the Guaranteed Maximum Price will not include overhead, profit or General Condition additional costs, since costs are absorbed within the Guaranteed Maximum Price (GMP).

10.4 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

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.

ARTICLE 12

PAYMENTS TO THE CONSTRUCTION MANAGER

12.1 Monthly Statements - The Construction Manager shall submit to the Owner a sworn statement along with the Certificate for Payment, 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. This data shall be attached to the Certificate for Payment Form shown in **Attachment "N"**, and shall include, but not be limited, to the following:

- Daily Reports;
- Updated Project Schedule;
- Daily Red line As-Builts review;
- Provide a billing report with each payment application that shows a breakdown of costs incurred by line item. This report should correspond with the amounts being charged on the Schedule of Values.
- Provide backup copies of all invoices that the County is being billed for, including vendor invoices, payments to subcontractors, cell phone statements, insurance, petty cash receipts, etc. These invoices should be coded by the line item that they correspond to on the billing report and Schedule of Values.
- Provide backup copies and documentation of all costs incurred under General Conditions.
- Provide backup copies of all payroll that details which labor amounts were paid to whom on a weekly basis.
- Provide copies of all subcontractor agreements.
  * The amounts charged on the Payment Application must be accurate and correspond with the total dollar amount of backup provided by the Construction Manager.

Payment by the Owner to the Construction Manager of the statement amount shall be made in accordance with Florida Statute 218.735.

Ten percent of each payment shall be held by the OWNER as retainage until 50-percent completion of such Project, which shall be deemed to have occurred when 50% of the GMP, as increased or decreased from time to time, has been expended. At that time, the retainage shall be reduced to 5% and the Construction Manager shall be entitled to request payment or release of up to 50% of the previously withheld retainage amounts, provided the retainage is not the subject of a good faith dispute, the subject of a claim brought pursuant to s. 255.05, Florida Statutes or otherwise the subject of a claim or demand by the OWNER.

Owner may refuse to certify payment and withhold a Certificate for Payment in whole or in part, in accordance with subsection(s) above, to such extent as may be reasonably necessary to protect the Owner from loss because of:

(1) defective work not remedied;
(2) third party claims filed or reasonable evidence indicating probably filing of such claims;
(3) failure of Construction Manager to make payments properly to subcontractors, consultants, or for labor, materials or equipment;
(4) evidence that the Project cannot be completed for the unpaid balance of the GMP, as adjusted;
(5) evidence that the Work will not be completed by the Scheduled Completion Date, as adjusted, and that the unpaid balance would not be adequate to cover the liquidated damages for the anticipated delay;
(6) failure to carry out the Work of the Project in accordance with the Contract Documents; or

If the Owner is unwilling to certify payment in the amount of the Application for Payment submitted by the Construction Manager, Owner will provide Construction Manager with written reasons for its refusal, within three (3) calendar days. If Construction Manager and Owner cannot agree on a revised amount, Owner will, within one (1) day of the aforesaid notification, promptly issue a Certificate for Payment as to the undisputed amount with respect to which Owner concurs.

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 in accordance with Florida Statutes after an *acceptable* Certificate of Final Completion has been issued **and all contractual closeout obligations have been met by the Construction Manager**. Before issuance of final payment, the Construction Manager, subcontractors and agents shall submit original, sworn, notarized statements that all payrolls, material bills, and other indebtness connected with the Project have been paid or otherwise satisfied, warranty information is complete, Final As-Builts in AutoCad format acceptable to the Owner, have been submitted and instruction and documentation for the Owner's operating and maintenance personnel is complete.

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

12.4 Withholding Payments to Subcontractors - The Construction Manager shall not withhold payments to Subcontractors if such payments have been made to the Construction Manager. Should this occur for any reason, the Construction Manager shall immediately return such monies to the Owner, adjusting pay

requests and project bookkeeping, as required.

ARTICLE 13

INSURANCE, INDEMNITY WAIVER OF SUBROGATION

13.1 (1) Indemnification - The Construction Manager agrees to indemnify and hold harmless the County and their employees from all claims, losses and expenses, arising out of or resulting from the performance of the products or services to be contracted, provided such claim, damage, loss or expense (1) is attributable to bodily injury, sickness, disease, death or personal injury, or to property damage, including loss of use resulting therefrom, (but not loss of use for which liquidated damages are assessed under the Agreement) and (2) is caused in whole or in part by any negligent act or omission of the Construction Manager, any subcontractor, any of their employees and/or agents in the performance of this contract. The Construction Manager agrees that it will pay the costs of the County's legal defense, including fees of attorneys as may be selected by the County, and shall defend, satisfy, and pay any judgments which may be rendered against the County in connection with the above hold harmless agreement. The Construction Manager acknowledges specific consideration has been received for this hold harmless/indemnification provision.

(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.

Loss Deductible Clause - Brevard County Board of County Commissioners shall be exempt from, and in no way liable for, any sums of money which may represent a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of the Construction Manager and/or Subcontractor providing such insurance.

13.2 Insurance

(1) The Construction Manager shall not commence any construction work in connection with this Agreement until the Construction Manager has obtained all of the following types of insurance and such insurance certificate(s) have been submitted to the Owner and have been approved by the Owner, nor shall the Construction Manager allow any Subcontractor to commence work on his subcontract until all insurance

required of the Subcontractor has been so obtained and approved. All insurance policies shall be with insurers qualified and doing business in the State of Florida.

a. Worker's Compensation - Provide Worker's Compensation Insurance on behalf of all employees who are to provide a service for this project, as required under Florida Laws.

b. Commercial General Liability - Including but not limited to bodily injury, property damage and personal injury with limits of not less than $1,000,000.00 combined single limit per occurrence, including products and completed operations, to include:

   1. "XCU" (Explosion, Collapse, Underground Damage) - The Construction Manager's Liability Policy shall provide "XCU" coverage.

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

   3. 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.

c. Automobile Liability - Including bodily injury, property damage liability for all vehicles owned, hired, leased and non-owned with limits of not less than $1,000,000.00 combined single limit, per accident.

d. Performance and Payment Bonds - With limits of not less than 100% of the total construction cost of this project. Payment and Performance Bond shall be recorded in the official record of the County in which the project is located. These bonds shall remain in effect at least until one (1) year after the date when the final payment is approved. Any bonding company submitting a Bid Bond, Performance Bond or Payment Bond to Brevard County must be licensed to transact a fidelity and surety business in the State of Florida, and hold a Certificate of Authority from the Secretary of the Treasury under Act of Congress, approved by July 30, 1947 (U.S.C. 613), and approved by Brevard County. Acceptable surety companies shall be licensed to do business in Florida and shall have an A.M. Best Rating of "A-" and financial

size V or higher.

e. 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 canceled because of partial occupancy by the Owner prior to final acceptance of the Project.

The Construction Manager shall require each of his Subcontractors to procure and maintain insurance during the life of the respective subcontracts.

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

Certificate(s) of Insurance will be furnished to the Owner within five (5) days of Notice to Proceed. These shall be completed and signed by the authorized Resident Agent, and shall be dated and show:

(1) 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.

(2) The General Liability and Auto Liability certificates of insurance shall indicate that the policies have been endorsed to cover the County as an additional insured to the extent of liability assumed by the Construction Manager under this Agreement, and that these policies may not be canceled or modified without thirty (30) days prior written notice to the County.

(3) The insurance coverages enumerated above constitute the minimum requirements and shall in no way lessen or limit the liability of the Construction Manager under the terms of the Contract.

*Certificates of Insurance shall be submitted to the Owner within five (5) days of Notice to Proceed, and no work shall commence on site until all submitted Certificates of Insurance are acceptable to the Owner.

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 thirty (30) days by the Owner, then the Construction Manager may, upon seven (7) days written notice to the Owner, request undisputed payment for all work executed, the Construction Manager's fee 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 its obligations under this Agreement, the Owner may, after seven (7) days written notice during which period the Construction Manager fails to perform such obligations, 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 to 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 forty-five (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 cure 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 termination expenses incurred by the Owner may be deducted from any payments left owing the Construction Manager (excluding monies owed the Construction Manager for subcontract work).

14.3 Termination by Owner for Convenience

(1) If the Owner terminates this Agreement other than pursuant to Article 14.2(2) or Article 14.3(2), 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 reimburse the Construction Manager for obligations and commitments made before notice of termination was received by

the Construction Manager.

(2) After the establishment of the Guaranteed Maximum Price or at the completion of the Construction 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.

(3) Any termination by Owner for cause which is later determined to be invalid shall be considered a termination by Owner for convenience.

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.

15.3 Venue and Attorney's Fees: Venue for any legal action brought by any party to this Agreement to interpret, construe or enforce this Agreement shall be in a court of competent jurisdiction in and for Brevard County, Florida. In the event of any legal action to enforce the terms of this Agreement, each party shall bear its own attorney's fees and costs and any trial shall be non-jury.

15.4 Severability: If any provision of this Agreement is held by a Court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired.

ARTICLE 16

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

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) If the Construction Manager claims that any instructions given to him by the Architect/Engineer or by the Owner, by drawings or otherwise, involve extra Work not covered by the Contract and not discoverable with a review of the plans and specifications, then, except in emergencies endangering life or property, Construction Manager shall give the Architect/Engineer and the Owner written notice thereof before proceeding to execute the Work. Said notice shall be given promptly enough to avoid delaying the Work and in no instance later than twenty (20) calendar days after the receipt of such instructions.

The Construction Manager must submit a Notice of Claim to the Owner and to the Architect/Engineer within twenty (20) days of when the Construction Manager was or should have been aware of the occurrence of the event giving rise to the claim; and

(c) Within ten (10) days of submitting its Notice of Claim, the Construction Manager shall submit to the Owner its Request For Change Order, which shall include a written statement of all details of the claim, including a description of the work affected. Within thirty (30) days from the Notice of Claim the Construction Manager shall submit a detailed schedule impact and detailed cost analysis indicating quantities, unit prices, etc. establishing the basis for the amount of the claim.

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 section.

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 disputed matters subject to the determination by final Owner action (not actions for breach of contract or tort) the Owner's written decision following compliance with the dispute resolution procedure set forth in sections 16.4 through 16.6 below shall be final Owner action.

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 Article 16.1 above, for an extension of the scheduled construction time. In the event of a change in such work that will modify the GMP, the Construction Manager's claim for adjustment in contract sum are limited exclusively to its actual costs for such changes, including costs involved in claim preparation, plus five percent (5%)

overhead, five percent (5%) profit and a two percent (2%) bond in the General Conditions. 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.

16.4 In the event of any dispute over a proposed change order or any other matter arising out of the implementation or interpretation of this contract the following dispute resolution process shall apply.

(a) Within three (3) days after denial of a contractor's change order or contract modification request in an amount, individually or in total, less than the authorized purchasing level approved for the County Manager by the County Commission (currently at $100,000) the contractor may submit to the County Manager or a designee with experience in the oversight of construction projects for a department or business other than the department responsible for monitoring the disputed request, documentation of the contractor's position in the dispute or disagreement. The County Manager or designee, within five (5) days after the receipt of the contractor's documentation, shall review the request and make a final determination as to whether denial was arbitrary or capricious based upon the sufficiency of the work under the terms of the contract, applicable regulations and relevant construction standards. Based upon the sufficiency and degree of completion, as well as any defects in the work and the amount reasonably required, if any, to correct or repair defective work, the reviewer shall make the final determination as to whether a written change order or contract modification should be approved by the County Manager.

(b) If the denied request or disputed amount exceeds the County Manager's purchasing authority, the County Manager shall present a report, recommendation and the contractor's claim and documentation, to the County Commission for a final determination within thirty (30) days after receiving the contractor's documentation for the claim. The Commission shall make its decision using the standards specified in subparagraph (a) above.

16.5 Within thirty (30) days after denial of a request for a change order or contract modification by the project manager or engineer involving (1) an amount in excess of the County Manager's expenditure authority or (2) for the amount the contractor claims to be due at the time the project is ready for beneficial use or occupation, the County may, at the County's option in lieu of the procedure specified in subparagraph 16.4, submit the dispute to a mediator with knowledge or experience in construction management, as agreed upon by the parties. Upon referral to a mediator, the County and contractor shall each pay half the

estimated cost of the mediator, up front. Within fifteen (15) days after the date of submittal, the mediator, applying the standards set forth in subparagraph 16.4, shall investigate the dispute and submit a written recommendation for disposition of the dispute to the County Manager or a designee with the qualifications specified in subparagraph 16.4. Within fifteen (15) days after receiving the mediator's recommendation, the County Manager shall submit the recommendation to the County Commission, along with a staff report analyzing the dispute and mediator's recommendation. Based on the standards set forth in subparagraph 16.4 above, the Commission shall decide whether to grant or deny, in whole or in part, the amounts recommended by the mediator. The Commission's decision will be deemed final action on the disputed claim for the purposes of ripening the decision for judicial review. If the mediator recommends that no change order or contract modification be granted, the contractor shall reimburse the county for any amounts paid by the county to the mediator.

16.6 The deadlines for completing the dispute resolution process described in subparagraphs 16.4 and 16.5 may be extended by mutual agreement of the contractor and the county.

ARTICLE 17

OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

17.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Construction Manager claims that a delay or additional cost is involved because of such action by the Owner, the Construction Manager shall make such claim as provided in this Agreement.

17.2 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Construction Manager, who shall cooperate with them. The Construction Manager shall participate with other separate contractors and the Owner in reviewing their construction schedules when directed to do so. The Construction Manager shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Construction Manager, separate contractors and the Owner until subsequently revised.

17.3 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights which apply to the Construction Manager under the Conditions of the Contract.

17.4 The Construction Manager shall afford the Owner, and separate contractors, reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities and shall connect and coordinate the Contractor's construction and operations with the Construction Manager, as required.

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

17.6 Costs caused by delays or by improperly timed activities or defective construction shall be borne by the party responsible thereof.

17.7 The Construction Manager shall promptly remedy damage wrongfully caused by the Construction Manager to completed or partially completed construction or to property of the Owner or separate contractors.

ARTICLE 18

MISCELLANEOUS

18.1 Interest - Any monies not paid when due to either party under this contract shall not bear interest except as may be required by Section 218.70 et seq., Florida Statutes, ("The Florida Prompt Payment Act").

18.2 Harmony - Construction Manager is advised and hereby agrees to 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.

18.3 Apprentices - If the Construction Manager employs apprentices on the project, the behavior of the Construction Manager and the Owner shall be governed by the provision 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.

18.4 Minority Participation - The Construction Manager shall *diligently attempt* to award his material contracts, subcontracts and sub-subcontracts to firms having a letter of certification as a minority business from the "Office of Minority Business Assistance, Department of General Services, or any other Federal, Florida County or City certification.

18.5 Minority Employment Information - The Board of County Commissioners requires construction contracts, who would otherwise be required to file and EEO Form 1 Report under Federal Law (currently Federal law requires filing for employers with more than 15 employees), to submit an EEO Form 1 Report with the submission of their GMP. This requirement extends to any subcontractors who are required to submit the EEO Form 1 Report (over 15 employees) under Federal law. Failure to submit an EEO Form 1 Report with your GMP will be reason to declare your proposal "non-responsive" to the proposal requirements. However, the information will be used for statistical purposes only and will not be used in any way as a basis to award a contract. See **Attachment "O"**.

18.6 Public Entity Crime Affidavit attached as **Attachment "P"**.

18.7 Non-Collusion Affidavit of Prime Bidder attached as **Attachment "P"**.

18.8 Copyright Clause No reports, data, programs or other materials produced, in whole or in part for the benefit and use of the Owner, under this agreement shall be subject to copyright by Contractor in the United States or any other Country.

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

ATTEST:

BOARD OF COUNTY
COMMISSIONERS
OF BREVARD COUNTY, FLORIDA

Scott Ellis, Clerk

Robin Fisher, Chair
Brevard County Commission

As Approved By the Brevard County Commission: _____

_____
BY: Construction Manager

STATE OF FLORIDA
COUNTY OF BREVARD

The foregoing instrument was acknowledged before me this _____ day of 201__ by whose position is _____ with the firm of, a Florida Corporation, on behalf of the corporation. He/She is personally known to me or has produced _____ as identification.

(SEAL)

_____
NOTARY PUBLIC
Typed, Printed or Stamped Name

ATTACHMENT "A"

CONSTRUCTION TEAM ASSIGNED REPRESENTATIVES

Owner
Brevard County Facilities Department

Joan Van Sickle	Project Director
	Construction Coordinator
Mary Bowers	Support Services Manager/Contracts
Anissa Pratte	Special Projects Coordinator II

Architect-Engineer

Construction Manager

President
Vice President/Principal-In-Charge
Project Manager
Project Administrator
Project Superintendent
Estimator/Cost Control
Schedules

ATTACHMENT "B"

PROJECT SCOPE OF WORK

ATTACHMENT "C"

DIRECT PURCHASING PROCEDURE
CONSTRUCTION MANAGEMENT AGREEMENT

INTENT: The Owner of this Project, Brevard County, Florida, intends that these procedures govern the County's direct purchases of selected materials so that the County may take advantage of its tax exempt status. All monies which would have been payable as taxes, if not for Owner direct purchase under these procedures, will inure solely to the benefit of the Owner. The Owner's direct purchase of materials will not minimize or conflict with the Construction Manager's responsibility for the purchase, installation, coordination, storage, protection, warranty, etc. of the materials as described herein and in the plans and specifications of the Contract.

