

Meeting Date
August 5, 2014



AGENDA REPORT
BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

AGENDA	
Section	Unfinished Business
Item No.	IV-A

SUBJECT:	Resolution Authorizing the Issuance of its Non-Ad Valorem Revenue Note to Finance costs relating to various energy, water and wastewater performance savings capital improvements.
DEPT/OFFICE:	Central Services

Requested Action:

Request the Board of County Commissioners adopt the Resolution authorizing the issuance of its Non-Ad Valorem Revenue Note, Series 2014 in the aggregate principal amount of not to exceed \$16 million to finance certain costs relating to various energy, water and wastewater performance savings capital improvements; covenanting to budget and appropriate certain legally available Non-Ad Valorem Revenues to pay debt service on the Series 2014 Note; making certain other covenants and agreements in connection with the issuance of such Series 2014 Note, including the negotiated sale of said series 2014 Note pursuant to the proposal of Banc of America Public Capital Corp.; providing for the rights, securities and remedies for the owner of the Series 2014 Note; delegating certain authority to the Chairman and County Manager; appointing the Paying Agent and Registrar with respect to said Series 2014 Note; providing for an effective date; and approve all necessary budget items relating to the Non-Ad Valorem Revenue Note.

Summary Explanation & Background:

On May 13, 2014, the Board of County Commissioners authorized the Chairman to execute the negotiated Contract, as provided per the County Attorney upon inserting appropriate statutory language regarding the guarantee of savings in F.S 489.145(3)(d), and clarifying that any remainder of funds in the contingency fund would remain the property of the County the design, procurement and construction phases with BGA, Inc./Con Edison Solutions for the guaranteed energy savings performance contracting project; authorized staff to pursue and execute the best available financing option and other necessary budget actions; and authorized the County Manager or designee to administer the project within the contract scope.

Public Financial Management, Inc. (PFM) solicited proposals from financial institutions to finance the project. PFM has advised that Banc of America Public Capital Corp has submitted the most beneficial proposal to provide the loan. The cost savings resulting from the project are expected to be equal to or greater than the debt service on the note. This Resolution will constitute a contract between the Board of County Commissioners and Banc of America.

Subject and pursuant to the provision of this Resolution, the Brevard County, Florida Non-Ad Valorem Resolution I the aggregate principal amount of not to exceed \$16,000,000 for the purpose of paying costs of the Services 2014 Project and paying the costs of issuing the Series 2014 Note. The Board further authorizes the acquisition, construction and equipping of the Series 2014 Project.

The amount of the BGA, Inc. contract is \$15,725,571. The loan will be amortized over a period of eighteen and one-half (18 ½) years at an interest rate of 3.520%.

Clerk to the Board Instructions: Return one executed copy to Central Services.

Exhibits Attached :Resolution

Contract /Agreement (If attached): Reviewed by County Attorney		Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>	PR	<input type="checkbox"/>
County Manager	Assistant County Manager, Mel Scott	Department Director / Extension		<i>Teresa Camarata</i>			
Stockton Whitten	Assistant County Manager, Venetta Valdengo	Teresa Camarata, Central Services Director/ ext 52543					



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

August 5, 2014

MEMORANDUM

TO: Teresa Camarata, Central Services Director

RE: Item IV.A., Resolution Authorizing Issuance of Non-Ad Valorem Revenue Note to Finance Costs Relating to Various Energy, Water, and Wastewater Performance Savings Capital Improvements

The Board of County Commissioners, in regular session on August 5, 2014, adopted Resolution No. 14-125, authorizing the issuance of its Non-Ad Valorem Revenue Note, Series 2014, in the aggregate principal amount of not to exceed \$16 million to finance certain costs relating to various energy, water, and wastewater performance savings capital improvements; covenanting to budget and appropriate certain legally available Non-Ad Valorem Revenues to pay debt service on the Series 2014 Note; making certain other covenants and agreements in connection with the issuance of such Series 2014 Note, including the negotiated sale of said Series 2014 Note, pursuant to the proposal of Banc of America Public Capital Corp.; providing for the rights, securities, and remedies for the owner of the Series 2014 Note; delegating certain authority to the Chairman and County Manager; appointing the Paying Agent and Registrar with respect to said Series 2014 Note; providing for an effective date; and approved all necessary budget items relating to the Non-Ad Valorem Revenue Note. Enclosed are fully-executed and certified copies of the Resolution.

Your continued cooperation is greatly appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Etheridge, Deputy Clerk

Encls. (2)

cc: County Manager
Finance
Budget

RESOLUTION NO. 14 - 125

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA AUTHORIZING THE ISSUANCE OF ITS NON-AD VALOREM REVENUE NOTE, SERIES 2014 IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED \$16,000,000 TO FINANCE CERTAIN COSTS RELATING TO VARIOUS ENERGY, WATER AND WASTEWATER PERFORMANCE SAVINGS CAPITAL IMPROVEMENTS; COVENANTING TO BUDGET AND APPROPRIATE CERTAIN LEGALLY AVAILABLE NON-AD VALOREM REVENUES TO PAY DEBT SERVICE ON THE SERIES 2014 NOTE; MAKING CERTAIN OTHER COVENANTS AND AGREEMENTS IN CONNECTION WITH THE ISSUANCE OF SUCH SERIES 2014 NOTE; PROVIDING CERTAIN TERMS AND DETAILS OF SUCH SERIES 2014 NOTE, INCLUDING THE NEGOTIATED SALE OF SAID SERIES 2014 NOTE PURSUANT TO THE PROPOSAL OF BANC OF AMERICA PUBLIC CAPITAL CORP; PROVIDING FOR THE RIGHTS, SECURITIES AND REMEDIES FOR THE OWNER OF THE SERIES 2014 NOTE; DELEGATING CERTAIN AUTHORITY TO THE CHAIRMAN AND COUNTY MANAGER; APPOINTING THE PAYING AGENT AND REGISTRAR WITH RESPECT TO SAID SERIES 2014 NOTE; AND PROVIDING FOR AN EFFECTIVE DATE.

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA that:

SECTION 1. FINDINGS. It is hereby found and determined that:

A. Brevard County, Florida (the "Issuer" or the "County"), has various energy, water and wastewater performance savings capital improvement needs in the form of the herein described Series 2014 Project that should be acquired, constructed and equipped for the health, safety and general welfare of the citizens of the Issuer.

B. The Issuer has entered into a Guaranteed Energy, Water and Wastewater Performance Savings Contract (the "Performance Contract") with BGA, Inc.

C. Public Financial Management, Inc., Financial Advisor to the Issuer (the "Financial Advisor") had discussions with certain financial institutions with respect to providing the Issuer with a tax-exempt loan (the "Loan") in order to finance certain costs of the Series 2014 Project.