Definitions: For the purpose of these Procedures, the following words have the following definitions.

a) Contract: Construction Management Agreement by and between Construction Manager and Brevard County Board of County Commissioners, Viera, Florida for the construction of _____.

b) County Purchased Materials: Materials purchased directly by the Owner through execution and delivery of a Purchase Order.

c) GMP - Guaranteed Maximum Price established under the Contract.

d) Materials: Tangible Personal Property necessary for completion of the Project.

e) Materials Deduction Summary: Written document signed by Owner's representative and Construction Manager setting forth the amounts of County Purchased Materials, plus applicable taxes were the purchase not exempt from such taxes, as reflected in the parties' previously executed deductive change order(s) to the Contract showing deduction of such Materials from the GMP.

f) Owner: See Definition in Article I, section 1.3.

g) Owner's Representative: See Definition in Article I, section 1.3.

h) Project: See Definition in Article I, section 1.3.

i) Purchase Order: The Owner's request for Materials from a particular vendor or supplier when fully executed and delivered to the Construction Manager, and the Owner's promise to pay for the Material specified upon delivery and acceptance at the Project Site, and presentation of an invoice by the Construction Manager to the Owner certifying payment of same.

j) Material Requisition: A request by the Construction Manager to the Owner that the Owner directly purchase specific items described in sufficient detail, including quantity, grade, brand, etc., along with the vendor or material supplier and that

vendor or material supplier's quoted price for the Materials.

Overview: The Owner requires the Construction Manager (hereinafter, "Manager") to notify the Owner's Representative of Materials needed for the Project exceeding $5,000.00 in value, through a Material Requisition form. For the purpose of these Procedures, the Manager will assign to the Owner any rights the Manager may have under quotes, contracts or commitments received from the particular vendor or supplier for the Materials described in the Material Requisition. Any Materials purchased by Owner pursuant to these Procedures shall be referred to as "County Purchased Materials", and the responsibilities of the Owner and Manager relating to such County Purchased Materials shall be governed by the terms and conditions of these Procedures, which shall take precedence over other conditions and terms of the Contract Documents where inconsistencies or conflicts exist. The invoiced amount of County Purchased Materials and applicable sales tax had the purchases not been tax exempt, once finalized through the Owner's Purchase Order and after confirmation of completed delivery and acceptance pursuant to this Procedure, will be deducted from the GMP, as defined in the Contract, by deductive change order.

Owner Direct Purchasing Requirements and Procedures: When a Materials purchase for the Project is estimated to be $5,000 or greater and time will allow for an Owner Direct Purchase, Manager shall prepare a Material Requisition form, *(to be provided by the Owner)*, acceptable to Owner, and which specifically identifies the Materials which Owner may, in its discretion, elect to purchase directly. The Material Requisition form shall be complete when submitted, and all information requested provided. Along with the Material Requisition the Construction Manager must provide:

a) The name, address, telephone and fax number and contact person for the material supplier;
b) Manufacturer or brand, model or specification number of the item;
c) Quantity needed as estimated by Manager;
d) The price quoted by the supplier for the Materials identified therein;
e) Any sales tax associated with such quote if it were not purchased by a tax exempt entity;
f) Shipping and handling cost, including associated insurance;
g) Delivery dates as established by the Manager;
h) Subcontractor's written acknowledgment of these Procedures for Owner Direct Purchase of Materials.

After receipt of the Material Requisition, the Owner's Representative will determine whether the Owner will directly purchase the Materials described in the Material Requisition, and communicate consent or decline to purchase the materials to the Manager within twenty four (24) hours. Brevard County's Purchasing Division shall be the Owner's approving authority on Purchase Orders of County Purchased Materials. If the Owner consents to purchase the Materials, the Owner shall issue a Purchase Order for same. The Owner shall issue the original Purchase Order, and the Manager shall deliver the Purchase Order to the subcontractor. The Purchase Order shall require (1) that the supplier provide the required shipping, (2) that the supplier provide the required shipping and handling insurance, and (3) delivery of the County Purchased Materials on the delivery dates provided by the Manager in the Material Requisition.

The Manager shall be fully responsible for all matters relating to the receipt of County Purchased Materials under these Procedures, including, but not limited to, preparation of shop

drawings and submittals, verifying correct quantities, verifying documents of orders in a timely manner, coordinating purchases, providing and obtaining all warranties and guarantees required by the Contract Documents, inspection and acceptance of the goods at the time of delivery, and loss or damage to equipment and materials due to the negligence of the Manager. The Manager shall coordinate delivery schedules, sequence of delivery, loading orientation, and other arrangements normally required by the Manager for the Materials furnished. The Manager shall provide all services required for the unloading, handling and storage of Materials through installation. The Manager agrees to indemnify and hold the Owner harmless from any and all claims of whatever nature resulting from non-payment of goods to suppliers arising from the actions of Manager.

The Manager shall insure that County Purchased Materials conform to the Specifications, and determine prior to incorporation into the Work, if such Materials are patently defective, and whether such Materials are identical to the Material ordered and match the description on the bill of lading. As County Purchased Materials are delivered to the job site, the Manager shall inspect all shipments from the suppliers, and, if in conformance with the Purchase Order, approve the vendor's invoice for materials delivered. The Manager shall assure that each delivery of County Purchased Material is accompanied by documentation adequate to identify the Purchase Order against which the purchase is made. This documentation may consist of an itemized delivery ticket, packing slip or invoice from the supplier conforming to the Purchase Order against which the purchase is made, together with such additional information as the Owner may require. The Manager will then forward the documentation to the Owner.

If the Manager discovers defective or non-conformities in County Purchased Material upon inspection, the Manager shall not use such non-conforming or defective Materials in the Work and instead shall promptly notify the Owner of the defective or non-conforming conditions and coordinate the repair or replacement of those Materials without any undue delay or interruption to the Project. All repair, maintenance or damage-repair calls shall be forwarded to the Manager for resolution with the appropriate supplier, vendor, or subcontractor. If the Manager fails to perform such inspection, the condition of which the Manager either knew or should have known by performance of an inspection, Manager shall be responsible for all damages to the County resulting from Manager's incorporation of such Materials into the Project, including liquidated or delay damages.

On a bi-weekly basis, Manager shall be required to review invoices submitted by all suppliers of County Purchased Materials delivered to the Project Site during that month and either concur or object to the Owner's issuance of payment to the suppliers, based on Manager's records of materials delivered to the site. In order to arrange for the prompt payment to the supplier, the Manager shall provide to the Owner a list indicating the acceptance of the goods or materials within fifteen (15) days of receipt of said invoice for goods or materials. The list shall reference the applicable purchase order and include a copy of the invoices, delivery tickets, written acceptance of the delivered items, and such other documentation as may be reasonably required by the Owner. Upon receipt of the appropriate documentation in duplicate, the Owner shall prepare a check drawn to the supplier based upon the receipt of data provided. This check will be delivered directly to the supplier. If any discounts are available from the supplier or vendor, they shall accrue to the benefit of the Owner, and the amount quoted by the vendor, plus applicable tax, shall be deducted from the GMP. The Manager agrees to assist the Owner to immediately obtain partial or final releases or waivers as appropriate.

Following performance of the Purchase Orders by the suppliers, and submittal of documentation

confirming same to Owner with an invoice for payment by Owner, the Manager shall execute and deliver to the Owner at the end of each month along with the Manager's regular pay requests, a Materials Deduction Summary setting forth the full value of all County Purchased Materials, plus all taxes which would have been payable on the purchase of the Materials had they not been Owner purchased. The Materials Deduction Summary shall show all sums to be deducted by an appropriate deductive change order, and ultimately the GMP, to date. The Board of County Commissioners, or their authorized representative, shall be the approving authority for the Owner on the Materials Deduction Summary for County Purchased Materials.

The Manager shall maintain records of all County Purchased Materials incorporated into the Work. These records shall be available for inspection by the Owner upon request.

Notwithstanding the delivery of County Purchased Materials to the Project Site for the Manager's inspection, custody and incorporation into the Work, the Owner shall retain legal and equitable title to any and all County Purchased Materials. The transfer of possession of County Purchased Materials from the Owner to the Manager shall constitute a bailment for the mutual benefit of the owner and the Manager solely for the purposes set forth herein. The Owner shall be considered the bailer and the Manager the bailee of the County Purchased Materials. County Purchased Materials shall be considered returned to the Owner for purposes of their bailment at such time as they are incorporated into the Project or are returned to the vendor or supplier at the discretion of the Manager prior to payment for the Purchase Order by Owner.

The Owner shall purchase and maintain Builder's Risk Insurance sufficient to protect against any loss or damage to County Purchased Materials. Such insurance shall cover the full value of any County Purchased Materials not yet incorporated into the Project from the time the Owner first takes title to any of such County Purchased Materials and the time when the last of such County Purchased Materials is incorporated into the Project, or are returned to the vendor at the Manager's discretion prior to Owner's payment for same.

The Owner shall in no way be liable for any interruption or delay in the Project, for any defects or other problems with the Project, or any extra costs or time resulting from any delay in the delivery of, or defects in, County Purchased Materials.

ATTACHMENT "D"

DRAWINGS AND SPECIFICATIONS

ATTACHMENT "E"

CONSTRUCTION MANAGER'S
PRELIMINARY CONSTRUCTION SCHEDULE

ATTACHMENT "F"

ORDINANCE 98-37

AN ORDINANCE AMENDING CHAPTER 2 OF THE BREVARD COUNTY CODE TO CREATE ARTICLE VII, A PROCEDURE FOR PREQUALIFYING CONSTRUCTION CONTRACTORS, FOR COMPETITIVE BIDDING CRITERIA AND FOR DEBARMENT OF CONSTRUCTION CONTRACTORS AND SURETIES; PROVIDING FOR ALTERNATIVE CONSTRUCTION DELIVERY METHODS; PROVIDING FOR PREQUALIFICATION AND COMPETITIVE BIDDING CRITERIA, PROCEDURE, AND FOR A STANDARD OF PROOF; PROVIDING FOR EDITING OF THE ORDINANCE FOR INCLUSION WITHIN THE BREVARD COUNTY CODE; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Section 255.20, Fla. Stat. (1997) requires that standards and procedures for determining the lowest qualified and responsive bidder or award of a construction contract under any delivery method be established if a bidder is selected for any reason other than price; and

WHEREAS, the Board has determined that it is in the public's best interest to provide such standards and procedures so that the Board may select the most qualified and responsive bidder; and

WHEREAS, the Board has determined that it is in the public's best interest to prevent construction firms and sureties who have defaulted on a previous contract with the County from future bidding on County projects through a debarment procedure;

THEREFORE, be it ordained by the Board of County Commissioners of Brevard County, Florida as follows:

Section 1: Chapter 2 of the Brevard County Code shall be amended to create Article VII as follows:

1. DEFINITIONS: The following words shall have these meanings throughout this article:

   "AFFECTED PARTY" means an individual or business which has submitted a bid, offer, proposal, quotation, or response which is rejected, or is found unqualified under the provisions of this article, or which would be selected if a low bidder was found unqualified or nonresponsive.

   "BOARD" means the Board of County Commissioners of Brevard County, Florida.

"COMMITTEE" means two or more persons designated to evaluate prequalification and responsiveness criteria. Committees established by the County Manager may be intradepartmental, or include representatives of several departments interested in the administration and success of the construction project.

"DEBARMENT" means the exclusion for cause of a vendor or contractor, or subcontractor from bidding or doing business with the County on a temporary or permanent basis.

"MINOR IRREGULARITY" means a variation from the Invitation to Bid which does not affect the price of the bid, or give the bidder an advantage or benefit not enjoyed by other bidders, or does not adversely impact the interests of the agency.

"QUALIFIED BIDDER" means an individual or business which has submitted a bid, offer, proposal, quotation, or response, which has the capability in all respects to fully perform the contract requirements, and has the financial stability, honesty, integrity, skill, business judgement, experience, facilities and reliability necessary to give reasonable assurance of good faith and performance.

"REQUEST FOR QUALIFICATION" ("RFQ") means the process by which the County may prequalify individuals or businesses for a particular project before requesting bids for the project, thereby limiting the pool of bidders to these prequalified.

"RESPONSIVE BIDDER" means an individual or business which has submitted a bid, offer, proposal, quotation, or response, which conforms in all material respects to the solicitation, including but not limited to compliance with the submittal of specified insurance and bond requirements.

1. Any County contract for the construction or improvement of a public building, structure, or other public construction work that is estimated in accordance with general accounting principles to have construction costs of more than fifty thousand dollars ($50,000.00) shall be competitively awarded to the lowest, qualified and responsive bidder in accordance with this article, unless the project (1) fits within exceptions set forth in s. 255.20, Fla. Stat., as amended from time to time, (2) is a contract governed by the Consultant's Competitive Negotiation Act, or (3) is awarded under another contract delivery method authorized by this article. Nothing in this article shall be construed to require competitive award of every County construction work, nor to prohibit the Board from rejecting all bids if competitively bid, or to prevent the Board from waiving minor irregularities in any bid.

2. (a) Potential lump sum bidders responding to a request for qualifications are required to submit information required by this article and as identified in the RFQ

package. A committee identified in the RFQ package will determine whether a potential bidder is qualified and responsive as defined in this article.

(b) For projects advertised for lump sum bid without prior prequalification, the apparent low bidder, after the formal bid opening, will be required to submit the following prequalification information identified in the bid package within five (5) business days after the bid opening. Failure to provide prequalification information within this time frame may be considered as grounds for finding the apparent low bidder nonresponsive. If the apparent low bidder cannot provide adequate documents for review, or the submitted documents indicate the apparent low bidder or any subcontractors are not qualified, or if the bidder's package is determined to be nonresponsive, the Committee will reject the bidder or any of its subcontractors. In the event the bidder is found unqualified or non-responsive, the apparent second low bidder will be contacted and afforded the previous mentioned five (5) days to submit pre-qualification documents. This process will continue until the lowest qualified and responsive bidder is established. In the event that a subcontractor is found unqualified or non-responsive, the potential bidder or prime contractor will have five (5) business days to submit a substitute subcontractor for the same bid price or withdraw the original bid.

(c) In addition to lump sum contracts for construction, the Board may use the following delivery methods for construction or improvement of a public building, structure, or other public construction work: construction manager, design/build, or continuing contracts based on unit prices. The Board may also enter into continuing contracts with construction managers using the pre-qualification procedure set forth herein for potential lump sum bidders. The individual projects shall be awarded under a continuing contract using the following criteria:

> Ability of professional personnel given project's special characteristics; past performance; willingness to meet time and budget requirements; location; recent, current and projected workloads of the firms available under continuing contract; volume of work previously awarded to each firm under a continuing contract provided distribution does not violate the principle of selection of the most qualified firm for the project; previous experience on County projects.

The County Manager will establish procedures for the Board to hear any affected party with a complaint or appeal as to any recommendation or finding made pursuant to this article. Any affected party's complaint or appeal must be presented, in writing, to the County Manager's office within five (5) business days of the posting of a committee's decision.

(d) At the completion of each competitively awarded County construction project, the County department which administered the construction contract shall

complete an evaluation of the contractor's performance on a form to be established by the County Manager. The department may also complete evaluations of critical subcontractors using the same form. All such records shall be copied to the party evaluated and maintained by County Purchasing. Any party evaluated may submit a written response of any length, which response shall be filed with the evaluation.

3. Potential bidders, the apparent lowest bidder, or the person providing services under any other contract delivery method, and applicable subcontractors identified in the bid or request for qualification package for any County construction project which is to be competitively awarded shall be evaluated to determine whether the bidder and its subcontractors are qualified. In evaluating qualifications, the County shall consider the following information:

   - A Contractor's Pre-Qualification Statement for the prime contractor and subcontractors performing parts of work identified in the bidding documents as critical to the project's success. The Pre-Qualification Statement shall be provided on a form to be established by the County Manager;

   - Most current financial statement, but not more than one (1) year old, indication of bondability, or, if project is under $100,000, other evidence of financial capability as identified in the bid documents;

   - Resumes of Contractor and Subcontractor's key personnel, including project manager and superintendent levels, showing job history, education related to work to be performed and any license, training, and experience related to the work which that individual will perform;

   - List of subcontractors and suppliers, and items of work to be performed by the Contractor's own work force;

   - County evaluations of the performance on County projects;

   - References obtained from individuals or businesses with whom the contractor or subcontractor has performed work or conducted business;

   - Any other relevant qualifications, data or information identified in the bidding documents to be critical to the success of the project.

4. The County Manager will establish committees which may debar a contractor, contractor's key personnel, contractor's surety, subcontractor and subcontractor's key personnel, or any entity which key personnel are later employed or retained by in a supervisory position, from bidding on any County project under the circumstances enumerated below. The decision to disbar is

discretionary, the seriousness of the offense and all mitigating factors should be considered in making the decision to disbar. The notice of debarment shall state the time when such debarment will be lifted, if ever, and the contractor's right to appeal such debarment to the Board of County Commissioners under the Board's regular agenda. The Board reserves the power to waive or lift any committee imposed suspension or debarment.

An individual or business may be *permanently* debarred for any of the following reasons:

- Conviction or a judgment obtained in a court of competent jurisdiction for:
- Commission of a fraud or a criminal offense as an incident to obtaining, attempting to obtain, or in the performance of a pubic contract
- Violation of any Federal or State of Florida anti-trust or anti-racketeering statutes arising out of submission of bids or proposals;
- Commission of embezzlement, theft, forgery, bribery, falsification of or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which seriously and directly affects the question of present responsibility as a County contractor, subcontractor or vendor;
- If the conviction or judgment is reversed on appeal, the debarment shall be removed upon receipt of notification thereof.