D. Banc of America Public Capital Corp (the "Purchaser") has submitted the most beneficial proposal (the "Proposal") to provide the Loan to the Issuer, which Loan shall be evidenced by a promissory note to be issued by the Issuer to the Purchaser (as more particularly described herein, the "Series 2014 Note").

E. The Cost Savings (as defined in the Performance Contract) resulting from the Series 2014 Project are expected to be equal to or greater than the debt service on the Series 2014 Note.

F. Due to the potential volatility of the market for tax-exempt obligations such as the Series 2014 Note and the complexity of the transactions relating to such Series 2014 Note, it is in the best interest of the Issuer to sell the Series 2014 Note by a negotiated sale to the Purchaser pursuant to the terms of the Proposal and the provisions hereof, rather than at a specified advertised date, thereby permitting the Issuer to obtain the best possible price and interest rate for the Series 2014 Note.

G. The Issuer now desires to formally accept the Proposal, to issue the Series 2014 Note and to award the sale thereof to the Purchaser.

H. In consideration of the purchase and acceptance of the Series 2014 Note authorized to be issued hereunder to the Purchaser, this Resolution shall constitute a contract between the Issuer and the Purchaser.

I. The Series 2014 Note shall be secured solely by a covenant of the Issuer, subject to certain conditions set forth herein, to budget and appropriate from Available Non-Ad Valorem Revenues (as defined herein) amounts sufficient to pay the principal of and interest on the Series 2014 Note, when due, and the ad valorem taxing power of the Issuer will never be necessary or authorized to pay the principal of and interest on the Series 2014 Note or to make any other payments provided for in this Resolution, and the Series 2014 Note shall not constitute a lien upon any property whatsoever of or in the Issuer.

SECTION 2. AUTHORITY FOR THIS SUPPLEMENTAL RESOLUTION.
This Resolution is enacted pursuant to the provisions of the Constitution of the State of Florida, Chapter 125, Florida Statutes, the Charter of the Issuer, and other applicable provisions of law (collectively, the "Act").

SECTION 3. DEFINITIONS. Capitalized terms not otherwise defined herein shall have the following meanings except as the context may clearly indicate otherwise:

"Additional Amount" shall mean (i) the difference between (a) interest on the Series 2014 Note for the period commencing on the date on which the interest on the Series 2014 Note (or portion thereof) loses its tax-exempt status and ending on the date the Series 2014 Note begins bearing interest at the Adjusted Rate (the "Taxable Period") at a rate per annum equal to the Adjusted Rate and (b) the aggregate amount of interest payable on the Series 2014 Note for the Taxable Period under the provisions of the Series 2014 Note, plus (ii) any penalties, fines, fees, costs and interest paid or payable by the Owner to the Internal Revenue Service by reason of such Determination of Taxability.

"Adjusted Ad Valorem Tax Revenues" shall mean all ad valorem tax revenues of the Issuer after deducting therefrom the required debt service payments on any limited or unlimited general obligation debt of the Issuer.

"Adjusted Non-Ad Valorem Revenues" shall mean all Non-Ad Valorem Revenues (except revenues of any enterprise fund of the County, unless and until such revenues are transferred from such enterprise fund to the County's general fund) less that portion of the Adjusted Costs of Essential Services which exceeds Adjusted Ad Valorem Tax Revenues.

"Adjusted Costs of Essential Services" shall mean that portion of the Costs of Essential Services which are identified as "general government" or "public safety" in the Issuer's Annual Audit.

"Adjusted Rate" shall have the meaning ascribed thereto in Section 13 hereof.

"Annual Audit" shall mean the annual audited financial statements of the Issuer prepared in accordance with generally accepted accounting principles applicable to governmental entities such as the issuer.

"Available Non-Ad Valorem Revenues" shall mean all Non-Ad Valorem Revenues of the Issuer that are legally available to pay principal of and interest on the Series 2014 Note, except for (i) revenues of any enterprise fund of the County, unless and until such revenues are transferred from such enterprise fund to the County's general fund, (ii) Non-Ad Valorem Revenues from any specific source or sources that have been pledged to secure other indebtedness of the County, until such funds become available for deposit into the County's general fund under the documentation creating such pledge, and (iii) Non-Ad Valorem Revenues required to pay or make provision for the payment of the Costs of Essential Services.

"Balloon Indebtedness" means any indebtedness, 25% or more of the original principal of which matures during any one Fiscal Year.

"Board" shall mean the Board of County Commissioners of the Issuer.

"Bond Counsel" shall mean shall mean Nabors, Giblin & Nickerson, P.A. or any other attorney at law or firm of attorneys, of nationally recognized standing in matters pertaining to the federal tax exemption of interest on obligations issued by states and political subdivisions, and duly admitted to practice law before the highest court of any state of the United States of America.

"Chairman" shall mean the Chairman of the Board or the Vice Chairman of the Board.

"Clerk" shall mean the Clerk of the Circuit Court of the County and Ex-Officio Clerk to the Board or any Deputy Clerk of the County.

"Code" shall mean the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder.

"Costs of Essential Services" shall mean the cost of services and programs which are for essential public purposes affecting the health, welfare and safety of the inhabitants of the County or which are legally mandated by applicable law.

"County" or "Issuer" shall mean Brevard County, Florida, a political subdivision of the State.

"County Manager" shall mean the County Manager of the Issuer or any Assistant County Manager.

"Default Rate" shall mean the lesser of (i) the Interest Rate plus five percent (5%) or (ii) the highest rate of interest allowed by applicable law.

"Determination of Taxability" shall mean the circumstance of interest paid or payable on the Series 2014 Note becoming includable for federal income tax purposes in the gross income of the Owner a result of any action or inaction of the Issuer. A Determination of Taxability will be deemed to have occurred upon (i) the receipt by the Issuer or the Owner of an original or a copy of an Internal Revenue Service Technical Advice Memorandum or Statutory Notice of Deficiency or other official letter or correspondence from the Internal Revenue Service which holds, in a final determination, that any interest payable on the Series 2014 Note is includable in the gross income of the Owner; (ii) the issuance of any public or private ruling of the Internal Revenue Service that any interest payable on the Series 2014 Note is includable in the gross income of the Owner, or (iii) receipt by the Issuer or the Owner of an opinion of Bond Counsel to the Issuer that any interest on the Series 2014 Note has become includable in the gross

income of the Owner for federal income tax purposes. For all purposes of this definition, a Determination of Taxability will be deemed to occur on the date as of which the interest on the Series 2014 Note is deemed includable in the gross income of the Owner. Without limiting the foregoing, a Determination of Taxability shall not include and is not triggered by a change in law by Congress that causes the interest or any portion thereof to be includable in the Owner's gross income.

"Financial Advisor" shall mean Public Financial Management, Inc., financial advisor to the Issuer.