Competent and substantial evidence of a violation of a County contract provision, as set forth below, when the violation is of a character so as to justify debarment action such as:

- Failure to perform in accordance with the specifications or delivery requirements in a contract;
- A history of failure to perform, or of unsatisfactory performance, in accordance with the terms of one or more contracts; provided, that such failure or unsatisfactory performance is within a reasonable period of time preceding the determination to debar. Failure to perform for unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered as a basis of debarment.

Upon adequate evidence, an individual or business may be *temporarily* debarred for a period up to three (3) years based upon substantial evidence of involvement in any of the causes cited in paragraph (b) above.

Section 2: Inclusion in Code: It is the intention of the Board of County Commissioners that the provisions of this ordinance shall become and be made a part of the Brevard County Code; and that the sections of this ordinance may be renumbered or relettered to accomplish such intentions.

Section 3: Severability: If any provision of this ordinance is held to be illegal or invalid,

the other provisions shall remain in full force and effect.

Section 4: Effective Date: This ordinance shall become effective upon filing as provided by law. A certified copy of the ordinance shall be filed with the Office of the Secretary of State, State of Florida within ten (10) days of enactment.

ATTACHMENT "G"

PUBLIC CONSTRUCTION PAYMENT BOND

BY THIS BOND, We _____ as Principal and _____, a corporation as Surety, are bound to Brevard County Board of County Commissioners, Brevard County, Florida, herein called Owner, in the sum of _____ ($), for payment of which we bind ourselves, our heirs, personal representatives, successors and assigns, jointly and severally.

THE CONDITIONS OF THIS BOND are that if Principal:

1. Promptly makes payments to all claimants, as defined in Section 255.05(1), Florida Statutes, supplying Principal with labor, materials, or supplies, used directly or indirectly by Principal in the prosecution of the work provided for in the contract dated _____, 20____, between Principal and Owner for construction of _____, the contract being attached hereto and made a part of this bond by reference, in such time and without delay, and in the manner prescribed in the contract; and
2. Pays Owner all losses, damages, expenses, costs, and attorney's fees, including appellate proceedings, that Owner sustains because of a default by Principal under the contract, then this bond is void; otherwise it remains in full force.

   Any changes in or under the contract documents and compliance or noncompliance with any formalities connected with the contract does not affect Surety's obligation under this bond.

Signed and sealed this _____ day of _____, 20___.

Witness:

_____

_____
Principal Seal

Its: _____
Title

Witness:

_____

_____
Surety Seal

Its: _____
Title

ATTACHMENT "H"

PUBLIC CONSTRUCTION PERFORMANCE BOND

BY THIS BOND, We _____, as Principal and _____, a corporation as Surety, are bound to Brevard County Board of County Commissioners, Brevard County, Florida, herein called Owner, in the sum of _____ ($_____), for payment of which we bind ourselves, our heirs, personal representatives, successors and assigns, jointly and severally.

THE CONDITIONS OF THIS BOND are that if Principal:

1. Performs promptly, completely and faithfully the contract dated _____, 2010 between Principal and Owner for construction of _____, the contract being attached hereto and made a part of this bond by reference, in such time and without delay, and in the manner prescribed in the contract including the delivery, execution and performance of any warranty work required by the contract; and
2. Pays Owner all losses, damages, expenses, costs, and attorney's fees, including appellate proceedings, that Owner sustains because of default by Principal under the contract; and
3. Performs the guarantee of all work and materials furnished under the contract for the time specified in the contract, then this bond is void; otherwise it remains in full force.

Any changes in or under the contract documents and compliance or noncompliance with any formalities connected with the contract does not affect Surety's obligation under this bond.

Signed and sealed this _____ day of _____, 20___.

Witness:

_____

_____
Principal Seal

Its: _____
Title

Witness:

_____

_____
Surety Seal

Its: _____
Title

ATTACHMENT "I"

CONSTRUCTION MANAGER'S
GUARANTEED MAXIMUM PRICE

ATTACH HERE

ATTACHMENT "J"

CERTIFICATE OF SUBSTANTIAL COMPLETION

(Insert Form Here)

ATTACHMENT "K"

CERTIFICATE OF FINAL COMPLETION

PROJECT NO. & TITLE:
ARCHITECT: CONTRACTOR:
CONTRACT DATE: DATE OF FINAL COMPLETION:

CERTIFICATE OF ARCHITECT/ENGINEER

Based on my inspections and investigation of the Contractor's work under the above referenced contract, I certify that the work, in general, has been completed in accordance with the contract documents, that all matters previously brought to the Contractor's attention as incomplete or defective have been resolved pursuant to my direction, and that the Contractor has submitted the attached sworn affidavit as evidence that the Contractor has paid all labor, materials, and other charges against the project in accordance with the terms of the Contract.

A/E Firm Name: _____ By: _____

TO BE COMPLETED BY ARCHITECT/ENGINEER: DATE: DAYS:

THROUGH THE SUBSTANTIAL COMPLETION PHASE

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 NTP through Date Certified by A/E)
6. Substantial Completion Overrun (Subtract Line 4 from 5 and Enter Overrun)

THROUGH THE FINAL COMPLETION PHASE

1. Time Specified in Contract, Between Substantial and Final Completion
2. Extensions Granted by Change Orders (Days Between S.C. and Final Completion)
3. Total Days Allowable Between Substantial Completion and Final Completion (Add Lines 1 and 2)
4. Date Actually Completed and Total Days Between and Date Certified by A/E as Actually being Finally Completed).
5. Final Completion Overrun (Subtract Line)

Architect: _____ Date: _____

Project Manager: _____ Date: _____

Facilities Construction Manager: _____ Date: _____

ATTACHMENT "L"

ALLOWABLE COSTS, OVERHEAD

DESCRIPTION	EST QUANTITY	UNITS	UNIT COST	BUDGET VALUE	QUANTITY TO DATE	QUANTITY TO COMP
OFFICE PHONES						
OFFICE SUPPLIES						
POSTAGE						
GAS/OIL/LUBRICATION						
AUTOMOBILES/TRUCKS						
PROJECT MANAGER						
ESTIMATING COSTS						
EXECUTIVE LABOR COST ASST PROJECT MANAGER IN HOUSE SECRETARY						
TRAVEL EXPENDITURES						
WARRANTY EXPENSE						

ATTACHMENT "M"
(Direct Cost Items)
GENERAL CONDITIONS

SUPERINTENDENT

JOB SITE SECRETARY/CLERK

QUALITY CONTROL

SURVEY

PERMITS

IMPACT/CONNECTION FEES

CONSTRUCTION DRAWINGS/SPECS

PROGRESS PHOTOGRAPHS *(IF REQUESTED BY THE OWNER)*

JOB SITE SIGN *(IF REQUESTED BY THE OWNER)*

SPECIAL SECURITY *(IF REQUESTED BY THE OWNER)*

PAYMENT & PERFORMANCE BONDS

BUILDERS RISK INSURANCE

JOBSITE TRAILER AND SUPPORT *(IF REQUESTED BY THE OWNER)*

TEMPORARY UTILITIES *(AS APPROVED BY THE OWNER)*

TEMPORARY JOBSITE FENCING *(INITIAL INSTALLATION ONLY)*

TRASH REMOVAL/DUMP FEES, AND RECYCLING *(AS APPROVED BY THE OWNER)*

ATTACHMENT "N"

CERTIFICATE FOR PAYMENT

(INSERT FORM HERE)

ATTACHMENT "O"

MINORITY EMPLOYMENT INFORMATION

The Board of County Commissioners requires construction contracts, who would otherwise be required to file and EEO Form 1 Report under Federal Law (currently Federal law requires filing for employers with more than 15 employees), to submit an EEO Form 1 Report with the submission of their GMP. This requirement extends to any subcontractors who are required to submit the EEO Form 1 Report (over 15 employees) under Federal law. Failure to submit an Acknowledgment and/or EEO Form 1 Report with your GMP will be reason to declare your proposal "non-responsive" to the proposal requirements. However, the information will be used for statistical purposes only and will not be used in any way as a basis to award a contract.

Please fill out and sign one (1) of the following statements:

1. My Company or subcontractors are required to submit the EEO Form 1 Report and they are attached.

   Company Name:
   Signature: _____ Date: _____

2. My Company or subcontractors are not required to submit the EEO Form 1 Report.

   Company Name:
   Signature: _____ Date: _____

Company Name: _____

Company Address: _____

Company Telephone: _____

Signature: _____ Printed Signature: _____

ATTACHMENT "P"

PUBLIC ENTITY CRIME ACKNOWLEDGMENT

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/quote/proposal on a contract to provide goods or services to a public entity, may not submit a bid/quote/proposal on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids/quotes/proposals on leases of rental 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 in excess of the threshold amount provided in Section 287.017, for Category Two ($15,000) for a period of thirty six (36) months from the date of being placed on the convicted vendor list.

NON-COLLUSION AFFIDAVIT OF PRIME BIDDER

State of Florida
County of Brevard

_____, being duly sworn, deposes and says that:

(1) Affiant is _____ of _____, the Bidder that has submitted a bid/quote/proposal;

(2) Affiant is fully informed respecting the preparation and contents of the bid/quote/proposal and of all pertinent circumstances respecting such bid/quote/proposal;

(3) Such bid/quote/proposal is genuine and is not a collusive or sham bid/quote/proposal;

(4) Neither the said Bidder nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, has in any way colluded, conspired, connived or agreed, directly or indirectly with any other Bidder, firm or person to submit a collusive or sham bid/quote/proposal in connection with the Contract for which the bid/quote/proposal has been submitted or to refrain from bidding in connection with such Contract, or has in any manner, directly or indirectly, sought by Contract, or has in any manner, directly or indirectly, sought by the agreement or collusion or communication or conference with any other bidder, firm or person to fix the price or prices in the bid/quote/proposal or of any other Bidder, or to fix any overhead, profit or cost element of the bid/quote/proposal price or the bid/quote/proposal price of any other bidder, or to secure through any collusion, conspiracy, connivance or unlawful agreement any advantage against the Board of County Commissioners of Brevard County, Florida, or any person interested in the Contract; and

(5) The price or prices negotiated for the bid/quote/proposal are fair and proper and are not tainted by any collusion, conspiracy, connivance, or unlawful agreement

on the part of the Bidder or any of its agents, representatives, owners, employees, or parties of interest, including affiant.

_____
Signature

_____
Title

Subscribed and sworn to before me this ____ day of _____, 20___.

_____
Notary Public

My Commission expires: _____

CONTINUING
CONSTRUCTION MANAGER (AT RISK)
SERVICES AGREEMENT

This is an Agreement entered into this 14th day of July 2015, by and between **BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS**, a political subdivision of the State of Florida, hereinafter referred to as COUNTY, and **W&J CONSTRUCTION** whose address is 1038 Harvin Way, Suite 120, Rockledge, Florida, 32955, a corporation under the laws of the State of Florida, hereinafter referred to as CONSTRUCTION MANAGER.

For and in consideration of the mutual agreement hereinafter contained, the COUNTY hereby retains the CONSTRUCTION MANAGER and the CONSTRUCTION MANAGER hereby covenants to provide Continuing Construction Manager (At Risk) services for Projects ($1 - $2,000,000 each).

ARTICLE 1

1.1 The CONSTRUCTION MANAGER agrees to furnish its best skill and judgement and to cooperate with the Architect/Engineer, where applicable, in furthering the interest of the COUNTY. The CONSTRUCTION MANAGER agrees to furnish efficient business administration and supervision and to use its best efforts to complete the Project(s) in an expeditious and economical manner consistent with the interests of the COUNTY.

1.2 The Construction Team: The CONSTRUCTION MANAGER, the COUNTY and the Architect/Engineer (the "Construction Team") will work as a team through construction completion. The CONSTRUCTION MANAGER shall provide leadership to the Construction Team on all matters relating to construction. The Architect/Engineer will provide leadership to the Construction Team on all matters relating to design.

ARTICLE 2

2.1 The CONSTRUCTION MANAGER'S basic services under this Agreement include construction management services for projects ($1 - $2,000,000). For each proposed Project, the COUNTY and the CONSTRUCTION MANAGER shall enter into a separate "Agreement Between Owner and Construction Manager" (Attachment "A").

2.2 Selection for each proposed Project will be per Florida Statute 287.055, and Qualification Based Selection Criteria approved by the Board of County Commissioners, as follows:

A. Ability of firms professional personnel given the project's special characteristics;
B. Willingness to meet time and budget requirements;
C. Physical location of firm;
D. Recent, current, and projected workload of the firms available under the continuing contract;
E. Volume of work previously awarded to the firm by the Board of County Commissioners, provided distribution does not violate the principles of selection of the most qualified firm for the project;
F. Previous Board of County Commissioners experience, including staff evaluations on file with Brevard County Facilities Construction and Brevard County Purchasing Services.

2.3 The Contract Time for performance of each proposed Project shall be established in the "Agreement Between Owner and Construction Manager" for each proposed Project, including the Notice to Proceed.

2.4 This Agreement shall remain in effect for a period of one (1) year, and may be renewed for an additional three (3) one-year increments at the COUNTY's option, based upon satisfactory performance of the CONSTRUCTION MANAGER.

2.5 The Guaranteed Maximum Price (GMP) for each proposed Project shall include the Cost of the Work required by the Contract Documents, and the CONSTRUCTION MANAGER'S fee. The GMP will be negotiated based on Contract Documents, Plans and Specifications for each proposed Project provided by the COUNTY.

2.6 Insurance, Payment and Performance Bonds will be provided to the COUNTY by the CONSTRUCTION MANAGER for each proposed Project in accordance with the initial Request for Proposal #P-3-11-04.

ARTICLE 3

3.1 The COUNTY and CONSTRUCTION MANAGER respectively bind themselves, their partners, successors, assigns and legal representatives to this Agreement and to the partners, successors, assigns and legal representatives of other party with respect to all covenants of this Agreement. Neither the COUNTY nor the CONSTRUCTION MANAGER shall assign this Agreement without written consent of the other.

3.2 This Agreement shall be governed by the laws of the State of Florida.

IN WITNESS WHEREOF, the parties have affixed their signatures, effective on the date first written above.

BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

By: _____
Robin Fisher, Chair

As Approved By The Board On: SEP 16 2014

Attest:

_____
Scott Ellis, Clerk of Circuit Court

W&J CONSTRUCTION

By: _____

Title: V.P.

Reviewed for legal form and content:

_____
Deputy County Attorney

6/19/15
Date

ATTACHMENT "A"

AGREEMENT
BETWEEN OWNER AND CONSTRUCTION MANAGER

THIS AGREEMENT made the ____ day of _____ in the year Two Thousand _____ between the **BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS**, a political subdivision of the State of Florida whose address is 2725 Judge Fran Jamieson Way, Viera, Florida 32940 (hereinafter referred to as "Owner"), and _____ whose address is _____ (hereinafter referred to as "Construction Manager"), a company licensed to do business in the State of Florida.

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. The Construction Manager covenants with the Owner to furnish the best skill and judgment and to cooperate with the Architect/Engineer in furthering the interests of the Owner. The Construction Manager agrees to furnish efficient business administration and superintendence and use its best efforts to complete the Project in 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 Design 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 **Attachment "A"** attached.

1.2 Scope of Work – A general description of the Work/Project to be built/constructed/installed under this Agreement (**Attachment "B"**).

1.3 Definitions:

Project - The Project is the total work to be performed under this Agreement. The Project consists of planning, design review, permitting, construction (which includes all labor, equipment, material and supervision) and code inspection necessary to build/construct and complete the Scope of Work identified in Attachment "B" (Scope of Work).

Owner - Brevard County Board of County Commissioners, Central Services

Department - Facilities, 2725 Judge Fran Jamieson Way, Building A, 2nd Floor, Viera, Florida 32940, (321) 633-2050; facsimile (321) 633-2101. For the purposes of this agreement, the Owner may also include the County Manager or the Project Manager with regard to the performance of designated functions and duties specified for each under the terms and provisions of this agreement.

Contract Documents - Consist of this Agreement with attachments, Scope of Work, the drawings, the specifications, the GMP, any Conditions of the Contract between the Owner and the Construction Manager (General, Special, Supplementary and other conditions), permit conditions, if any, grant specifications, any addenda to the foregoing listed documents and all change orders, amendments or modifications as provided in Article 10, whether or not any of the foregoing listed documents have been attached hereto.

Permitting Authority - All applicable Federal, State, County and local agencies responsible for permitting and code inspections on projects administered by the Owner.

Construction Manager –

Architect/Engineer –

Project Director - The person designated by the Owner to provide direct interface with the Construction Manager with respect to the Owner's responsibilities. Joan Van Sickle, Construction Manager, is the designated Project Director, and _____ is the designated Construction Coordinator.

Owner's Representatives - The Project Director and his/her supervisors and/or designees.

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

Guaranteed Maximum Price (GMP) - The Guaranteed Maximum Price for the construction of the project, which shall be subject to adjustments only as provided herein. GMP includes Cost of the Work and Construction Manager's fee for Construction Phase services. The Guaranteed Maximum Price does include the cost for Owner direct purchases, however, all Owner direct purchases will be deducted in one deductive change order in accordance with **Attachment "C"** (Direct Purchasing Procedure) at the end of the project.