"Fiscal Year" shall mean the period commencing on November 1 of each year and ending on the immediately succeeding September 30.

"Interest Rate" shall have the meaning ascribed thereto in Section 6(B) hereof.

"Maturity Date" shall mean the final maturity date of the Series 2014 Note, which date shall be determined by the County Manager upon the advice of the Financial Advisor and the concurrence of the Purchaser; provided, however, such date shall not be later than May 1, 2033.

"Maximum Annual Debt Service" shall mean with respect to indebtedness that bears interest at a fixed interest rate, the largest aggregate amount of annual debt service coming due in any Fiscal Year in which such indebtedness is scheduled to be outstanding, and, with respect to indebtedness which bears interest at a variable interest rate, Maximum Annual Debt Service shall be determined assuming that interest accrues on such indebtedness at the current "Bond Buyer Revenue Bond Index" as published in *The Bond Buyer* no more than three business days prior to any such calculation; provided, however, if any indebtedness, whether bearing interest at a fixed or variable interest rate, constitutes Balloon Indebtedness, Maximum Annual Debt Service on such indebtedness shall be determined assuming such indebtedness is amortized over 20 years on an approximately level debt service basis.

"Maximum Corporate Tax Rate" shall mean the highest marginal United States federal income tax rate applicable to the taxable income of corporations without regard to any increase in tax designed to normalize the rate for all income at the highest marginal tax rate, which as of the date hereof is 35%.

"Non-Ad Valorem Revenues" shall mean all revenues of the Issuer not derived from ad valorem taxation.

"Other Debt" shall mean all of the following to the extent that they are secured by or payable in whole or in part from any Non-Ad Valorem Revenues (A) all obligations of the Issuer for borrowed money or evidenced by bonds, debentures, notes or other similar instruments; (B) all obligations of the Issuer to pay the deferred purchase price of

property or services, except trade accounts payable under normal trade terms and which arise in the ordinary course of business; and (C) all obligations of the Issuer as lessee under capitalized leases.

"Owner" shall mean initially the Purchaser and, subsequently, any successive purchaser or owner of the Series 2014 Note which such Owner is required to be either (i) a "Qualified Institutional Buyer" as defined under Rule 144A promulgated by the Securities and Exchange Commission pursuant to the Securities Act of 1933, as amended, or an "Accredited Investor" as defined in Rule 501 of Regulation D (an "Accredited Investor") promulgated under the Securities Act of 1933, (ii) a bank, savings institution or insurance company (whether acting in a trustee or custodial capacity for any Accredited Investor or Qualified Institutional Buyer or on its own behalf) or (iii) a trust or custodial arrangement each of the beneficial owners of which is an Accredited Investor or Qualified Institutional Buyer.

"Paying Agent" and or "Registrar" as it relates to the Series 2014 Note shall mean the County Manager of the Issuer or his designee.

"Person" shall mean natural persons, firms, trusts, estates, associations, corporations, partnerships and public bodies.

"Pledged Funds" shall mean (a) the proceeds of the Series 2014 Note pending the application thereof, including amounts on deposit in the Series 2014 Project Account and (b) Available Non Ad Valorem Revenues actually budgeted and appropriated pursuant to Section 9 hereof.

"Proposal" shall mean the proposal of the Purchaser to purchase the Series 2014 Note, a copy of which Proposal is attached hereto as Exhibit B.

"Resolution" shall mean this Resolution, pursuant to which the Series 2014 Note is authorized to be issued, including any supplemental resolutions.

"Series 2014 Note" shall mean the Brevard County, Florida Non-Ad Valorem Revenue Note, Series 2014, authorized to be issued pursuant to this Resolution, the form of which is attached hereto as Exhibit A.

"Series 2014 Project" shall mean those capital improvements to be financed with a portion of the proceeds of the Series 2014 Note, as generally described in the Performance Contract. The Series 2014 Project may be amended or supplemented by the Board from time to time in accordance with the provisions of the Performance Contract.

"Series 2014 Project Account" shall mean the Series 2014 Project Account established pursuant to Section 11 hereof.

"State" shall mean the State of Florida.

SECTION 4. ACCEPTANCE OF PROPOSAL. The Issuer hereby accepts the Proposal of the Purchaser, a copy of which is attached hereto as Exhibit B. To the extent of any conflict between the provisions of this Resolution and the Proposal, the Resolution shall prevail.

SECTION 5. AUTHORIZATION OF SERIES 2014 NOTE AND THE SERIES 2014 PROJECT. Subject and pursuant to the provisions of this Resolution, an obligation of the Issuer to be known as the "Brevard County, Florida Non-Ad Valorem Revenue Note, Series 2014" is hereby authorized to be issued under and secured by this Resolution in the aggregate principal amount of not to exceed \$16,000,000 for the purpose of paying costs of the Series 2014 Project and paying the costs of issuing the Series 2014 Note. The Board further authorizes the acquisition, construction and equipping of the Series 2014 Project.

SECTION 6. DESCRIPTION AND TERMS OF SERIES 2014 NOTE; PREPAYMENT.

A. The Series 2014 Note shall be dated the date of its delivery and shall mature on the Maturity Date. The aggregate principal amount of the Series 2014 Note and the principal payments due on the Series 2014 Note shall be determined by the County Manager upon the advice of the Financial Advisor and shall be approved by the Purchaser and set forth in the Series 2014 Note. Principal payments shall be payable semi-annually on November 1 and May 1 of each year commencing November 1, 2015 and ending on the Maturity Date. The Series 2014 Note shall be executed on behalf of the Issuer with the manual signature of the Chairman, the official seal of the Issuer, and be attested with the manual signature of the Clerk. In case any one or more of the officers who shall have signed or sealed the Series 2014 Note or whose facsimile signature shall appear thereon shall cease to be such officer of the Issuer before the Series 2014 Note so signed and sealed has been actually sold and delivered, such Series 2014 Note may nevertheless be sold and delivered as herein provided and may be issued as if the person who signed or sealed such Series 2014 Note had not ceased to hold such office.

B. The Series 2014 Note shall bear interest from its date of issuance, payable semi-annually on the first day of May and the first day of November of each year, commencing on May 1, 2015, at a fixed interest rate of 3.52% per annum (the "Interest Rate"). Interest shall be calculated on the basis of twelve 30-day months and a 360-day year. The Interest Rate is subject to adjustment as provided in Section 13 hereof. The Series 2014 Note shall be issued as one note and the authorized denomination of the Series 2014 Note shall be its outstanding principal amount, as such principal amount changes from time to time.