Substantial Completion - the point in the construction where all essential elements of the Project are sufficiently complete in conformance with the Contract, that the OWNER has both the occupancy of the Project, as evidenced by a Certificate of Occupancy issued by the governmental authority with jurisdiction and the beneficial use of the Project for its intended purpose where

only minor punch list items are required for final completion. Substantial Completion shall not be deemed to have occurred where 1) latent defects are revealed subsequent to use and occupation of the project by the OWNER or 2) where the scope of substantial defects in workmanship or materials are not readily observable or discoverable when use and occupancy of the project commenced or 3) the failure to meet grant specifications, if any.

1.4 Extent of Agreement - This Agreement for Construction Management services for the construction of the _____ between the Owner and the Construction Manager supersedes any prior negotiations, representations or agreements. The drawings, specifications and other descriptive documents defining the work to be included under this construction contract are identified in **Attachment "D"**. The Construction Manager shall obtain from the Owner three (3) sets of signed, sealed and dated drawings, specifications and other documents upon which the GMP is based; 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 (1) set of the documents to the Project Director along with his GMP proposal, while keeping one (1) set for himself and returning one (1) set to the Architect/Engineer.

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.

ARTICLE 2

CONSTRUCTION MANAGER'S RESPONSIBILITIES

Construction Manager shall perform all services described in this Article. The services to be provided under Paragraph 2.1 constitute the Pre-Construction Phase services. The services to be provided under Paragraph 2.2 thru 2.9 constitute the Construction Phase services. The parties acknowledge the Construction Phase shall commence before the Pre-Construction Phase is completed, and to a certain extent both phases shall proceed concurrently.

2.1 PRE-CONSTRUCTION PHASE

2.1.1 Preliminary Evaluation - Construction Manager shall provide a preliminary evaluation of Owner's program and Project budget requirements, each in terms of the other.

2.1.2 Consultation - Construction Manager will provide Design Disciplines Construction Documents Plans and Specifications review at all design milestones and a final constructability review. The review at each milestone will identify areas of omission, overlapping and identify documents to be modified in order to clarify the construction details. The review will also include the coordination and

interface of the contract document's General Conditions, Special Conditions, trade contractor bid packages and site utilization planning during construction. Reviews shall be completed and comments provided within five (5) business days. As part of the design review, Construction Manager will provide Value Engineering and construction alternatives, identifying to the Owner and Architect options for systems and components that are cost effective, ease of maintainability and efficiency to be considered.

Construction Manager, with Architect, has scheduled and attended, and will continue to jointly schedule and attend, **weekly** progress meetings (*or as determined by the Project Director or Project Manager*) with Owner and Architect. Construction Manager has and will continue to consult with Owner and Architect regarding site use and improvements, and the selection of materials, building systems and equipment. Construction Manager has provided and will continue to provide recommendations on construction feasibility; actions designated to minimize adverse effects of labor or material shortages; time requirements for procurement, installation and construction completion; and factors related to construction cost including estimates of alternative designs or materials, preliminary budgets and possible economies.

2.1.3 Preliminary Project Schedule - Construction Manager has prepared a Preliminary Project Schedule, a copy of which is attached as **Attachment "E"**. Construction Manager shall coordinate and integrate the Preliminary Project Schedule with the services and activities of Owner, Architect and Construction Manager. The Construction Manager shall 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 Total Project Schedule. The schedule shall include all phases of construction work, material supplies, long lead procurement, approval of shop drawings, change orders in progress, schedules for change orders, and performance of testing requirements. The Construction Manager shall advise the Owner, its representatives and the Architect/Engineer of their required participation in any meeting or inspection giving each at least one (1) week notice unless such notice is made impossible by conditions beyond the Construction Manager's control. The Construction Manager shall hold jobsite meetings at least once each week with the Construction Team and at least once each week with the subcontractors and the Architect/Engineer field representatives, and Owner or more frequently as required by work progress, to review progress, discuss problems and their solutions and coordinate future work with all subcontractors.

2.1.4 Subcontractors and Suppliers - Construction Manager shall continue to develop subcontractor interest in the Project and shall furnish to Owner and Architect for their information a list of possible subcontractors, including suppliers who are to

furnish materials or equipment fabricated to a special design, from whom proposals will be requested for each principal portion of the Project. Owner will promptly reply in writing to Construction Manager if Owner has an objection to any such subcontractor or supplier. The receipt of such list shall not require Owner to investigate the qualifications of proposed subcontractors or suppliers, nor shall it waive the rights of Owner to later object to or reject any proposed subcontractor or supplier.

2.1.5 Long Lead and Owner Direct Procurement - The Construction Manager shall review the design for the purpose of identifying long lead and Owner direct procurement items (machinery, equipment, materials and supplies). When each item is identified the Construction Manager shall notify the subcontractors, the Project Director, and the Owner of the required procurement and schedule. Such information shall be included in the bid documents and made a part of all affected subcontracts. 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 Invitation for Bids. The Construction Manager shall keep informed of the progress of the respective subcontractors and/or suppliers, manufacturing or fabricating such items and notify the Project Director, Owner and Architect/Engineer of any problems or prospective delay in delivery.

2.1.6 Extent of Responsibility - The recommendations and advice of Construction Manager concerning design alternatives shall be subject to the review and approval of Owner and Owner's professional consultants. It is not Construction Manager's responsibility to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations. However, if Construction Manager recognizes that portions of the Drawings and Specifications are at variance therewith, Construction Manager shall promptly notify Owner and Architect in writing.

2.1.7 Equal Employment Opportunity and Affirmative Action - Construction Manager shall comply with applicable laws, regulations and special requirements of the Contract Documents regarding equal employment opportunity and affirmative action programs.

2.1.8 Separate Contracts Planning - The Construction Manager shall review the design with the Architect/Engineer and make recommendations to the Owner and to the Architect/Engineer with respect to dividing the work in such manner as will permit the Construction Manager to take bids and award separate construction subcontracts on the current schedule while the design is being completed. The Construction Manager shall take into consideration such factors as natural and practical lines of severability, sequencing, effectiveness, access and availability constraints, total time for completion, construction market conditions, availability of labor and materials, community relations and any other factors pertinent to saving time and cost by overlapping design and construction that are authorized

by the Owner.

2.2 CONSTRUCTION PHASE

2.2.1 Interfacing -

(1) The Construction Manager shall take such measures as are appropriate to provide that all construction requirements will be covered in the separate subcontracts for procurement of long lead items, the separate construction subcontracts and the general conditions items performed without duplication or overlap, sequenced to maintain completion of all work on schedule. Particular attention shall be given to provide that each bid package clearly identifies the work included in that particular separate subcontract, its schedule for start and completion and its relationship to other separate subcontractors.

(b) Subcontractor Interfacing - The Construction Manager shall be the single point of interface with all Subcontractors for the Owner, and all of its agents and representatives, including the Architect/Engineer. The Construction Manager shall negotiate all change orders, field orders and request for proposals, with all affected Subcontractors and shall review the costs of those proposals and advise the Owner and Architect/Engineer of their validity and reasonableness, acting in the Owner's best interest prior to requesting approval of each change order from the Owner. Before any work is begun on any change order, an executed Authorization to Initiate Work form from the Owner must be issued. However, when health and safety are threatened, the Construction Manager shall act immediately to remove the threat to health and safety. The Construction Manager shall also carefully review all shop drawings and then forward the same to the Architect/Engineer for review and actions. The Architect/Engineer will transmit them back to the Construction Manager who will then issue the shop drawings to the affected Subcontractor for fabrication or revision. The Construction Manager shall maintain a suspense control system to promote expeditious handling. The Construction Manager shall request the Architect/Engineer to make interpretations of the drawings or specifications requested of the Construction Manager by the Subcontractors and shall maintain a suspense control system to promote timely response. The Construction Manager shall advise the Project Director and Architect/Engineer when timely response is not occurring on any of the above.

2.2.2 Solicitation of Bids

(1) Without assuming responsibilities of the Architect/Engineer, the Construction Manager shall prepare Invitations for Bids (or Request For Proposals, when applicable) for all procurements of long lead times,

materials and services for Subcontractor contracts and for site utilities.

(2) 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.

(3) For each separate subcontractor or construction trade contract used in this project, the Construction Manager shall, unless waived by the 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.

(4) In accordance with Article 2.4.2 the Construction Manager shall open and review all bids and enter into contract(s) with those low bidders determined to be most qualified by the Construction Manager. The Construction Manager shall make every effort to follow the County's Pre-Qualification Ordinance 98-37 (**Attachment "F"**) for applicable subcontract trades.

2.2.3 Bonds - For those projects where the cost will exceed $100,000.00, 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 (**Attachment "G" and "H"**), certified copies of the recorded 100% Public Construction Performance Bond and 100% Public Construction Payment Bond each in an amount not less than the total construction cost (GMP) as defined in Article 9 and inclusive of the construction fee. *Payment and Performance Bonds shall be recorded (by the Construction Manager) in the official record of the County in which the project is located.* The Contractor must provide a copy of the bond(s) to all subcontractors and notify them of deadlines to make claims under the bonds.

2.2.4 Quality Control - The Construction Manager shall develop and maintain a program, acceptable to the Owner and Architect/Engineer, to assure quality control of the construction (*this may include personnel if approved by the Owner*). The Construction Manager shall have a qualified and competent Superintendent to supervise the work of all Subcontractors providing instructions to each when their work does not conform to the requirements of the plans and specifications and shall continue to exert 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 and 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.

2.3 Guaranteed Maximum Price (GMP) and Contract Time

2.3.1 Construction Manager acknowledges and agrees the Drawings and Specifications are sufficiently complete for Construction Manager to propose a Guaranteed Maximum Price (GMP), which is the total not to exceed sum of the Construction Manager's Fee and the Cost of the Project. Accordingly, the Guaranteed Maximum Price (GMP) is hereby established at $_____. *The final approved GMP spread sheet is hereby attached as* **Attachment "I"** *to and shall become a part of this Agreement between Owner and Construction Manager.*

2.3.2 The Cost of the Work shall include Construction Manager's contingency, a sum agreed to by all parties for the Manager's use to cover costs arising from unforeseen conditions in the project. Construction Manager's contingency is hereby established as a separate line item of $_____ within the Guaranteed Maximum Price.

2.3.3 Basis of Guaranteed Maximum Price (GMP)
The Guaranteed Maximum Price, herein established is based upon the following:

.1 The list of the Drawings and Specifications, including all addenda thereto, and the Conditions of the Contract, which are identified in the Attachments to this Agreement.

.2 The list of clarifications and assumptions made by Construction Manager in the preparation of its Guaranteed Maximum Price proposal to supplement the information contained in the Drawings and Specifications.

.3 The Preliminary Construction Schedule (**Attachment "E"**). As reflected in said Schedule, Construction Manager is to achieve Substantial Completion of the Work within ____ calendar days from issuance of Notice to Proceed. Final Completion shall be achieved within an additional ____ calendar days.

2.3.4 Included within the Guaranteed Maximum Price is the Construction Manager's fee. The Construction Manager's Fee is hereby established as $_____ for services provided in this Agreement. The sum of the Cost of the Project and the Construction Manager's Fee shall not exceed the Guaranteed Maximum Price. The Construction Manager's Fee shall constitute Construction Manager's total compensation for profit. All costs in excess of the final approved GMP (as

reduced by Owner direct purchases, if any, in accordance with **Attachment "C"**) are the responsibility of the Construction Manager. Any savings between the GMP (as reduced by Owner direct purchases) and the sum of the actual cost of the Project plus the Construction Manager's fee will be returned to the Owner.

2.3.5 Prior to issuance of the Construction Phase Notice to Proceed, Construction Manager shall not incur any costs to be reimbursed as part of the Cost of the Project, except as Owner may specifically authorize in writing.

2.3.6 The Guaranteed Maximum Price and date of Substantial Completion shall be subject to additions and deductions by a Change Order as provided in the Contract Documents.

2.3.7 The Guaranteed Maximum Price shall include in the Cost of the Project only those taxes which are enacted and in effect at the time the GMP was determined.

2.4 Construction Phase

2.4.1 General

2.4.1.1 The Construction Phase shall commence on the date identified in the Notice to Proceed to be issued by the Owner.

2.4.1.2 The Construction Manager shall cause all Work required by the Contract Documents to be properly completed in accordance with the terms of the Contract Documents and within the Contract Time.

2.4.1.3 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 and to coordinate, inspect and provide general direction of the work and progress of the subcontractors, and the Construction Manager shall provide no less than those personnel during the respective phases of construction. The Construction Manager shall not change any of those designated persons 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 reasonably withheld.

2.4.1.3.1 The Construction Manager shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during the progress of the work. The superintendent shall represent the Construction Manager and all communications given to the superintendent shall be as binding as if given to the Construction Manager.

2.4.1.3.2 The superintendent shall be in attendance at the Project site not less than

eight (8) hours per day, five (5) days per week, and any time work is being performed at the jobsite, unless the job is closed down due to a general strike or conditions beyond the control of the Construction Manager or until completion or termination of the Contract. It is understood that such superintendent shall be acceptable to the Owner and the Architect and shall be the one who will be continued in that capacity for the duration of the project, unless the Owner otherwise agrees. The superintendent shall not be employed on any other project for or by Construction Manager or any other entity during the course of the work.

2.4.1.4 Lines of Authority - The Construction Manager shall establish and maintain lines of authority for its personnel, and shall provide this description/definition to the Owner and all other affected parties such as the code inspectors of the permitting authorities, the subcontractors, 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 the Architect/Engineer may attend meetings between the Construction Manager and subcontractors, however, such attendance shall not diminish either the authority or responsibility of the Construction Manager to administer the subcontractor.

2.4.2 Administration

2.4.2.1 Those portions of the Project that Construction Manager does not customarily perform with Construction Manager's own personnel shall be performed under subcontracts or by other appropriate written agreements with Construction Manager. Construction Manager shall obtain bids from subcontractors and from suppliers of materials or equipment fabricated to a special design for the Project from the list previously reviewed and, after analyzing such bids, shall deliver such bids to the Owner and Architect for review and comment. Based upon that review and comment, Construction Manager shall then determine, subject to the reasonable objection of Architect or Owner, which bids will be accepted. Construction Manager shall not be required to contract with anyone to whom Construction Manager has reasonable objection. Notwithstanding anything herein to the contrary, Construction Manager covenants and agrees that it shall competitively bid all subcontracts. Further, with respect to all such subcontracts, Construction Manager covenants and agrees that it shall select and contract with the lowest, responsive and qualified bidder, unless otherwise consented to in writing by Owner.

2.4.2.2 Subcontracts and agreements with suppliers furnishing materials or equipment fabricated to a special design shall conform with payment provisions and shall not be awarded on the basis of cost plus a fee without prior written consent of Owner.

2.4.2.3 Construction Manager shall schedule and conduct weekly meetings at

which Owner, Architect, Construction Manager and appropriate Subcontractors can discuss the status of the Project. Construction Manager shall prepare and promptly distribute meeting minutes within two (2) business days after any such meeting is held.

2.4.2.4 Promptly after Owner's issuance of the Notice to Proceed, Construction Manager shall prepare a more detailed Project Schedule, based upon the preliminary Project Construction Schedule attached as **Attachment "E"**, including Owner's occupancy requirements. Construction Manager will submit monthly updates to the Schedule until the project is completed.

2.4.2.5 Construction Manager shall provide Monthly Written Reports to Owner on the progress of the entire Work. Construction Manager shall maintain a daily log containing a record of weather, subcontractors working on the site, number of workers, Work accomplished, problems encountered and other similar relevant data as Owner may require. The log shall be available to Owner at all times.

2.5 Professional Services - Construction Manager shall not be required to provide professional services which constitute the practice of architecture or engineering, unless such services are specifically required by the Contract Documents for a portion of the Project, or unless Construction Manager has specifically agreed in writing to provide such services. In such event, Construction Manager shall cause such services to be performed by appropriately licensed professionals.

2.6 Unsafe Materials - If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance encountered but not created or brought on the site Construction Manager shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to Owner and Architect in writing. Owner shall be responsible for obtaining the services of a licensed laboratory to verify the presence or absence of the material or substance reported by Construction Manager and, in the event such material or substance is found to be present, to verify that it has been rendered harmless.

In accordance with Florida Statute 255.40, the Owner will require that the Contractor certify (at project completion) that to the best of his/her knowledge and ability no asbestos-containing materials and/or supplies have been purchased and/or installed on this Project.

(*Florida Statute 255.40 Use of asbestos in new public buildings or buildings newly constructed for lease to governmental agencies; prohibition - The use of asbestos or asbestos-based fiber materials is prohibited in any building, construction of which is commenced after September 30, 1983, which is financed with public funds or is constructed for the express purpose of being leased to any*

governmental entity.)

2.7 Weather Protection - The Construction Manager will be responsible to 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. All costs associated with this shall be the responsibility of the Construction Manager.

2.8 Job Site Requirements

(1) The Construction Manager shall provide for each of the following activities as a part of the Construction Manager's Construction Phase services:

a. Maintain a log of daily activities, including manpower records, weather, delays, major decisions, etc. and require the same of subcontractors
b. Maintain a directory of companies on the Project with names, addresses, telephone numbers, emergency telephone numbers and fax numbers of key personnel.
c. Establish and enforce job rules governing parking, clean-up, use of facilities and worker discipline.
d. Provide labor relations management for a harmonious, productive Project.
e. 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.
f. Provide a quality control program.
g. Miscellaneous office supplies that support the construction efforts which are consumed by his own forces.

2.9 Job Site Administration - The Construction Manager shall provide as part of the Construction Manager's Construction Phase services, administrative functions during construction, including but not limited to, the following:

(1) 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 and delivery of materials, work sequences, inspection and testing, labor allocations, etc. Review and coordinate each Subcontractor's work. Review and implement revisions to the Schedule. Monitor and promote safety requirements.

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 document and implement the 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.

(2) Shop Drawing Submittals/Approvals - Check Shop Drawings and implement procedures for submittal and transmittal to the Architect/Engineer of such drawings for action, and closely monitor their submittal and approval process. Provide copy of all correspondence to Owner. Construction Manager will provide one (1) approved Submittal or Shop Drawing to Owner.

(3) Material and Equipment Expediting - Closely monitor material and equipment deliveries; implement inspection and follow-up procedures on commitments of all Suppliers and Subcontractors.

(4) Payments to Subcontractor - Develop and implement a procedure for review, processing, and payment of applications by Subcontractors for progress and final payments.

(5) Document Interpretation - Refer all questions for interpretation of the documents prepared by the Architect/Engineer to the Architect/Engineer.

(6) 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.

(7) Substantial Completion - The Construction Manager shall secure the Certificate of Occupancy and notify the Owner and Architect/Engineer, in writing, that the Project will be ready for inspection to determine if it is substantially complete and ready for inspection on or after a specific date, which date shall be stated in the notice. The notice shall be given at least seven (7) calendar days in advance of said date. Inspection and testing shall take place at time(s) mutually agreeable to the Construction Manager, Architect/Engineer and Owner. The inspection will be conducted jointly between the Architect/Engineer, Owner and Construction Manager's representative. The inspection shall determine if substantial completion has been accomplished and the Architect/Engineer shall produce a Certificate of Substantial Completion (**Attachment "J"**) and a written list of unfinished Work and defective work, commonly referred to as

a "Punch List", which must be finished and corrected to obtain final completion.

At the Owner's option a specific area or segment of the project may be inspected and/or determined substantially complete.

(8) Final Completion - The Construction Manager shall notify the Architect/Engineer and Owner, in writing, that the Project will be ready for final inspection on or after a specific date, which date shall be stated in the notice. This notice shall be given at least seven (7) calendar days in advance. That inspection and any necessary testing shall be conducted in the same manner as the inspection for Substantial Completion. When the Project is finally and totally complete, including the elimination of all defects, a Certificate of Final Completion (**Attachment "K"**) will be issued by the Architect/Engineer and the Project shall be submitted to the Owner for final acceptance.

The Owner and Architect/Engineer shall conduct the inspections. The Owner may elect to have other persons of its choosing also participate in the inspections. If one or more re-inspections are required, the Construction Manager shall reimburse the Owner for all costs of re-inspection or, at the Owner's option, the costs may be deducted from payments due to the Construction Manager. The Total Project Schedule shall include these notices and inspections as activities.

The Construction Manager shall secure and transmit to the Architect/Engineer all required guarantees, affidavits, releases, bonds and waivers, manuals, record drawings, and maintenance books as part of final completion (in triplicate) unless stated otherwise in the Project specifications.

(9) Start-Up - With the Owner's personnel, direct the checkout of utilities, operations, systems and equipment for readiness and assist in their initial start-up and testing by the subcontractors.

(10) Record Drawings - The Construction Manager shall monitor the progress of Work on marked-up field prints which, at Substantial Completion, shall be submitted to the Architect/Engineer who will prepare the final record drawings.

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

Contracts and Purchase Orders
Shop Drawing Submittal/Approval Logs

Equipment Purchase/Delivery Logs
Contract Drawings and Specifications with Addenda
Cost Proposal Requests
Meeting Minutes
Lab Test Reports
Contract Changes
Material Purchase Delivery Logs
"As-Built" Marked Prints
Monthly Progress Reports
Correspondence Files
Transmittal Records
Inspection Reports
Punch Lists

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 Construction Phase which will provide a smooth and successful Owner occupancy of the Project. The Construction Manager shall provide consultation and project management to facilitate Owner occupancy and provide transitional services to get the work, as completed by the contractors "on line" in such conditions as will satisfy Owner operational requirements.

The Construction Manager 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.

The Construction Manager shall catalog operational and maintenance requirements of equipment to be operated by maintenance personnel and convey these to the Owner in such a manner as to promote their usability (in triplicate). The Construction Manager shall provide operational training, in equipment use, for building operators to a maximum of eight (8) hours.

The Construction Manager shall secure required guarantees and warranties, assembled and organized (in a binder) and deliver same, in triplicate, to the Owner in a manner that will facilitate their maximum enforcement and assure their meaningful implementation.

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

(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 (1) year from the Date of Final Completion or 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. This warranty Inspection will be scheduled by a representative of the Owner**.

ARTICLE 3

OWNER'S RESPONSIBILITIES

3.1 Owner's Information - The Owner shall provide full information regarding Owner's requirements for the Project.

3.2 Owner's Representative/Project Director - 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. The Owner's representative 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 upon request.

3.4 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.

3.5 Legal Services - The Owner shall furnish such legal services as may be necessary for providing the items set forth in Article 3 and such auditing services as the Owner may require.

3.6 Drawings and Specifications - The Owner will provide to the Construction Manager a reproducible set of all drawings and specifications reasonably

necessary and ready for printing.

3.7 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.

3.8 Project Fault or Defects - If the Owner becomes aware of any fault or defect in the Project or non-conformance with the drawings and specifications, the Owner shall give prompt written notice thereof to the Construction Manager and Architect/Engineer.

3.9 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.

3.10 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.

3.11 Lines of Authority - The Owner shall establish and maintain lines of authority for Owner's personnel and shall provide this definition to the Construction Manager and all other affected parties.

3.12 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

4.1 Permits, Fees and Notices - Unless otherwise provided in the Contract Documents, the Construction Manager shall secure and the Owner shall pay for any Brevard County building permit or other County permits and governmental fees and licenses necessary for proper execution of the Contract and which are legally required. Any other entity/jurisdiction permits (i.e.: City of Titusville, City of Melbourne, etc.) shall be included in the Guaranteed Maximum Price and secured and paid for by the Construction Manager. County Impact and Solid Waste fees will also be paid by the Owner. Copies of all permits shall be submitted to the Owner.

4.2 The Construction Manager shall comply with and give notices required by laws, ordinances, rules and regulations and lawful orders of public authorities bearing on performance of the work required for the Project.

4.3 It is not the Construction Manager's responsibility to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations. However, if the Construction Manager observes that portions of the Contract Documents are at variance therewith, and such variance was not discoverable during the Construction Manager's review of these documents for the purpose of determining the GMP, the Construction Manager shall promptly notify the Architect and Owner, in writing, and necessary changes shall be accomplished by appropriate modification.

4.4 If the Construction Manager performs Work knowing it to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without such notice to the Architect and Owner, the Construction Manager shall assume full responsibility for such Work and shall bear the attributable costs.

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. Nothing contained in the Contract Document shall create any contractual relation between the Owner or Architect/Engineer and any Subcontractor.

5.2 Bids/Proposals - The Construction Manager shall request and make every attempt to receive, at a minimum, three (3) bids/proposals from Subcontractors and Suppliers and will award those contracts to the most qualified and responsive low bidder after the Construction Manager and Owner have reviewed each bid/proposal and agree that the Subcontractor is qualified to perform the work.

5.3 Required Subcontractor 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 this Agreement, 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 Subcontractor's 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-subcontractor.

(1) Subcontractors must submit a complete pre-qualification form demonstrating their work experience, financial condition, and adherence to schedule. The Subcontractors financial condition must demonstrate that adequate fixed and liquid assets and equipment are available to properly perform the subcontract.

(2) Workforce - The Subcontractor must agree to perform no less than fifty 50%) percent of the Project construction work utilizing its own forces.

(3) 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 cost for such change, plus, no more than five percent (5%) for profit, and five percent (5%) for overhead.

The subcontract shall require the Subcontractor expressly agree that the foregoing constitute its 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, loss or additional compensation.

b. Each subcontract shall require that any claims by Subcontractor for delays 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 its employees and agents and its Subcontractors, agents and employees, and all other persons performing any of the work or supplying materials under this contract to the Construction Manager.

ARTICLE 6

SCHEDULE, TIME OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

6.1 At the time a Guaranteed Maximum Price (GMP) is established, as provided for in Article 7, a Project Substantial Completion Date, a Project Final Completion Date and an Owner Occupancy Date for completion of the Project in accordance with the master Project schedule, shall also be established by the Construction Team. The Construction Manager agrees to complete the construction in accordance with the agreed upon Substantial Completion Date, Final Completion Date and Owner Occupancy Date. The Construction Manager acknowledges that failure to complete the Project within the construction time set forth in the approved schedule will result in substantial damages to the Owner.

It is specifically agreed by and between the parties that the Owner may deduct a sum in the amount scheduled below from the amount of compensation to be paid the Construction Manager, Sundays and Holidays included, that the Project remains uncompleted. This amount as scheduled and agreed upon as a proper measure of liquidated damages, which the Owner will sustain per day by failure of the Construction Manager to complete the Project by the time stipulated in this Agreement, is not to be construed in any sense as a penalty provision.

Project Substantial Completion	$500 per day
Project Final Completion	$250 per day

Liquidated Damages will be assessed for each day beyond the contracted project Substantial Completion date, until actual project Substantial Completion is achieved. From the date of Substantial Completion, the Construction Manager shall be granted thirty (30) days for completion of punch list items, associated inspections and approvals, and submission and approval of required closeout documentation, at which time Final Completion shall be obtained. Final Completion liquidated damages will be assessed for each day beyond the thirty (30) days period from actual Substantial Completion.

6.2 The date of Owner Occupancy shall occur as described in Article 2.9(7) and Article 1.3, hereinabove. Warranties called for by this Agreement or by the Drawings and Specifications shall commence on the Date of Final Completion of the Project unless specified otherwise in the Project Specifications.

ARTICLE 7

GUARANTEED MAXIMUM PRICE FOR CONSTRUCTION

7.1 The Construction Manager will establish and submit in writing a Guaranteed Maximum Price to the Owner for its approval, guaranteeing the maximum price to the Owner, for the construction cost of the Project or designated part thereof, based on a review of the contract drawings and specifications. Such Guaranteed

Maximum Price will be subject to increase or deduction for changes in the Project as provided in Article 10 and for Owner direct purchases, if any, in accordance with **Attachment "C"**. All costs in excess of the final approved GMP, as adjusted up or down in accordance with the terms of this agreement, are the responsibility of the Construction Manager. Any savings between the GMP, as adjusted, and the sum of the actual cost of the Project plus the Construction Manager's fees, will be returned to the Owner. The GMP includes all taxes in the Cost of the Project which were legally enacted and in effect at the time the GMP was established.

7.2 Owner-Direct Purchases - In the event the Owner opts to make Owner Direct Purchases, as outlined in **Attachment "C"**, the Guaranteed Maximum Price shall be reduced by the cost of the materials plus applicable sales tax so that all sales tax savings accrue to the benefit of the project contingency. The Construction Manager shall diligently process all Owner Direct Purchase invoices for the project in order for the Owner to benefit from applicable vendor discounts. The Construction Manager will be required to submit all invoices to Owner in sufficient amount of time in order for the project to benefit from the vendor discount. All costs associated with missed discounts by the Construction Manager will be deducted from the Construction Manager's contract via deductive change order at project completion. Owner reserves the right to waive the Construction Manager's responsibility for missing discounts.

7.3 At the time of execution of the contract, the Construction Manager will verify the time schedule for activities and work which is adopted by the Construction Team and used to determine the Construction Manager's cost of work. Surplus funds from bids received below the applicable line items, including line items within the General Conditions, in the GMP will be set aside for contingency. Construction contingency funds will be used 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. The Architect/Owner shall verify and approve the actual costs.

If bids are received above the applicable line item in the GMP the deficiency will be taken from the contingency via an approved Authorization to Initiate Work/GMP Realignment form; 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 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 8.1.2 and 8.1.3. subject to the retainage specified in 8.1.1 below.

8.1.1 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 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. A percentage of the agreed upon Construction Phase Fee shall be paid monthly based on percentage (%) of work completed, less retainage, in accordance with subsection 12.1 below. The Construction Manager's first monthly Certificate for Payment shall be submitted no earlier than thirty (30) days following the issuance of the Notice to Proceed, and the final monthly payment shall be paid only when construction of the Project is finally completed, all original, final release of liens are received, closeout documentation has been submitted 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, subcontractors or others for whose acts the Construction Manager is responsible.

(2) Costs and Expenses Included in Construction Manager's Construction Phase Fee - The following are included in the Construction Manager's fee for services during the Construction Phase and are included in the GMP (See **Attachment "L"** for Allowable Costs, Overhead associated with the Construction Manager's Construction Phase Fee referenced in Article 8):

(a) Corporate costs including expenses and overhead and profit related to this project by the Construction Manager's principal and branch offices.
(b) Costs of all data processing, accounting, purchasing and associated staff which is performed at the home office.
(c) General operating expenses incurred in the management and supervision of the project, except as expressly included in Article 9.
(d) Salaries or other compensation of the Construction Manager's employees at his principal and branch offices.

(e) Those services set forth in Paragraph 2.1, 2.2, 2.3 and 2.4; except as expressly included in Article 9.
(f) Relocation expenses for Construction Manager's personnel.
(g) Costs of all project estimating, safety, scheduling and accounting staff.

8.1.3 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, based on a review of the contract drawings and specifications. Such Guaranteed Maximum Price will be subject to modification for changes in the Project as provide in Article 10. However, the actual price paid for the Work by the Owner shall be (1) the Cost of the Project as defined in Article 9, plus the Construction Manager's fees, or (2) the GMP, whichever is less, when the Work is complete. All costs in excess of the final approved GMP are the responsibility of the Construction Manager.

ARTICLE 9

COST OF THE PROJECT

9.1 Definition - The term Cost of the Project shall mean costs reasonably and necessarily incurred in the Project during the Construction Phase for construction services and paid by the Construction Manager which are included in the Construction Phase Fee, less Owner direct purchases made in accordance with **Attachment "C"** upon completion of the Project. Such costs shall include the items set forth below in this Article, and shall also include, but are not limited to, those set forth in **Attachment "M"** - "Allowable General Conditions".

The Owner agrees to pay the Construction Manager for the Cost of the Project subject to the limits set forth in Articles 9.2 and 9.3 plus the Construction Manager's fees stipulated in Article 8, provided the total does not to exceed the GMP.

9.2 Direct Cost Items (See **Attachment "M"** - "Allowable General Conditions")

(1) Labor wages paid for the on-site Project Superintendent directly responsible for the operation and supervision of the project, clerical and Quality Control personnel (as opposed to wages paid to management or supervisory personnel who are not part of the on-site project management) in the direct employ of the Construction Manager in the performance of the Construction Manager's work under this Agreement, acceptable salary or wage schedules and such fringe benefits, if any, as may be payable with respect thereto (labor burden not to exceed 40% for payroll and 15% for per diem).

(2) 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.

(3) Cost of the premiums for insurance above and beyond the minimum required by Brevard County ($1 million) and cost of premiums for bonds which the Construction Manager is required to procure by this Agreement specifically for the construction of this project.

(4) Sales, use, gross receipts or similar taxes related to allowable direct costs of the Project imposed by a governmental authority, and for which the Construction Manager is liable. 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.

(5) If approved by the Owner, the Construction Manager, when qualified, may self 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.

(6) 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.

(7) 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.

9.3 Allowances

Within the GMP, there may be specific items which the Construction Manager and Owner have agreed to include as allowances in the estimates until such time as the cost and schedule impact of these items can be more specifically ascertained. At the time that the Costs of the Work of allowance items becomes known (either through a subcontract price or by virtue of either (A) scope of work and cost agreed to by Construction Manager and Owner or (B) an actual buyout of the item), the GMP and Scheduled Completion Date will be adjusted (either increased or decreased) by the actual Costs of the Work and schedule impact of the item. With respect to increases and decreases to the amount of an allowance

item, Construction Manager shall be entitled to the Construction Manager's fee, subject to the limits set forth in Article 8, on the adjusted amount of such allowance, and the GMP shall be adjusted by reason thereof, by Change Order. Allowances must be agreed to by both parties. Allowances included within the GMP constitute approval of said allowances at the time the Guaranteed Maximum Price is approved.

9.4 Public Records Law and Audit Requirements

In the performance of this Contract, the Construction Manager shall keep books, records and accounts of all activities related to the Contract in compliance with generally accepted accounting procedures and in compliance with the Public Records Laws of the State of Florida (Including, but not limited to Chapter 119, Florida Statutes).

All records or documents created by Construction Manager or provided to Construction Manager by the County in connection with the activities or services provided by Construction Manager under the terms of this agreement, are public records and Construction Manager agrees to comply with any request for such public records or documents made in accordance with section 119.07 Florida Statutes.

Records, documents, books and accounts ordinarily and necessarily required for the performance of this Contract shall be kept, maintained and open to inspection by the Owner, Owner's representative, and members of the public during regular business hours.

The Construction Manager shall provide the public with access to public records on the same terms and conditions that the public agency provides the records and at a cost that does not exceed the cost provided for in Florida Statute Chapter 119 or as otherwise provided by law (see also County Administrative Order, AO-47).