C. The Series 2014 Note may be prepaid in whole or in part on any principal or interest payment date with thirty (30) days prior written notice to the Owner by

payment of an amount equal to the principal amount to be prepaid, plus accrued interest thereon to the date of prepayment, plus a prepayment premium equal to (i) 3% of the principal amount to be prepaid if the Series 2014 Note is prepaid on or before November 1, 2026, (ii) 2% of the principal amount to be prepaid if the Series 2014 Note is prepaid after November 1, 2026 but prior to November 1, 2030 and (iii) 1.5% of the principal amount to be prepaid if the Series 2014 Note is prepaid on or after November 1, 2030.

Principal prepayments shall be applied to the Series 2014 Note in the inverse order of scheduled principal payment dates.

D. The Series 2014 Note shall be in substantially the form set forth in Exhibit A hereto with such changes as shall be approved by the County Manager and the Chairman, such approval to be conclusively evidenced by the execution thereof by the Chairman.

SECTION 7. REGISTRATION AND EXCHANGE OF SERIES 2014 NOTE; PERSONS TREATED AS OWNER. So long as the Series 2014 Note shall remain unpaid, the Issuer will keep books for the registration and transfer of the Series 2014 Note. The Series 2014 Note shall be transferable only upon such registration books in whole but not in part, upon delivery to the Issuer of a certificate in form and substance reasonably acceptable to the Issuer evidencing the sale or transfer of the Series 2014 Note. The Issuer, through the County Manager, shall serve as the Paying Agent and Registrar for the Series 2014 Note. The Series 2014 Note may only be transferred to an Owner as defined in Section 3 hereof.

The Person in whose name a Series 2014 Note shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of principal and interest on such Series 2014 Note shall be made only to or upon the written order of the Owner. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Series 2014 Note to the extent of the sum or sums so paid.

SECTION 8. OTHER COVENANTS OF ISSUER. For so long as any of the principal of and interest on the Series 2014 Note shall be outstanding and unpaid, the Issuer covenants with the Owner of the Series 2014 Note as follows:

A. Payment of Series 2014 Note. The Series 2014 Note shall be secured by and payable from the Pledged Funds. The Issuer does hereby irrevocably pledge the Pledged Funds to the payment of the Series 2014 Note in accordance with the provisions hereof. The pledge of and lien on the Pledged Funds shall attach at the time of delivery of the Series 2014 Note.

The Issuer covenants and agrees to transfer to the Owner, solely from the Pledged Funds on or prior to the date designated for payment of any principal of or interest on the Series 2014 Note, sufficient moneys to pay such principal or interest.

B. Books and Records; Other Information. Books and records of the Issuer shall be kept in which complete and correct entries shall be made, in accordance with generally accepted accounting principles. As soon as available, but not later than 180 days following the end of each Fiscal Year, the Issuer shall provide the Owner with its Comprehensive Annual Financial Report, including the Issuer's Annual Audit. Such financial statements will be in sufficient detail to determine compliance with all applicable financial covenants contained in this Resolution.

Upon request of the Owner, the Issuer shall provide the Owner with a certificate of an authorized officer of the Issuer certifying that the Issuer is not in default with respect to any provision of this Resolution and that the Issuer is in compliance with all of the covenants contained in this Resolution.

The Issuer shall provide the Owner with other information relating to the Series 2014 Note or the security with respect thereto upon reasonable request, including but not limited to the Issuer's annual budget for the current or prior Fiscal Year or, if adopted, the upcoming Fiscal Year.

D. Notice of Defaults. The Issuer shall within ten (10) days after it acquires actual knowledge thereof, notify the Owner in writing upon the happening, occurrence, or existence of any Event of Default (as defined in Section 17 hereof), and any event or condition which with the passage of time or giving of notice, or both, would constitute an Event of Default, and shall provide the Owner with such written notice, a detailed statement by a responsible officer of the Issuer of all relevant facts and the action being taken or proposed to be taken by the Issuer with respect thereto.

E. Records. The Issuer agrees that any and all records of the Issuer with respect to the Series 2014 Note shall be open to inspection by the Owner or its representatives at all reasonable times at the offices the Issuer upon reasonable advance written notice.

F. No Financial Material Adverse Change. No material adverse change in the financial condition of the Issuer or the Pledged Funds has occurred since the Fiscal Year ended September 30, 2013.

G. No Debt Default. No event has occurred which would constitute an event of default under any debt, revenue bond or obligation which the Issuer has issued during the past ten (10) years.

SECTION 9. COVENANT TO BUDGET AND APPROPRIATE. Subject to the other provisions of this Section 9, the Issuer covenants and agrees to appropriate in its annual budget, by amendment, if necessary, from Available Non-Ad Valorem Revenues, amounts sufficient to pay the regularly scheduled payments of principal and interest of the Series 2014 Note. Such covenant and agreement on the part

of the Issuer to budget and appropriate such amounts of Available Non-Ad Valorem Revenues shall be cumulative to the extent not paid, and shall continue until such Available Non-Ad Valorem Revenues in amounts sufficient to make all such required payments shall have been budgeted, appropriated and actually paid. No lien upon or pledge of such budgeted Non-Ad Valorem Revenues shall be in effect until such monies are budgeted and appropriated.

Such covenant to budget and appropriate does not create any lien upon or pledge of such Non-Ad Valorem Revenues, nor does it preclude the Issuer from pledging in the future its Non-Ad Valorem Revenues or any component thereof, nor does it require the Issuer to levy and collect any particular Non-Ad Valorem Revenues, nor does it give the Owner of the Series 2014 Note a prior claim on any Non-Ad Valorem Revenues. Such covenant to budget and appropriate Available Non-Ad Valorem Revenues is subject in all respects to the prior payment of obligations secured by a pledge of such Non-Ad Valorem Revenues heretofore or hereafter entered into (including the payment of debt service on other debt instruments). Anything in this Resolution to the contrary notwithstanding, it is understood and agreed that the obligations of the Issuer, if any, to pay amounts due hereunder shall be payable from the portion of Available Non-Ad Valorem Revenues budgeted and appropriated as provided for hereunder and nothing herein shall be deemed to pledge ad valorem tax revenues for such interest or to permit or constitute a mortgage or lien upon any assets owned by the Issuer and no Owner of the Series 2014 Note nor any other person, may compel the levy of ad valorem taxes on real or personal property within the boundaries of the Issuer to pay such interest.

Notwithstanding any provisions of this Resolution or the Series 2014 Note to the contrary, the Issuer shall never be obligated to maintain or continue any of the activities of the Issuer which generate user service charges, regulatory fees or any Non-Ad Valorem Revenues. Neither this Resolution nor the obligations of the Issuer hereunder shall be construed as a pledge of or a lien on all or any legally available Non-Ad Valorem Revenues of the Issuer, but shall be payable solely as provided herein and is subject in all respects to the provisions of Section 129.01, Florida Statutes.