The Construction Manager shall also ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.

No reports, data, programs or other materials produced, in whole or in part for the benefit and use of the County, under this Contract shall be subject to copyright by Construction Manager in the United States or any other country.

The Construction Manager shall meet all requirements for retaining public records and shall transfer, at no cost, to the Owner/County all public records in possession of the Construction Manager upon termination of the contract and

destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the Owner/County in a format that is compatible with the information technology systems of the Owner/County.

Failure to comply with the provisions of this Section 9.4, shall result in the Owner taking enforcement action against the Construction Manager including the cost to the Owner for gaining the Construction Manager's compliance which will include, but are not limited to, the gross hourly rate of the Owner's employee(s) contacts to the Construction Manager to obtain compliance with this section, litigation filing fees and attorney's fees.

ARTICLE 10

CHANGES IN THE PROJECT

10.1 Change Orders - The Owner, without invalidating this Agreement, may order Changes in the Project within the general scope of this Agreement consisting of additions, deletions or other revisions which may cause an increase or decrease in the GMP, and/or the Construction Completion Date. All changes in the Project GMP or Construction Completion Date not covered by an authorized contingency, as described in Article 7.3 must be authorized by a written Change Order or Construction Change Directive, and signed by the Owner, Architect and Construction Manager before the change is implemented. It shall be the Owner's discretion as to whether each change order requires the A/E signature. **Maximum allowable mark-up on any change order is 5% Profit, 5% Overhead, and a 2% Bond.**

10.1.1 A Construction Change Directive is a change directive signed by the Project Director and the County Manager directing an addition, deletion, or revision in the scope of work and/or schedule. The Construction Change Directive is necessary when no Agreement exists among the Architect/Engineer of record, Brevard County and the Construction Manager on the dollar amount of a necessary change in the scope of work and/or an extension of time to the construction contract. The Construction Change Directive is used (1) when an unsafe, hazardous or other similar condition exists, (2) when failure to achieve prompt resolution of the change will result in a demobilization of the Construction Manager, its subcontractors and/or agents, (3) when failure to achieve prompt resolution will result in additional cost, and/or a significant delay in completing the project. A Construction Change Directive does not change the contract price or the contract time, but is evidence that the parties expect that the change will be incorporated in a subsequently issued Change Order or be covered by an authorized contingency.

10.1.2 A Change Order is a written order to the Construction Manager signed by the Owner, Architect, and Construction Manager, issued after the execution of this Agreement, authorizing a change in the Project and/or an adjustment in the construction authorization, the Construction Manager's fee, or the Construction Completion date. Each adjustment in the GMP resulting from a change order shall be documented clearly to separate the amount attributable to the cost of the change in the Project from the original cost of the Project.

10.1.3 The increase or decrease in the Guaranteed Maximum Price resulting from Change Orders in the Project shall be determined by one 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 plus a mutually acceptable fixed or percentage fee; or
(4) by the method provided in Subparagraph 10.1.4.

10.1.4 If none of the methods set forth in Clause 10.1.3 is agreed upon, the Construction Manager, provided he receives a written order signed by the Owner, shall promptly proceed with the work required by the Construction Change Directive 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 10.1.3 above, the Construction Manager shall keep and present, in such forms 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 in the Cost of the Project and the Construction Manager's fee subject to the limits set forth in Article 7.

10.1.5 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.

10.1.6 Should the Construction Manager or his contracted subcontractors encounter:

(1) concealed conditions in the performance of the Work below the surface of the ground; or
(2) concealed or unknown conditions in an existing structure be at variance with the conditions indicated by the Drawings, Specifications, or Owner furnished information; or
(3) unknown physical conditions below the surface of the ground; or
(4) 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, then 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. and Article 11.

Upon discovery of concealed or unknown conditions, the Construction Manager shall notify the Owner and Architect/Engineer within twenty four (24) hours of discovery, and not proceed with Work until such notice has been given and a response is issued by the Owner. The Architect/Engineer will evaluate the alleged unknown or concealed condition and, if warranted, recommend to the Owner that the GMP and schedule be increased or decreased accordingly. No claim under this Article may be made unless notice, as herein provided, is given prior to Work being performed. No equitable adjustment shall be permitted if this notice provision is not complied with.

Within ten (10) calendar days of submitting its Notice, 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. Within thirty (30) days from Notice, the Construction Manager shall submit detailed schedule impact and detailed cost analysis indicating quantities, unit prices, etc.

10.1.7 The Construction Manager shall review any Owner directed change and shall respond in writing within seven (7) calendar days after receipt of the proposed change (or such other reasonable time as the Owner may direct), stating the effect of the proposed change upon the Construction Manager's Work, including any increase or decrease in the contract time or price. The Construction Manager shall furnish to the Owner an itemized breakdown of the quantities and prices used in computing the change in

Contract price.

The Owner and Architect/Engineer shall review the Construction Manager's proposal and respond to the Construction Manager within seven (7) calendar days of receipt. If a change to the Contract price and time for performance are agreed upon, both parties shall sign the Change Order. Changes to the Contract time and/or price shall be effective when signed by both parties. It shall be the Owner's discretion as to whether each change order requires the A/E signature.

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.

10.2.1 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 or 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.

10.2.2 All change orders must indicate that the Contract Time for Completion is not changed or is either increased or decreased by a specific number of days. The previous Time for Completion and, if there is one, the new Time for Completion must be stated. The Construction Manager must provide written justification for an extension of the Time for Completion to the Architect/Engineer and to the Owner. The written justification must demonstrate an anticipated actual increase in the time required to complete the Work beyond that allowed by the Contract as adjusted by prior change orders or amendments to the Contract, not just an increase or decrease in the time needed to complete some portion of the total Work. No increase to the Time for Completion shall be allowed unless the additional or changed Work increases the length of the critical path. Approved increases in time required to complete the Work shall be added to the Time for Completion. Decreases in time as a result of the change order shall be demonstrated by a decrease in the critical path of the Work if CPM scheduling is properly used and updated by the Construction Manager. If no CPM is used the Owner shall determine the appropriate decrease by the best means possible. Approved decreases in the time needed to complete the Work shall be deducted from the Contract completion date. The change to time and Contract price allowed by each change order shall include all time and monetary impacts of the change, whether the change order is considered alone or with all other changes

during the course of the project. Failure to include a change to time and Contract price in a change order shall waive any change to the time and Contract price unless the parties mutually agree in writing to postpone a determination of the change to time and price resulting from the change order. Such a determination may be postponed not more than forty five (45) days to give the Construction Manager an opportunity to demonstrate a change in the time and price needed to complete the Work.

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 (Realignment of Work)
The Owner and/or 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 affected by written order. Documentation of changes shall be determined by the Construction Team, and included in the Project Manual. Changes shall be approved by the Project Director, Architect/Engineer. It shall be the Owner's discretion as to whether a Realignment of Work requires the A/E signature. All changes or realignments of work performed within the Guaranteed Maximum Price will not include overhead, profit or General Condition additional costs, since costs are absorbed within the Guaranteed Maximum Price (GMP).

10.4 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

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.

ARTICLE 12

PAYMENTS TO THE CONSTRUCTION MANAGER

12.1 Monthly Statements - The Construction Manager shall submit to the Owner a sworn statement along with the Certificate for Payment, 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. This data shall be attached to the Certificate for Payment Form shown in **Attachment "N"**, and shall include, but not be limited, to the following:

- Daily Reports;
- Updated Project Schedule;
- Daily Red line As-Builts review;
- Provide a billing report with each payment application that shows a breakdown of costs incurred by line item. This report should correspond with the amounts being charged on the Schedule of Values.
- Provide backup copies of all invoices that the County is being billed for, including vendor invoices, payments to subcontractors, cell phone statements, insurance, petty cash receipts, etc. These invoices should be coded by the line item that they correspond to on the billing report and Schedule of Values.
- Provide backup copies and documentation of all costs incurred under General Conditions.
- Provide backup copies of all payroll that details which labor amounts were paid to whom on a weekly basis.
- Provide copies of all subcontractor agreements.
  * The amounts charged on the Payment Application must be accurate and correspond with the total dollar amount of backup provided by the Construction Manager.

Payment by the Owner to the Construction Manager of the statement amount shall be made in accordance with Florida Statute 218.735.

Ten percent of each payment shall be held by the OWNER as retainage until 50-percent completion of such Project, which shall be deemed to have occurred when 50% of the GMP, as increased or decreased from time to time, has been expended. At that time, the retainage shall be reduced to 5% and the Construction Manager shall be entitled to request payment or release of up to 50% of the previously withheld retainage amounts, provided the retainage is not the subject of a good faith dispute, the subject of a claim brought pursuant to s. 255.05, Florida Statutes or otherwise the subject of a claim or demand by the OWNER.

Owner may refuse to certify payment and withhold a Certificate for Payment in whole or in part, in accordance with subsection(s) above, to such extent as may be reasonably necessary to protect the Owner from loss because of:

(1) defective work not remedied;
(2) third party claims filed or reasonable evidence indicating probably filing of such claims;
(3) failure of Construction Manager to make payments properly to subcontractors, consultants, or for labor, materials or equipment;
(4) evidence that the Project cannot be completed for the unpaid balance of the GMP, as adjusted;
(5) evidence that the Work will not be completed by the Scheduled Completion Date, as adjusted, and that the unpaid balance would not be adequate to cover the liquidated damages for the anticipated delay;
(6) failure to carry out the Work of the Project in accordance with the Contract Documents; or

If the Owner is unwilling to certify payment in the amount of the Application for Payment submitted by the Construction Manager, Owner will provide Construction Manager with written reasons for its refusal, within three (3) calendar days. If Construction Manager and Owner cannot agree on a revised amount, Owner will, within one (1) day of the aforesaid notification, promptly issue a Certificate for Payment as to the undisputed amount with respect to which Owner concurs.

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 in accordance with Florida Statutes after an *acceptable* Certificate of Final Completion has been issued **and all contractual closeout obligations have been met by the Construction Manager**. Before issuance of final payment, the Construction Manager, subcontractors and agents shall submit original, sworn, notarized statements that all payrolls, material bills, and other indebtness connected with the Project have been paid or otherwise satisfied, warranty information is complete, Final As-Builts in AutoCad format acceptable to the Owner, have been submitted and instruction and documentation for the Owner's operating and maintenance personnel is complete.

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

12.4 Withholding Payments to Subcontractors - The Construction Manager shall not withhold payments to Subcontractors if such payments have been made to the Construction Manager. Should this occur for any reason, the Construction Manager shall immediately return such monies to the Owner, adjusting pay

requests and project bookkeeping, as required.

ARTICLE 13

INSURANCE, INDEMNITY WAIVER OF SUBROGATION

13.1 (1) Indemnification - The Construction Manager agrees to indemnify and hold harmless the County and their employees from all claims, losses and expenses, arising out of or resulting from the performance of the products or services to be contracted, provided such claim, damage, loss or expense (1) is attributable to bodily injury, sickness, disease, death or personal injury, or to property damage, including loss of use resulting therefrom, (but not loss of use for which liquidated damages are assessed under the Agreement) and (2) is caused in whole or in part by any negligent act or omission of the Construction Manager, any subcontractor, any of their employees and/or agents in the performance of this contract. The Construction Manager agrees that it will pay the costs of the County's legal defense, including fees of attorneys as may be selected by the County, and shall defend, satisfy, and pay any judgments which may be rendered against the County in connection with the above hold harmless agreement. The Construction Manager acknowledges specific consideration has been received for this hold harmless/indemnification provision.

(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.

Loss Deductible Clause - Brevard County Board of County Commissioners shall be exempt from, and in no way liable for, any sums of money which may represent a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of the Construction Manager and/or Subcontractor providing such insurance.

13.2 Insurance

(1) The Construction Manager shall not commence any construction work in connection with this Agreement until the Construction Manager has obtained all of the following types of insurance and such insurance certificate(s) have been submitted to the Owner and have been approved by the Owner, nor shall the Construction Manager allow any Subcontractor to commence work on his subcontract until all insurance

required of the Subcontractor has been so obtained and approved. All insurance policies shall be with insurers qualified and doing business in the State of Florida.

a. Worker's Compensation - Provide Worker's Compensation Insurance on behalf of all employees who are to provide a service for this project, as required under Florida Laws.

b. Commercial General Liability - Including but not limited to bodily injury, property damage and personal injury with limits of not less than $1,000,000.00 combined single limit per occurrence, including products and completed operations, to include:

1. "XCU" (Explosion, Collapse, Underground Damage) - The Construction Manager's Liability Policy shall provide "XCU" coverage.

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

3. 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.

c. Automobile Liability - Including bodily injury, property damage liability for all vehicles owned, hired, leased and non-owned with limits of not less than $1,000,000.00 combined single limit, per accident.

d. Performance and Payment Bonds - With limits of not less than 100% of the total construction cost of this project. Payment and Performance Bond shall be recorded in the official record of the County in which the project is located. These bonds shall remain in effect at least until one (1) year after the date when the final payment is approved. Any bonding company submitting a Bid Bond, Performance Bond or Payment Bond to Brevard County must be licensed to transact a fidelity and surety business in the State of Florida, and hold a Certificate of Authority from the Secretary of the Treasury under Act of Congress, approved by July 30, 1947 (U.S.C. 613), and approved by Brevard County. Acceptable surety companies shall be licensed to do business in Florida and shall have an A.M. Best Rating of "A-" and financial

size V or higher.

e. 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 canceled because of partial occupancy by the Owner prior to final acceptance of the Project.

The Construction Manager shall require each of his Subcontractors to procure and maintain insurance during the life of the respective subcontracts.

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

Certificate(s) of Insurance will be furnished to the Owner within five (5) days of Notice to Proceed. These shall be completed and signed by the authorized Resident Agent, and shall be dated and show:

(1) 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.

(2) The General Liability and Auto Liability certificates of insurance shall indicate that the policies have been endorsed to cover the County as an additional insured to the extent of liability assumed by the Construction Manager under this Agreement, and that these policies may not be canceled or modified without thirty (30) days prior written notice to the County.

(3) The insurance coverages enumerated above constitute the minimum requirements and shall in no way lessen or limit the liability of the Construction Manager under the terms of the Contract.

*Certificates of Insurance shall be submitted to the Owner within five (5) days of Notice to Proceed, and no work shall commence on site until all submitted Certificates of Insurance are acceptable to the Owner.

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 thirty (30) days by the Owner, then the Construction Manager may, upon seven (7) days written notice to the Owner, request undisputed payment for all work executed, the Construction Manager's fee 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 its obligations under this Agreement, the Owner may, after seven (7) days written notice during which period the Construction Manager fails to perform such obligations, 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 to 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 forty-five (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 cure 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 termination expenses incurred by the Owner may be deducted from any payments left owing the Construction Manager (excluding monies owed the Construction Manager for subcontract work).

14.3 Termination by Owner for Convenience

(1) If the Owner terminates this Agreement other than pursuant to Article 14.2(2) or Article 14.3(2), 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 reimburse the Construction Manager for obligations and commitments made before notice of termination was received by

the Construction Manager.

(2) After the establishment of the Guaranteed Maximum Price or at the completion of the Construction 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.

(3) Any termination by Owner for cause which is later determined to be invalid shall be considered a termination by Owner for convenience.

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.

15.3 Venue and Attorney's Fees: Venue for any legal action brought by any party to this Agreement to interpret, construe or enforce this Agreement shall be in a court of competent jurisdiction in and for Brevard County, Florida. In the event of any legal action to enforce the terms of this Agreement, each party shall bear its own attorney's fees and costs and any trial shall be non-jury.

15.4 Severability: If any provision of this Agreement is held by a Court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired.

ARTICLE 16

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

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) If the Construction Manager claims that any instructions given to him by the Architect/Engineer or by the Owner, by drawings or otherwise, involve extra Work not covered by the Contract and not discoverable with a review of the plans and specifications, then, except in emergencies endangering life or property, Construction Manager shall give the Architect/Engineer and the Owner written notice thereof before proceeding to execute the Work. Said notice shall be given promptly enough to avoid delaying the Work and in no instance later than twenty (20) calendar days after the receipt of such instructions.

The Construction Manager must submit a Notice of Claim to the Owner and to the Architect/Engineer within twenty (20) days of when the Construction Manager was or should have been aware of the occurrence of the event giving rise to the claim; and

(c) Within ten (10) days of submitting its Notice of Claim, the Construction Manager shall submit to the Owner its Request For Change Order, which shall include a written statement of all details of the claim, including a description of the work affected. Within thirty (30) days from the Notice of Claim the Construction Manager shall submit a detailed schedule impact and detailed cost analysis indicating quantities, unit prices, etc. establishing the basis for the amount of the claim.

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 section.

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 disputed matters subject to the determination by final Owner action (not actions for breach of contract or tort) the Owner's written decision following compliance with the dispute resolution procedure set forth in sections 16.4 through 16.6 below shall be final Owner action.

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 Article 16.1 above, for an extension of the scheduled construction time. In the event of a change in such work that will modify the GMP, the Construction Manager's claim for adjustment in contract sum are limited exclusively to its actual costs for such changes, including costs involved in claim preparation, plus five percent (5%)

overhead, five percent (5%) profit and a two percent (2%) bond in the General Conditions. 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.

16.4 In the event of any dispute over a proposed change order or any other matter arising out of the implementation or interpretation of this contract the following dispute resolution process shall apply.

(a) Within three (3) days after denial of a contractor's change order or contract modification request in an amount, individually or in total, less than the authorized purchasing level approved for the County Manager by the County Commission (currently at $100,000) the contractor may submit to the County Manager or a designee with experience in the oversight of construction projects for a department or business other than the department responsible for monitoring the disputed request, documentation of the contractor's position in the dispute or disagreement. The County Manager or designee, within five (5) days after the receipt of the contractor's documentation, shall review the request and make a final determination as to whether denial was arbitrary or capricious based upon the sufficiency of the work under the terms of the contract, applicable regulations and relevant construction standards. Based upon the sufficiency and degree of completion, as well as any defects in the work and the amount reasonably required, if any, to correct or repair defective work, the reviewer shall make the final determination as to whether a written change order or contract modification should be approved by the County Manager.

(b) If the denied request or disputed amount exceeds the County Manager's purchasing authority, the County Manager shall present a report, recommendation and the contractor's claim and documentation, to the County Commission for a final determination within thirty (30) days after receiving the contractor's documentation for the claim. The Commission shall make its decision using the standards specified in subparagraph (a) above.

16.5 Within thirty (30) days after denial of a request for a change order or contract modification by the project manager or engineer involving (1) an amount in excess of the County Manager's expenditure authority or (2) for the amount the contractor claims to be due at the time the project is ready for beneficial use or occupation, the County may, at the County's option in lieu of the procedure specified in subparagraph 16.4, submit the dispute to a mediator with knowledge or experience in construction management, as agreed upon by the parties. Upon referral to a mediator, the County and contractor shall each pay half the

estimated cost of the mediator, up front. Within fifteen (15) days after the date of submittal, the mediator, applying the standards set forth in subparagraph 16.4, shall investigate the dispute and submit a written recommendation for disposition of the dispute to the County Manager or a designee with the qualifications specified in subparagraph 16.4. Within fifteen (15) days after receiving the mediator's recommendation, the County Manager shall submit the recommendation to the County Commission, along with a staff report analyzing the dispute and mediator's recommendation. Based on the standards set forth in subparagraph 16.4 above, the Commission shall decide whether to grant or deny, in whole or in part, the amounts recommended by the mediator. The Commission's decision will be deemed final action on the disputed claim for the purposes of ripening the decision for judicial review. If the mediator recommends that no change order or contract modification be granted, the contractor shall reimburse the county for any amounts paid by the county to the mediator.

16.6 The deadlines for completing the dispute resolution process described in subparagraphs 16.4 and 16.5 may be extended by mutual agreement of the contractor and the county.

ARTICLE 17

OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

17.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Construction Manager claims that a delay or additional cost is involved because of such action by the Owner, the Construction Manager shall make such claim as provided in this Agreement.

17.2 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Construction Manager, who shall cooperate with them. The Construction Manager shall participate with other separate contractors and the Owner in reviewing their construction schedules when directed to do so. The Construction Manager shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Construction Manager, separate contractors and the Owner until subsequently revised.

17.3 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights which apply to the Construction Manager under the Conditions of the Contract.

17.4 The Construction Manager shall afford the Owner, and separate contractors, reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities and shall connect and coordinate the Contractor's construction and operations with the Construction Manager, as required.

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

17.6 Costs caused by delays or by improperly timed activities or defective construction shall be borne by the party responsible thereof.

17.7 The Construction Manager shall promptly remedy damage wrongfully caused by the Construction Manager to completed or partially completed construction or to property of the Owner or separate contractors.

ARTICLE 18

MISCELLANEOUS

18.1 Interest - Any monies not paid when due to either party under this contract shall not bear interest except as may be required by Section 218.70 et seq., Florida Statutes, ("The Florida Prompt Payment Act").

18.2 Harmony - Construction Manager is advised and hereby agrees to 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.

18.3 Apprentices - If the Construction Manager employs apprentices on the project, the behavior of the Construction Manager and the Owner shall be governed by the provision 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.

18.4 Minority Participation - The Construction Manager shall *diligently attempt* to award his material contracts, subcontracts and sub-subcontracts to firms having a letter of certification as a minority business from the "Office of Minority Business Assistance, Department of General Services, or any other Federal, Florida County or City certification.

18.5 Minority Employment Information - The Board of County Commissioners requires construction contracts, who would otherwise be required to file and EEO Form 1 Report under Federal Law (currently Federal law requires filing for employers with more than 15 employees), to submit an EEO Form 1 Report with the submission of their GMP. This requirement extends to any subcontractors who are required to submit the EEO Form 1 Report (over 15 employees) under Federal law. Failure to submit an EEO Form 1 Report with your GMP will be reason to declare your proposal "non-responsive" to the proposal requirements. However, the information will be used for statistical purposes only and will not be used in any way as a basis to award a contract. See **Attachment "O"**.

18.6 Public Entity Crime Affidavit attached as **Attachment "P"**.

18.7 Non-Collusion Affidavit of Prime Bidder attached as **Attachment "P"**.

18.8 Copyright Clause No reports, data, programs or other materials produced, in whole or in part for the benefit and use of the Owner, under this agreement shall be subject to copyright by Contractor in the United States or any other Country.

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

ATTEST:

BOARD OF COUNTY
COMMISSIONERS
OF BREVARD COUNTY, FLORIDA

Scott Ellis, Clerk

Robin Fisher, Chair
Brevard County Commission

As Approved By the Brevard County Commission: _____

_____
BY: Construction Manager

STATE OF FLORIDA
COUNTY OF BREVARD

The foregoing instrument was acknowledged before me this _____ day of 201__ by whose position is _____ with the firm of, a Florida Corporation, on behalf of the corporation. He/She is personally known to me or has produced _____ as identification.

(SEAL)

_____
NOTARY PUBLIC
Typed, Printed or Stamped Name

ATTACHMENT "A"

CONSTRUCTION TEAM ASSIGNED REPRESENTATIVES

Owner
Brevard County Facilities Department

Joan Van Sickle	Project Director
	Construction Coordinator
Mary Bowers	Support Services Manager/Contracts
Anissa Pratte	Special Projects Coordinator II

Architect-Engineer

Construction Manager

President
Vice President/Principal-In-Charge
Project Manager
Project Administrator
Project Superintendent
Estimator/Cost Control
Schedules

ATTACHMENT "B"

PROJECT SCOPE OF WORK

ATTACHMENT "C"

DIRECT PURCHASING PROCEDURE
CONSTRUCTION MANAGEMENT AGREEMENT

INTENT: The Owner of this Project, Brevard County, Florida, intends that these procedures govern the County's direct purchases of selected materials so that the County may take advantage of its tax exempt status. All monies which would have been payable as taxes, if not for Owner direct purchase under these procedures, will inure solely to the benefit of the Owner. The Owner's direct purchase of materials will not minimize or conflict with the Construction Manager's responsibility for the purchase, installation, coordination, storage, protection, warranty, etc. of the materials as described herein and in the plans and specifications of the Contract.

Definitions: For the purpose of these Procedures, the following words have the following definitions.

a) Contract: Construction Management Agreement by and between Construction Manager and Brevard County Board of County Commissioners, Viera, Florida for the construction of _____.

b) County Purchased Materials: Materials purchased directly by the Owner through execution and delivery of a Purchase Order.

c) GMP - Guaranteed Maximum Price established under the Contract.

d) Materials: Tangible Personal Property necessary for completion of the Project.

e) Materials Deduction Summary: Written document signed by Owner's representative and Construction Manager setting forth the amounts of County Purchased Materials, plus applicable taxes were the purchase not exempt from such taxes, as reflected in the parties' previously executed deductive change order(s) to the Contract showing deduction of such Materials from the GMP.

f) Owner: See Definition in Article I, section 1.3.

g) Owner's Representative: See Definition in Article I, section 1.3.

h) Project: See Definition in Article I, section 1.3.

i) Purchase Order: The Owner's request for Materials from a particular vendor or supplier when fully executed and delivered to the Construction Manager, and the Owner's promise to pay for the Material specified upon delivery and acceptance at the Project Site, and presentation of an invoice by the Construction Manager to the Owner certifying payment of same.

j) Material Requisition: A request by the Construction Manager to the Owner that the Owner directly purchase specific items described in sufficient detail, including quantity, grade, brand, etc., along with the vendor or material supplier and that

vendor or material supplier's quoted price for the Materials.

Overview: The Owner requires the Construction Manager (hereinafter, "Manager") to notify the Owner's Representative of Materials needed for the Project exceeding $5,000.00 in value, through a Material Requisition form. For the purpose of these Procedures, the Manager will assign to the Owner any rights the Manager may have under quotes, contracts or commitments received from the particular vendor or supplier for the Materials described in the Material Requisition. Any Materials purchased by Owner pursuant to these Procedures shall be referred to as "County Purchased Materials", and the responsibilities of the Owner and Manager relating to such County Purchased Materials shall be governed by the terms and conditions of these Procedures, which shall take precedence over other conditions and terms of the Contract Documents where inconsistencies or conflicts exist. The invoiced amount of County Purchased Materials and applicable sales tax had the purchases not been tax exempt, once finalized through the Owner's Purchase Order and after confirmation of completed delivery and acceptance pursuant to this Procedure, will be deducted from the GMP, as defined in the Contract, by deductive change order.

Owner Direct Purchasing Requirements and Procedures: When a Materials purchase for the Project is estimated to be $5,000 or greater and time will allow for an Owner Direct Purchase, Manager shall prepare a Material Requisition form, *(to be provided by the Owner)*, acceptable to Owner, and which specifically identifies the Materials which Owner may, in its discretion, elect to purchase directly. The Material Requisition form shall be complete when submitted, and all information requested provided. Along with the Material Requisition the Construction Manager must provide:

a) The name, address, telephone and fax number and contact person for the material supplier;
b) Manufacturer or brand, model or specification number of the item;
c) Quantity needed as estimated by Manager;
d) The price quoted by the supplier for the Materials identified therein;
e) Any sales tax associated with such quote if it were not purchased by a tax exempt entity;
f) Shipping and handling cost, including associated insurance;
g) Delivery dates as established by the Manager;
h) Subcontractor's written acknowledgment of these Procedures for Owner Direct Purchase of Materials.

After receipt of the Material Requisition, the Owner's Representative will determine whether the Owner will directly purchase the Materials described in the Material Requisition, and communicate consent or decline to purchase the materials to the Manager within twenty four (24) hours. Brevard County's Purchasing Division shall be the Owner's approving authority on Purchase Orders of County Purchased Materials. If the Owner consents to purchase the Materials, the Owner shall issue a Purchase Order for same. The Owner shall issue the original Purchase Order, and the Manager shall deliver the Purchase Order to the subcontractor. The Purchase Order shall require (1) that the supplier provide the required shipping, (2) that the supplier provide the required shipping and handling insurance, and (3) delivery of the County Purchased Materials on the delivery dates provided by the Manager in the Material Requisition.

The Manager shall be fully responsible for all matters relating to the receipt of County Purchased Materials under these Procedures, including, but not limited to, preparation of shop

drawings and submittals, verifying correct quantities, verifying documents of orders in a timely manner, coordinating purchases, providing and obtaining all warranties and guarantees required by the Contract Documents, inspection and acceptance of the goods at the time of delivery, and loss or damage to equipment and materials due to the negligence of the Manager. The Manager shall coordinate delivery schedules, sequence of delivery, loading orientation, and other arrangements normally required by the Manager for the Materials furnished. The Manager shall provide all services required for the unloading, handling and storage of Materials through installation. The Manager agrees to indemnify and hold the Owner harmless from any and all claims of whatever nature resulting from non-payment of goods to suppliers arising from the actions of Manager.

The Manager shall insure that County Purchased Materials conform to the Specifications, and determine prior to incorporation into the Work, if such Materials are patently defective, and whether such Materials are identical to the Material ordered and match the description on the bill of lading. As County Purchased Materials are delivered to the job site, the Manager shall inspect all shipments from the suppliers, and, if in conformance with the Purchase Order, approve the vendor's invoice for materials delivered. The Manager shall assure that each delivery of County Purchased Material is accompanied by documentation adequate to identify the Purchase Order against which the purchase is made. This documentation may consist of an itemized delivery ticket, packing slip or invoice from the supplier conforming to the Purchase Order against which the purchase is made, together with such additional information as the Owner may require. The Manager will then forward the documentation to the Owner.

If the Manager discovers defective or non-conformities in County Purchased Material upon inspection, the Manager shall not use such non-conforming or defective Materials in the Work and instead shall promptly notify the Owner of the defective or non-conforming conditions and coordinate the repair or replacement of those Materials without any undue delay or interruption to the Project. All repair, maintenance or damage-repair calls shall be forwarded to the Manager for resolution with the appropriate supplier, vendor, or subcontractor. If the Manager fails to perform such inspection, the condition of which the Manager either knew or should have known by performance of an inspection, Manager shall be responsible for all damages to the County resulting from Manager's incorporation of such Materials into the Project, including liquidated or delay damages.

On a bi-weekly basis, Manager shall be required to review invoices submitted by all suppliers of County Purchased Materials delivered to the Project Site during that month and either concur or object to the Owner's issuance of payment to the suppliers, based on Manager's records of materials delivered to the site. In order to arrange for the prompt payment to the supplier, the Manager shall provide to the Owner a list indicating the acceptance of the goods or materials within fifteen (15) days of receipt of said invoice for goods or materials. The list shall reference the applicable purchase order and include a copy of the invoices, delivery tickets, written acceptance of the delivered items, and such other documentation as may be reasonably required by the Owner. Upon receipt of the appropriate documentation in duplicate, the Owner shall prepare a check drawn to the supplier based upon the receipt of data provided. This check will be delivered directly to the supplier. If any discounts are available from the supplier or vendor, they shall accrue to the benefit of the Owner, and the amount quoted by the vendor, plus applicable tax, shall be deducted from the GMP. The Manager agrees to assist the Owner to immediately obtain partial or final releases or waivers as appropriate.

Following performance of the Purchase Orders by the suppliers, and submittal of documentation

confirming same to Owner with an invoice for payment by Owner, the Manager shall execute and deliver to the Owner at the end of each month along with the Manager's regular pay requests, a Materials Deduction Summary setting forth the full value of all County Purchased Materials, plus all taxes which would have been payable on the purchase of the Materials had they not been Owner purchased. The Materials Deduction Summary shall show all sums to be deducted by an appropriate deductive change order, and ultimately the GMP, to date. The Board of County Commissioners, or their authorized representative, shall be the approving authority for the Owner on the Materials Deduction Summary for County Purchased Materials.

The Manager shall maintain records of all County Purchased Materials incorporated into the Work. These records shall be available for inspection by the Owner upon request.

Notwithstanding the delivery of County Purchased Materials to the Project Site for the Manager's inspection, custody and incorporation into the Work, the Owner shall retain legal and equitable title to any and all County Purchased Materials. The transfer of possession of County Purchased Materials from the Owner to the Manager shall constitute a bailment for the mutual benefit of the owner and the Manager solely for the purposes set forth herein. The Owner shall be considered the bailer and the Manager the bailee of the County Purchased Materials. County Purchased Materials shall be considered returned to the Owner for purposes of their bailment at such time as they are incorporated into the Project or are returned to the vendor or supplier at the discretion of the Manager prior to payment for the Purchase Order by Owner.

The Owner shall purchase and maintain Builder's Risk Insurance sufficient to protect against any loss or damage to County Purchased Materials. Such insurance shall cover the full value of any County Purchased Materials not yet incorporated into the Project from the time the Owner first takes title to any of such County Purchased Materials and the time when the last of such County Purchased Materials is incorporated into the Project, or are returned to the vendor at the Manager's discretion prior to Owner's payment for same.

The Owner shall in no way be liable for any interruption or delay in the Project, for any defects or other problems with the Project, or any extra costs or time resulting from any delay in the delivery of, or defects in, County Purchased Materials.

ATTACHMENT "D"

DRAWINGS AND SPECIFICATIONS

ATTACHMENT "E"

CONSTRUCTION MANAGER'S
PRELIMINARY CONSTRUCTION SCHEDULE

ATTACHMENT "F"

ORDINANCE 98-37

AN ORDINANCE AMENDING CHAPTER 2 OF THE BREVARD COUNTY CODE TO CREATE ARTICLE VII, A PROCEDURE FOR PREQUALIFYING CONSTRUCTION CONTRACTORS, FOR COMPETITIVE BIDDING CRITERIA AND FOR DEBARMENT OF CONSTRUCTION CONTRACTORS AND SURETIES; PROVIDING FOR ALTERNATIVE CONSTRUCTION DELIVERY METHODS; PROVIDING FOR PREQUALIFICATION AND COMPETITIVE BIDDING CRITERIA, PROCEDURE, AND FOR A STANDARD OF PROOF; PROVIDING FOR EDITING OF THE ORDINANCE FOR INCLUSION WITHIN THE BREVARD COUNTY CODE; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Section 255.20, Fla. Stat. (1997) requires that standards and procedures for determining the lowest qualified and responsive bidder or award of a construction contract under any delivery method be established if a bidder is selected for any reason other than price; and

WHEREAS, the Board has determined that it is in the public's best interest to provide such standards and procedures so that the Board may select the most qualified and responsive bidder; and

WHEREAS, the Board has determined that it is in the public's best interest to prevent construction firms and sureties who have defaulted on a previous contract with the County from future bidding on County projects through a debarment procedure;

THEREFORE, be it ordained by the Board of County Commissioners of Brevard County, Florida as follows:

Section 1: Chapter 2 of the Brevard County Code shall be amended to create Article VII as follows:

1. DEFINITIONS: The following words shall have these meanings throughout this article:

   "AFFECTED PARTY" means an individual or business which has submitted a bid, offer, proposal, quotation, or response which is rejected, or is found unqualified under the provisions of this article, or which would be selected if a low bidder was found unqualified or nonresponsive.