The covenant to budget and appropriate for the purposes and in the manner stated herein shall have the effect of making available for the payment of the Series 2014 Note, in the manner described herein, Available Non-Ad Valorem Revenues, and placing on the Issuer a positive duty to appropriate and budget, by amendment, if necessary, amounts sufficient to meet its obligations hereunder; subject, however, in all respects to the restrictions of Sections 129.03 and 129.07, Florida Statutes. The Issuer agrees that its covenant and agreement to budget and appropriate Available Non-Ad Valorem Revenues shall be deemed entered into for the benefit of the Owner of the Series 2014 Note and this obligation may be enforced by a court of competent jurisdiction.

SECTION 10. ANTI-DILUTION AND ADDITIONAL DEBT. During each Fiscal Year that the Series 2014 Note is outstanding hereunder, the Issuer agrees and

covenants with the Owner that Adjusted Non-Ad Valorem Revenues shall cover projected aggregate Maximum Annual Debt Service on the Series 2014 Note and Other Debt for each Fiscal Year by at least 1.5x. The Issuer agrees to provide the Owner with a certification that such anti-dilution test has been satisfied and accompanying calculation not later than 210 days after each Fiscal Year end. During each Fiscal Year that the Series 2014 Note is outstanding hereunder, prior to the incurrence of any additional Other Debt, the Issuer agrees and covenants with the Owner that Adjusted Non-Ad Valorem Revenues shall cover the aggregate Maximum Annual Debt Service on the Series 2014 Note and Other Debt, including the proposed Other Debt, by at least 1.5x. Such calculation shall be determined using the average of actual Adjusted Non Ad Valorem Revenues for the prior two Fiscal Years based on the Issuer's Annual Audits. The Issuer agrees to provide the Owner with a certification that such test has been satisfied and accompanying calculation prior to the incurrence of such additional Other Debt.

SECTION 11. APPLICATION OF PROCEEDS OF SERIES 2014 NOTE.

A. A sufficient amount of the Series 2014 Note proceeds shall be applied to the payment of costs and expenses relating to the issuance of the Series 2014 Note.

B. The balance of the proceeds of the Series 2014 Note shall be deposited to the "2014 Project Account" which is hereby established and shall be applied to pay costs of the Series 2014 Project in accordance with the Performance Contract.

SECTION 12. TAX COVENANT. The Issuer covenants to the purchasers of the Series 2014 Note that the Issuer will not make any use of the proceeds of the Series 2014 Note at any time during the term of the Series 2014 Note which, if such use had been reasonably expected on the date the Series 2014 Note was issued, would have caused such Series 2014 Note to be an "arbitrage bond" within the meaning of the Code. The Issuer will comply with the requirements of the Code and any valid and applicable rules and regulations promulgated thereunder necessary to ensure the exclusion of interest on the Series 2014 Note from the gross income of the holder thereof for purposes of federal income taxation.

SECTION 13. ADJUSTMENT TO INTEREST RATE. In the event of a Determination of Taxability, the interest rate on the Series 2014 Note shall be increased to such rate as shall provide the Owner with the same rate of return that the Owner would have otherwise received on the Series 2014 Note taking into account the increased taxable income of the Owner as a result of such Determination of Taxability (the "Adjusted Rate"); provided, however, such Adjusted Rate shall never exceed the maximum rate allowable by law. Immediately upon a Determination of Taxability, the Issuer agrees to pay to the Owner the Additional Amount.

SECTION 14. AMENDMENT. The Issuer will not modify or amend this Resolution in any respect that impairs the Owner's security or rights hereunder without the written consent of the Owner of the Series 2014 Note.

SECTION 15. LIMITATION OF RIGHTS. With the exception of any rights herein expressly conferred, nothing expressed or mentioned in or to be implied from this Resolution or the Series 2014 Note is intended or shall be construed to give to any Person other than the Issuer and the Owner any legal or equitable right, remedy or claim under or with respect to this Resolution or any covenants, conditions and provisions herein contained; this Resolution and all of the covenants, conditions and provisions hereof being intended to be and being for the sole and exclusive benefit of the Issuer and the Owner.

SECTION 16. NOTE MUTILATED, DESTROYED, STOLEN OR LOST. In case the Series 2014 Note shall become mutilated, or be destroyed, stolen or lost, the Issuer shall issue and deliver a new Series 2014 Note of like tenor as the Series 2014 Note so mutilated, destroyed, stolen or lost, in exchange and in substitution for such mutilated Series 2014 Note, or in lieu of and in substitution for the Series 2014 Note destroyed, stolen or lost and upon the Owner furnishing the Issuer proof of ownership thereof and indemnity reasonably satisfactory to the Issuer and complying with such other reasonable regulations and conditions as the Issuer may prescribe and paying such expenses as the Issuer may incur. The Series 2014 Note so surrendered shall be canceled.

SECTION 17. EVENTS OF DEFAULT; REMEDIES OF NOTEHOLDER. The following shall constitute "Events of Default": (A) if the Issuer fails to pay any payment of principal of or interest on the Series 2014 Note when due and payable; (B) if the Issuer defaults in the performance or observance of any covenant or agreement contained in this Resolution or the Series 2014 Note (other than set forth in (A) above) and fails to cure the same within thirty (30) days following written notice, or such longer period as may be necessary to cure the default, provided that the Issuer is making all reasonable efforts to cure such default with reasonable diligence; (C) filing of a petition by or against the Issuer relating to bankruptcy, reorganization, arrangement or readjustment of debt of the Issuer or for any other relief relating to the Issuer under the United States Bankruptcy Code, as amended, or any other insolvency act or law now or hereafter existing, or the involuntary appointment of a receiver or trustee for the Issuer, and, in the case of a proceeding other than a voluntary proceeding commenced by the Issuer, the continuance of any such event for 90 days undismissed or undischarged or (D) any representation or warranty of the Issuer contained in this Resolution or in any certificate or other closing document executed and delivered by the Issuer in connection with the issuance of the Series 2014 Note shall prove to have been untrue in any material respect when executed and delivered, thereby adversely impairing the security for the Series 2014 Note.

Upon the occurrence and during the continuation of any Event of Default, the Owner of the Series 2014 Note may either at law or in equity, by suit, action, mandamus or other proceeding (including specific performance) in any court of competent jurisdiction, protect and enforce any and all rights under the laws of the State, or granted or contained in this Resolution, and may enforce and compel the performance of all duties required by this Resolution, or by any applicable statutes to be performed by the Issuer or by any officer thereof. Additionally, upon the occurrence and continuation of an Event of Default specified in section (A) above that is not cured within three (3) days of the scheduled payment date, the Series 2014 Note shall bear interest at the Default Rate and all payments made on the Series 2014 Note during any such period shall be applied first to interest and then to principal.

SECTION 18. SEVERABILITY. If any provision of this Resolution shall be held or deemed to be or shall, in fact, be illegal, inoperative or unenforceable in any context, the same shall not affect any other provision herein or render any other provision (or such provision in any other context) invalid, inoperative or unenforceable to any extent whatever.

SECTION 19. APPLICABLE PROVISIONS OF LAW. This Resolution shall be governed by and construed in accordance with the laws of the State.

SECTION 20. RULES OF INTERPRETATION. Unless expressly indicated otherwise, references to sections or articles are to be construed as references to sections or articles of this instrument as originally executed. Use of the words "herein," "hereby," "hereunder," "hereof," "hereinbefore," "hereinafter" and other equivalent words refer to this Resolution and not solely to the particular portion in which any such word is used.

SECTION 21. CAPTIONS. The captions and headings in this Resolution are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Resolution.

SECTION 22. PERSONAL LIABILITY EXEMPTION.

A. No recourse under or upon any obligation, covenant or agreement of this Resolution or the Series 2014 Note or for any claim based thereon or otherwise in respect thereof, shall be had against any member of the Board, the Chairman, the Clerk, the County Attorney, the County Manager or any staff, employees or agents of the Issuer, past, present or future, either directly or through the Issuer (collectively, "Issuer Participants") it being expressly understood (i) that no personal liability whatsoever shall attach to, or is or shall be incurred by, the Issuer Participants under or by reason of the obligations, covenants or agreements contained in this Resolution or implied therefrom, and (ii) that any and all such personal liability, either at common law or in equity or by constitution or statute, of, and any and all such rights and claims against, every Issuer

Participant are waived and released as a condition of, and as a consideration for, the execution of this Resolution and the issuance of the Series 2014 Note, on the part of the Issuer.

B. No recourse under or upon any obligation, covenant or agreement of this Resolution or the Series 2014 Note or for any claim based thereon or otherwise in respect thereof, shall be had against any officers, employees or agents of the Purchaser, past, present or future, either directly or through the Purchaser it being expressly understood (i) that no personal liability whatsoever shall attach to, or is or shall be incurred by, the officers, employees or agents of the Purchaser under or by reason of the obligations, covenants or agreements contained in this Resolution or implied therefrom, and (ii) that any and all such personal liability, either at common law or in equity or by constitution or statute, of, and any and all such rights and claims against, every such officers, employees or agents of the Purchaser, as such, are waived and released as a condition of, and as a consideration for the purchase of the Series 2014 Note. Notwithstanding the foregoing, nothing in this clause (B) shall be read or construed to release the Purchaser from any liability or obligation, or to release any officers, employees or agents of the Purchaser, past, present or future, from any liability arising out of such party's gross negligence, willful misconduct or breach of fiduciary duty.

SECTION 23. AUTHORIZATIONS. The Chairman and any member of the Board, the County Attorney, the Clerk, the County Manager and such other officials and employees of the Issuer as may be designated by the Issuer are each designated as agents of the Issuer in connection with the issuance and delivery of the Series 2014 Note and the financing of the Series 2014 Project and are authorized and empowered, collectively or individually, to take all action and steps and to execute all instruments, documents, and contracts on behalf of the Issuer that are necessary or desirable in connection with the execution and delivery of the Series 2014 Note and the financing of the Series 2014 Project, and which are specifically authorized or are not inconsistent with the terms and provisions of this Resolution.

SECTION 24. WAIVER OF JURY TRIAL. To the extent permitted by applicable law, the Issuer and the Purchaser, knowingly, voluntarily and intentionally waives any right each may have to a trial by jury in respect of any litigation based on, or arising out of, under or in connection with this Resolution, the Series 2014 Note or any agreement contemplated to be executed in connection with this Resolution, or any course of conduct, course of dealing, statements (whether verbal or written) or actions of any party with respect hereto.

SECTION 25. REPEALER. All resolutions or parts thereof in conflict herewith are hereby repealed.

SECTION 26. NO THIRD PARTY BENEFICIARIES. Except such other persons as may be expressly described in this Resolution or in the Series 2014 Note,


nothing in this Resolution or in the Series 2014 Note, expressed or implied, is intended or shall be construed to confer upon any person, other than the Issuer and the Owner, any right, remedy or claim, legal or equitable, under and by reason of this Resolution, or any provision thereof, or of the Series 2014 Note, all provisions thereof being intended to be and being for the sole and exclusive benefit of the Issuer and the persons who shall from time to time be the Owner.

SECTION 27. EFFECTIVE DATE. This Resolution shall be effective immediately upon its adoption.


This Resolution passed and adopted this 5th day of August, 2014.

BOARD OF COUNTY COMMISSIONERS
BREVARD COUNTY, FLORIDA,

(SEAL)

By: 
Mary Bolin Lewis
Chairman

ATTEST:



Scott Ellis, Clerk of the Circuit Court
and Ex-Officio Clerk to the Board of
County Commissioners of Brevard
County, Florida

EXHIBIT A
FORM OF SERIES 2014 NOTE

August ____, 2014

\$ _____

BREVARD COUNTY, FLORIDA
NON-AD VALOREM REVENUE NOTE, SERIES 2014

Maturity Date: _____

Brevard County, Florida (the "Issuer"), for value received, promises to pay from the sources hereinafter provided, to the order of Banc of America Public Capital Corp, or registered assigns (hereinafter, the "Owner"), the principal sum of _____ AND 00/100 DOLLARS, in the amount and on the date described below, together with interest on the principal balance at a rate of 3.52% per annum (subject to adjustment as described in the hereinafter described Resolution) semi-annually on each May 1 and November 1 commencing May 1, 2015. Interest shall be calculated on the basis of twelve 30-day months and a 360-day year.

Principal on this Note is payable annually in lawful money of the United States of America at such place as the Owner may designate to the Issuer in writing pursuant to the following schedule:

<u>Payment Date</u>	<u>Principal Amount</u>
11/01/15	
05/01/16	
11/01/16	
05/01/17	
11/01/17	
05/01/18	
11/01/18	
05/01/19	
11/01/19	
05/01/20	
11/01/20	
05/01/21	
11/01/21	
05/01/22	
11/01/22	
05/01/23	
11/01/23	
05/01/24	
11/01/24	
05/01/25	
11/01/25	

<u>Payment Date</u>	<u>Principal Amount</u>
05/01/26	
11/01/26	
05/01/27	
11/01/27	
05/01/28	
11/01/28	
05/01/29	
11/01/29	
05/01/30	
11/01/30	
05/01/31	
11/01/31	
05/01/32	
11/01/32	
05/01/33	
11/01/33	

This Note may be prepaid in whole, or in part, on any interest or principal payment date, with thirty (30) days prior written notice to the Owner by payment of an amount equal to the principal amount to be prepaid, plus accrued interest thereon to the date of prepayment, plus a prepayment premium equal to (i) 3% of the principal amount to be prepaid if the Series 2014 Note is prepaid on or before November 1, 2026, (ii) 2% of the principal amount to be prepaid if the Series 2014 Note is prepaid after November 1, 2026 but prior to November 1, 2030 and (iii) 1.5% of the principal amount to be prepaid if the Series 2014 Note is prepaid on or after November 1, 2030. Principal prepayments shall be applied to this Note in the inverse order of principal payment dates.