   "BOARD" means the Board of County Commissioners of Brevard County, Florida.

"COMMITTEE" means two or more persons designated to evaluate prequalification and responsiveness criteria. Committees established by the County Manager may be intradepartmental, or include representatives of several departments interested in the administration and success of the construction project.

"DEBARMENT" means the exclusion for cause of a vendor or contractor, or subcontractor from bidding or doing business with the County on a temporary or permanent basis.

"MINOR IRREGULARITY" means a variation from the Invitation to Bid which does not affect the price of the bid, or give the bidder an advantage or benefit not enjoyed by other bidders, or does not adversely impact the interests of the agency.

"QUALIFIED BIDDER" means an individual or business which has submitted a bid, offer, proposal, quotation, or response, which has the capability in all respects to fully perform the contract requirements, and has the financial stability, honesty, integrity, skill, business judgement, experience, facilities and reliability necessary to give reasonable assurance of good faith and performance.

"REQUEST FOR QUALIFICATION" ("RFQ") means the process by which the County may prequalify individuals or businesses for a particular project before requesting bids for the project, thereby limiting the pool of bidders to these prequalified.

"RESPONSIVE BIDDER" means an individual or business which has submitted a bid, offer, proposal, quotation, or response, which conforms in all material respects to the solicitation, including but not limited to compliance with the submittal of specified insurance and bond requirements.

1. Any County contract for the construction or improvement of a public building, structure, or other public construction work that is estimated in accordance with general accounting principles to have construction costs of more than fifty thousand dollars ($50,000.00) shall be competitively awarded to the lowest, qualified and responsive bidder in accordance with this article, unless the project (1) fits within exceptions set forth in s. 255.20, Fla. Stat., as amended from time to time, (2) is a contract governed by the Consultant's Competitive Negotiation Act, or (3) is awarded under another contract delivery method authorized by this article. Nothing in this article shall be construed to require competitive award of every County construction work, nor to prohibit the Board from rejecting all bids if competitively bid, or to prevent the Board from waiving minor irregularities in any bid.

2. (a) Potential lump sum bidders responding to a request for qualifications are required to submit information required by this article and as identified in the RFQ

package. A committee identified in the RFQ package will determine whether a potential bidder is qualified and responsive as defined in this article.

(b) For projects advertised for lump sum bid without prior prequalification, the apparent low bidder, after the formal bid opening, will be required to submit the following prequalification information identified in the bid package within five (5) business days after the bid opening. Failure to provide prequalification information within this time frame may be considered as grounds for finding the apparent low bidder nonresponsive. If the apparent low bidder cannot provide adequate documents for review, or the submitted documents indicate the apparent low bidder or any subcontractors are not qualified, or if the bidder's package is determined to be nonresponsive, the Committee will reject the bidder or any of its subcontractors. In the event the bidder is found unqualified or non-responsive, the apparent second low bidder will be contacted and afforded the previous mentioned five (5) days to submit pre-qualification documents. This process will continue until the lowest qualified and responsive bidder is established. In the event that a subcontractor is found unqualified or non-responsive, the potential bidder or prime contractor will have five (5) business days to submit a substitute subcontractor for the same bid price or withdraw the original bid.

(c) In addition to lump sum contracts for construction, the Board may use the following delivery methods for construction or improvement of a public building, structure, or other public construction work: construction manager, design/build, or continuing contracts based on unit prices. The Board may also enter into continuing contracts with construction managers using the pre-qualification procedure set forth herein for potential lump sum bidders. The individual projects shall be awarded under a continuing contract using the following criteria:

> Ability of professional personnel given project's special characteristics; past performance; willingness to meet time and budget requirements; location; recent, current and projected workloads of the firms available under continuing contract; volume of work previously awarded to each firm under a continuing contract provided distribution does not violate the principle of selection of the most qualified firm for the project; previous experience on County projects.

The County Manager will establish procedures for the Board to hear any affected party with a complaint or appeal as to any recommendation or finding made pursuant to this article. Any affected party's complaint or appeal must be presented, in writing, to the County Manager's office within five (5) business days of the posting of a committee's decision.

(d) At the completion of each competitively awarded County construction project, the County department which administered the construction contract shall

complete an evaluation of the contractor's performance on a form to be established by the County Manager. The department may also complete evaluations of critical subcontractors using the same form. All such records shall be copied to the party evaluated and maintained by County Purchasing. Any party evaluated may submit a written response of any length, which response shall be filed with the evaluation.

3. Potential bidders, the apparent lowest bidder, or the person providing services under any other contract delivery method, and applicable subcontractors identified in the bid or request for qualification package for any County construction project which is to be competitively awarded shall be evaluated to determine whether the bidder and its subcontractors are qualified. In evaluating qualifications, the County shall consider the following information:

   - A Contractor's Pre-Qualification Statement for the prime contractor and subcontractors performing parts of work identified in the bidding documents as critical to the project's success. The Pre-Qualification Statement shall be provided on a form to be established by the County Manager;

   - Most current financial statement, but not more than one (1) year old, indication of bondability, or, if project is under $100,000, other evidence of financial capability as identified in the bid documents;

   - Resumes of Contractor and Subcontractor's key personnel, including project manager and superintendent levels, showing job history, education related to work to be performed and any license, training, and experience related to the work which that individual will perform;

   - List of subcontractors and suppliers, and items of work to be performed by the Contractor's own work force;

   - County evaluations of the performance on County projects;

   - References obtained from individuals or businesses with whom the contractor or subcontractor has performed work or conducted business;

   - Any other relevant qualifications, data or information identified in the bidding documents to be critical to the success of the project.

4. The County Manager will establish committees which may debar a contractor, contractor's key personnel, contractor's surety, subcontractor and subcontractor's key personnel, or any entity which key personnel are later employed or retained by in a supervisory position, from bidding on any County project under the circumstances enumerated below. The decision to disbar is

discretionary, the seriousness of the offense and all mitigating factors should be considered in making the decision to disbar. The notice of debarment shall state the time when such debarment will be lifted, if ever, and the contractor's right to appeal such debarment to the Board of County Commissioners under the Board's regular agenda. The Board reserves the power to waive or lift any committee imposed suspension or debarment.

An individual or business may be *permanently* debarred for any of the following reasons:

- Conviction or a judgment obtained in a court of competent jurisdiction for:
- Commission of a fraud or a criminal offense as an incident to obtaining, attempting to obtain, or in the performance of a pubic contract
- Violation of any Federal or State of Florida anti-trust or anti-racketeering statutes arising out of submission of bids or proposals;
- Commission of embezzlement, theft, forgery, bribery, falsification of or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which seriously and directly affects the question of present responsibility as a County contractor, subcontractor or vendor;
- If the conviction or judgment is reversed on appeal, the debarment shall be removed upon receipt of notification thereof.

Competent and substantial evidence of a violation of a County contract provision, as set forth below, when the violation is of a character so as to justify debarment action such as:

- Failure to perform in accordance with the specifications or delivery requirements in a contract;
- A history of failure to perform, or of unsatisfactory performance, in accordance with the terms of one or more contracts; provided, that such failure or unsatisfactory performance is within a reasonable period of time preceding the determination to debar. Failure to perform for unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered as a basis of debarment.

Upon adequate evidence, an individual or business may be *temporarily* debarred for a period up to three (3) years based upon substantial evidence of involvement in any of the causes cited in paragraph (b) above.

Section 2: Inclusion in Code: It is the intention of the Board of County Commissioners that the provisions of this ordinance shall become and be made a part of the Brevard County Code; and that the sections of this ordinance may be renumbered or relettered to accomplish such intentions.

Section 3: Severability: If any provision of this ordinance is held to be illegal or invalid,

the other provisions shall remain in full force and effect.

Section 4: Effective Date: This ordinance shall become effective upon filing as provided by law. A certified copy of the ordinance shall be filed with the Office of the Secretary of State, State of Florida within ten (10) days of enactment.

ATTACHMENT "G"

PUBLIC CONSTRUCTION PAYMENT BOND

BY THIS BOND, We _____ as Principal and _____, a corporation as Surety, are bound to Brevard County Board of County Commissioners, Brevard County, Florida, herein called Owner, in the sum of _____ ($), for payment of which we bind ourselves, our heirs, personal representatives, successors and assigns, jointly and severally.

THE CONDITIONS OF THIS BOND are that if Principal:

1. Promptly makes payments to all claimants, as defined in Section 255.05(1), Florida Statutes, supplying Principal with labor, materials, or supplies, used directly or indirectly by Principal in the prosecution of the work provided for in the contract dated _____, 20____, between Principal and Owner for construction of _____, the contract being attached hereto and made a part of this bond by reference, in such time and without delay, and in the manner prescribed in the contract; and
2. Pays Owner all losses, damages, expenses, costs, and attorney's fees, including appellate proceedings, that Owner sustains because of a default by Principal under the contract, then this bond is void; otherwise it remains in full force.

Any changes in or under the contract documents and compliance or noncompliance with any formalities connected with the contract does not affect Surety's obligation under this bond.

Signed and sealed this _____ day of _____, 20___.

Witness:

_____

_____
Principal Seal

Its: _____
Title

Witness:

_____

_____
Surety Seal

Its: _____
Title

ATTACHMENT "H"

PUBLIC CONSTRUCTION PERFORMANCE BOND

BY THIS BOND, We _____, as Principal and _____, a corporation as Surety, are bound to Brevard County Board of County Commissioners, Brevard County, Florida, herein called Owner, in the sum of _____ ($_____), for payment of which we bind ourselves, our heirs, personal representatives, successors and assigns, jointly and severally.

THE CONDITIONS OF THIS BOND are that if Principal:

1. Performs promptly, completely and faithfully the contract dated _____, 2010 between Principal and Owner for construction of _____, the contract being attached hereto and made a part of this bond by reference, in such time and without delay, and in the manner prescribed in the contract including the delivery, execution and performance of any warranty work required by the contract; and
2. Pays Owner all losses, damages, expenses, costs, and attorney's fees, including appellate proceedings, that Owner sustains because of default by Principal under the contract; and
3. Performs the guarantee of all work and materials furnished under the contract for the time specified in the contract, then this bond is void; otherwise it remains in full force.

Any changes in or under the contract documents and compliance or noncompliance with any formalities connected with the contract does not affect Surety's obligation under this bond.

Signed and sealed this _____ day of _____, 20___.

Witness:

_____

_____
Principal Seal

Its: _____
Title

Witness:

_____

_____
Surety Seal

Its: _____
Title

ATTACHMENT "I"

CONSTRUCTION MANAGER'S
GUARANTEED MAXIMUM PRICE

ATTACH HERE

ATTACHMENT "J"

CERTIFICATE OF SUBSTANTIAL COMPLETION

(Insert Form Here)

ATTACHMENT "K"

CERTIFICATE OF FINAL COMPLETION

PROJECT NO. & TITLE:
ARCHITECT: CONTRACTOR:
CONTRACT DATE: DATE OF FINAL COMPLETION:

CERTIFICATE OF ARCHITECT/ENGINEER

Based on my inspections and investigation of the Contractor's work under the above referenced contract, I certify that the work, in general, has been completed in accordance with the contract documents, that all matters previously brought to the Contractor's attention as incomplete or defective have been resolved pursuant to my direction, and that the Contractor has submitted the attached sworn affidavit as evidence that the Contractor has paid all labor, materials, and other charges against the project in accordance with the terms of the Contract.

A/E Firm Name: _____ By: _____

TO BE COMPLETED BY ARCHITECT/ENGINEER: DATE: DAYS:

THROUGH THE SUBSTANTIAL COMPLETION PHASE

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 NTP through Date Certified by A/E)
6. Substantial Completion Overrun (Subtract Line 4 from 5 and Enter Overrun)

THROUGH THE FINAL COMPLETION PHASE

1. Time Specified in Contract, Between Substantial and Final Completion
2. Extensions Granted by Change Orders (Days Between S.C. and Final Completion)
3. Total Days Allowable Between Substantial Completion and Final Completion (Add Lines 1 and 2)
4. Date Actually Completed and Total Days Between and Date Certified by A/E as Actually being Finally Completed).
5. Final Completion Overrun (Subtract Line)

Architect: _____ Date: _____

Project Manager: _____ Date: _____

Facilities Construction Manager: _____ Date: _____

ATTACHMENT "L"

ALLOWABLE COSTS, OVERHEAD

DESCRIPTION	EST QUANTITY	UNITS	UNIT COST	BUDGET VALUE	QUANTITY TO DATE	QUANTITY TO COMP
OFFICE PHONES						
OFFICE SUPPLIES						
POSTAGE						
GAS/OIL/LUBRICATION						
AUTOMOBILES/TRUCKS						
PROJECT MANAGER						
ESTIMATING COSTS						
EXECUTIVE LABOR COST						
ASST PROJECT MANAGER						
IN HOUSE SECRETARY						
TRAVEL EXPENDITURES						
WARRANTY EXPENSE						

ATTACHMENT "M"
(Direct Cost Items)
GENERAL CONDITIONS

SUPERINTENDENT

JOB SITE SECRETARY/CLERK

QUALITY CONTROL

SURVEY

PERMITS

IMPACT/CONNECTION FEES

CONSTRUCTION DRAWINGS/SPECS

PROGRESS PHOTOGRAPHS *(IF REQUESTED BY THE OWNER)*

JOB SITE SIGN *(IF REQUESTED BY THE OWNER)*

SPECIAL SECURITY *(IF REQUESTED BY THE OWNER)*

PAYMENT & PERFORMANCE BONDS

BUILDERS RISK INSURANCE

JOBSITE TRAILER AND SUPPORT *(IF REQUESTED BY THE OWNER)*

TEMPORARY UTILITIES *(AS APPROVED BY THE OWNER)*

TEMPORARY JOBSITE FENCING *(INITIAL INSTALLATION ONLY)*

TRASH REMOVAL/DUMP FEES, AND RECYCLING *(AS APPROVED BY THE OWNER)*

ATTACHMENT "N"

CERTIFICATE FOR PAYMENT

(INSERT FORM HERE)

ATTACHMENT "O"

MINORITY EMPLOYMENT INFORMATION

The Board of County Commissioners requires construction contracts, who would otherwise be required to file and EEO Form 1 Report under Federal Law (currently Federal law requires filing for employers with more than 15 employees), to submit an EEO Form 1 Report with the submission of their GMP. This requirement extends to any subcontractors who are required to submit the EEO Form 1 Report (over 15 employees) under Federal law. Failure to submit an Acknowledgment and/or EEO Form 1 Report with your GMP will be reason to declare your proposal "non-responsive" to the proposal requirements. However, the information will be used for statistical purposes only and will not be used in any way as a basis to award a contract.

Please fill out and sign one (1) of the following statements:

1. My Company or subcontractors are required to submit the EEO Form 1 Report and they are attached.

   Company Name:
   Signature: _____ Date: _____

2. My Company or subcontractors are not required to submit the EEO Form 1 Report.

   Company Name:
   Signature: _____ Date: _____

Company Name: _____

Company Address: _____

Company Telephone: _____

Signature: _____ Printed Signature: _____

ATTACHMENT "P"

PUBLIC ENTITY CRIME ACKNOWLEDGMENT

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/quote/proposal on a contract to provide goods or services to a public entity, may not submit a bid/quote/proposal on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids/quotes/proposals on leases of rental 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 in excess of the threshold amount provided in Section 287.017, for Category Two ($15,000) for a period of thirty six (36) months from the date of being placed on the convicted vendor list.

NON-COLLUSION AFFIDAVIT OF PRIME BIDDER

State of Florida
County of Brevard

_____, being duly sworn, deposes and says that:

(1) Affiant is _____ of _____, the Bidder that has submitted a bid/quote/proposal;

(2) Affiant is fully informed respecting the preparation and contents of the bid/quote/proposal and of all pertinent circumstances respecting such bid/quote/proposal;

(3) Such bid/quote/proposal is genuine and is not a collusive or sham bid/quote/proposal;

(4) Neither the said Bidder nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, has in any way colluded, conspired, connived or agreed, directly or indirectly with any other Bidder, firm or person to submit a collusive or sham bid/quote/proposal in connection with the Contract for which the bid/quote/proposal has been submitted or to refrain from bidding in connection with such Contract, or has in any manner, directly or indirectly, sought by Contract, or has in any manner, directly or indirectly, sought by the agreement or collusion or communication or conference with any other bidder, firm or person to fix the price or prices in the bid/quote/proposal or of any other Bidder, or to fix any overhead, profit or cost element of the bid/quote/proposal price or the bid/quote/proposal price of any other bidder, or to secure through any collusion, conspiracy, connivance or unlawful agreement any advantage against the Board of County Commissioners of Brevard County, Florida, or any person interested in the Contract; and

(5) The price or prices negotiated for the bid/quote/proposal are fair and proper and are not tainted by any collusion, conspiracy, connivance, or unlawful agreement

on the part of the Bidder or any of its agents, representatives, owners, employees, or parties of interest, including affiant.

_____
Signature

_____
Title

Subscribed and sworn to before me this ____ day of _____, 20___.

_____
Notary Public

My Commission expires: _____