If any date for the payment of principal and interest hereon or the taking of any action hereunder shall fall on a day which is not a business day, the payment due or action to be taken on such date shall be due on the next succeeding day which is a business day, but the Issuer shall not receive credit for the payment until it is actually received by the Owner.

All payments by the Issuer pursuant to this Note shall apply first to accrued interest, then to other charges due the Owner, and the balance thereof shall apply to principal.

This Note is issued pursuant to the provisions of the Constitution of the State of Florida, Chapter 125, Florida Statutes, the Charter of the Issuer, and other applicable provisions of law (the "Act"), and Resolution No. _____ adopted by the Board of County Commissioners of the Issuer on August 5, 2014 (the "Resolution"), and is subject to all the terms and conditions of the Act and the Resolution. All terms, conditions and provisions of the Resolution are by this reference thereto incorporated herein as a part of this Note. Terms used herein in capitalized form and not otherwise defined herein shall

have the meanings ascribed thereto in the Resolution.

Payments of the principal of and interest on this Note shall be limited obligations of the Issuer, payable solely from the Pledged Funds to the extent provided in the Resolution. The Issuer has agreed in the Resolution, subject to the limitations described therein, to appropriate in its annual budget, by amendment, if necessary, from Available Non-Ad Valorem Revenues, amounts sufficient to pay the regularly scheduled payments of principal and interest of this Note. Such covenant and agreement on the part of the Issuer to budget and appropriate such amounts of Available Non-Ad Valorem Revenues shall be cumulative to the extent not paid, and shall continue until such Available Non-Ad Valorem Revenues in amounts sufficient to make all such required payments shall have been budgeted, appropriated and actually paid. No lien upon or pledge of such budgeted Non-Ad Valorem Revenues shall be in effect until such monies are budgeted and appropriated.

Such covenant to budget and appropriate does not create any lien upon or pledge of such Non-Ad Valorem Revenues, nor does it preclude the Issuer from pledging in the future its Non-Ad Valorem Revenues or any component thereof, nor does it require the Issuer to levy and collect any particular Non-Ad Valorem Revenues, nor does it give the Owner a prior claim on the Non-Ad Valorem Revenues. Such covenant to budget and appropriate Available Non-Ad Valorem Revenues is subject in all respects to the prior payment of obligations secured by a pledge of such Non-Ad Valorem Revenues heretofore or hereafter entered into (including the payment of debt service on other debt instruments). Anything in the Resolution to the contrary notwithstanding, it is understood and agreed that the obligations of the Issuer, if any, to pay amounts due on this Note shall be payable from the portion of Available Non-Ad Valorem Revenues budgeted and appropriated as provided for under the Resolution and nothing in the Resolution or this Note shall be deemed to pledge ad valorem tax revenues for such interest or to permit or constitute a mortgage or lien upon any assets owned by the Issuer and the Owner of this Note nor any other person, may compel the levy of ad valorem taxes on real or personal property within the boundaries of the Issuer to pay such interest.

Notwithstanding any provisions of the Resolution or this Note to the contrary, the Issuer shall never be obligated to maintain or continue any of the activities of the Issuer which generate user service charges, regulatory fees or any Non-Ad Valorem Revenues. Neither the Resolution nor the obligations of the Issuer under the Resolution or this Note shall be construed as a pledge of or a lien on all or any legally available Non-Ad Valorem Revenues of the Issuer, but shall be payable solely as provided herein and is subject in all respects to the provisions of Section 129.01, Florida Statutes.

The covenant to budget and appropriate for the purposes and in the manner stated in the Resolution shall have the effect of making available for the payment of this Note, in the manner described in the Resolution, Available Non-Ad Valorem Revenues, and placing on the Issuer a positive duty to appropriate and budget, by amendment, if necessary, amounts sufficient to meet its obligations under the Resolution; subject,

however, in all respects to the restrictions of Sections 129.03 and 129.07, Florida Statutes. The Issuer agrees that its covenant and agreement to budget and appropriate Available Non-Ad Valorem Revenues shall be deemed entered into for the benefit of Owner of this Note and this obligation may be enforced by a court of competent jurisdiction.

The Note shall not constitute a general obligation or a pledge of the faith, credit or taxing power of the Issuer, the State, or any political subdivision or agency thereof, within the meaning of any constitutional or statutory provisions. Neither the State, nor any political subdivision or agency thereof, nor the Issuer shall be obligated (i) to exercise its ad valorem taxing power in any form on any real or personal property of or in the Issuer to pay the principal of the Note, the interest thereon, or other costs incidental thereto or (ii) to pay the same from any other funds of the Issuer except from the Pledged Funds, in the manner provided in the Resolution.

This Note may be exchanged or transferred by the Owner hereof, in whole but not in part, but only upon the registration books maintained by the Issuer and in the manner and subject to the conditions provided in the Resolution.

The interest rate on this Note is subject to adjustment as provided in Sections 13 and 17 of the Resolution.

It is hereby certified, recited and declared that all acts, conditions and prerequisites required to exist, happen and be performed precedent to and in the execution, delivery and the issuance of this Note do exist, have happened and have been performed in due time, form and manner as required by law, and that the issuance of this Note is in full compliance with and does not exceed or violate any constitutional or statutory limitation.

[Signature page follows]

IN WITNESS WHEREOF, Brevard County, Florida, has issued this Note and has caused the same to be signed by the Chairman of the Board of County Commissioners and attested to and countersigned by the Chief Deputy Clerk of said Board, either manually or with their facsimile signatures, and its corporate seal or a facsimile thereof to be reproduced hereon, all as of the 5th day of August, 2014.

BREVARD COUNTY, FLORIDA

(SEAL)

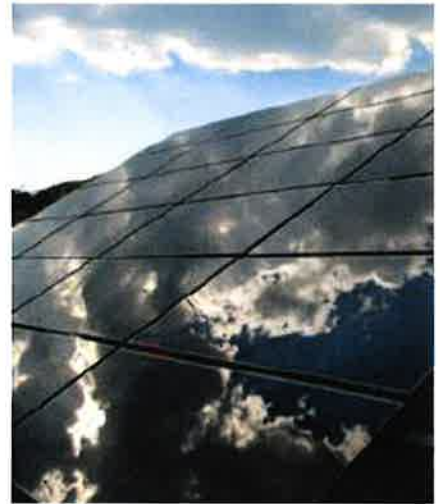
By: Mary Bolin Lewis
Mary Bolin Lewis, Chairman
Approved by the Board on August 5, 2014

ATTEST:

By: Scott Ellis
Scott Ellis, Clerk of the Circuit Court
and Ex-Officio Clerk to the Board
of County Commissioners of
Brevard County, Florida

EXHIBIT B

PROPOSAL OF BANC OF AMERICA PUBLIC CAPITAL CORP



Tax-Exempt CBA Note Finance Proposal for Brevard County, FL

June 19, 2014

As part of Bank of America's 10-year, \$50 billion business initiative to address climate change, we promote an environmentally sustainable economy through financing for energy efficiency projects and renewable energy assets.



Geoffrey R. Culm
Senior Vice President
Energy Services

Banc of America Public Capital Corp
135 S. LaSalle Street, 10th Floor
IL4-135-10-42
Chicago, IL 60603
Email: geoffrey.r.culm@bamf.com
Tel: (312) 828.5319
Fax: (312) 453.3981

June 19, 2014

VIA ELECTRONIC MAIL

Mr. Jay Glover
Senior Managing Consultant
Public Financial Management
Lincoln Plaza
300 South Orange Ave., Ste 1170
Orlando, FL 32801

Re: \$16 Mln (approximate) Tax-Exempt CBA Note Finance Proposal for Brevard County, FL

Dear Mr. Glover:

Thank you for the opportunity to present to you the attached terms and conditions for the financing of the above CBA Note transaction for Brevard County, Florida (the "County" or "Borrower"). Banc of America Public Capital Corp ("BAPCC" or "Lender") looks forward to the opportunity to provide our tax-exempt, finance services for this important energy and cost saving project.

BAPCC and Bank of America, N.A. ("BANA") offer unique financing features and qualifications that can be leveraged on behalf of the County to complete this transaction at a low interest cost and in a smooth and efficient manner. These features and qualifications include:

1. TAX-EXEMPT PRIVATE PLACEMENT EXPERIENCE: BAPCC/BANA are leading providers of private placement capital to the state government, municipal local government, K-12, housing authority, and higher education tax-exempt markets. Our teams are highly experienced in documenting and closing tax-exempt, direct placement transactions;
2. ENERGY EFFICIENCY FINANCING EXPERIENCE: BAPCC's Energy Services group is a leading provider of financial solutions for energy efficiency, renewable energy, water system, and energy generation equipment and assets; and as such we have experience in working with energy services companies, including BGA Inc./Con Ed Solutions;
3. PRIVATE PLACEMENT BENEFITS: Because the proposed transaction is a private placement, there will be no additional public ongoing disclosure requirements, no additional public offering document generation requirements,

and there will be no underwriting or related fees associated with the transaction;
and

4. RATE LOCK: To eliminate the interest rate risk for the County during the approval, documentation and closing of the transaction, we have included a 60 day rate lock in this proposal (please review the attached proposal for terms of the rate lock).

This cover letter and term sheet include only a brief description of the principal terms of the proposed transaction. Please understand that this proposal is not a commitment or offer to lend, and does not create any obligation for Lender or BANA. Lender and/or BANA will not be responsible or liable for any damages, consequential or otherwise, that may be incurred or alleged by any person or entity, including Borrower, as a result of this letter. Lender will notify you in writing of its decision if Lender agrees to proceed with the proposed transaction after completing its review and analysis.

Please feel free to contact me at 312.828.5319 to discuss the proposed transaction, or to accept this proposal, please sign the enclosed copy of this letter **within ten (10) business days** and return it to **Banc of America Public Capital Corp, 135 S. LaSalle Street, 10th Floor, IL4-135-10-42, Chicago, IL 60603 Attention: Geoff Culm, or by fax to the same attention at fax number: 312.453.3981.**

I look forward to the opportunity to work with you and with Brevard County on the financing of this important project.

Very truly yours,

Banc of America Public Capital Corp



Geoffrey R. Culm
Senior Vice President

The undersigned, by its authorized representative below, accepts the above proposal, agrees to furnish Lender, its successors and assigns, any information relating to the business or financial condition of borrower or its affiliates, and authorizes Lender, Bank of America Corporation and their affiliates to disclose to, discuss with and distribute such information (and any information they may already have) to any other affiliates or proposed assignees or successors of Lender.

AGREED AND ACCEPTED:

BREVARD COUNTY BOARD OF COMMISSIONERS, FL

By: _____

Title: _____

Date: _____

Tax ID: ON FILE

cc: Steve Lenehan, Holly Kuhlman, Courtney Guzman

**SUMMARY OF TERMS AND CONDITIONS
TAX-EXEMPT CBA NOTE**

I. Borrower and Lender - Introduction

Borrower/County: Brevard County Board of Commissioners
400 South Street
Titusville, FL 32780

Lender: Banc of America Public Capital Corp, or its affiliate or designee

Contact:

Geoffrey Culm
Senior Vice President, BAPCC Energy Services
135 S. LaSalle Street, 10th Floor
IL4-135-10-42
Chicago, IL 60603
(312) 828.5319 office
(312) 453.3981 fax
geoffrey.r.culm@baml.com

Address for Documentation:

Attn: Contracts Administration
11333 McCormick Road
Hunt Valley II
Mail Code: MD5-03-07-05
Hunt Valley, MD 21031

Lender Background: The Lender is a subsidiary of Bank of America Corporation, which is one of the nation's largest financial holding companies. In addition, Lender has extensive experience in funding tax-exempt equipment lease and similar private placement transactions for local government entities for energy and water efficiency equipment and projects.

Commitment to energy efficiency and the environment: Bank of America is a proud supporter of energy efficiency and initiatives that have a positive impact on the environment. Attached please find a summary of some of our important environmental announcements, and the following website contains a link to our corporate environmental progress report:

http://environment.bankofamerica.com/?cm_mmc=ENT-Funded--vanity--EF01VN0002_environment--NA

Financial profile and strength: As mentioned, Bank of America is one of the nation's largest financial holding companies. Our annual report can be found on the following internet link:

<http://investor.bankofamerica.com/phoenix.zhtml?c=71595&p=irol-reportsannual>

Local Presence: Bank of America is a proud member of and employer in the Brevard County community. The following is just a *sample* list of the branches that Bank of America operates in the County:

2600 Barna Ave
Titusville, FL 32780

660 West Avenue
Cocoa, FL 32927

430 Brevard Ave
Cocoa, FL 32922

15 E Merritt Island Cswy
Merritt Island, FL 32952...

II. Financing Structure, Project Description

Purpose: The purpose of this transaction is to provide financing to the Borrower for the acquisition, construction and installation of energy conservation equipment (collectively, the "*Equipment*") under a guaranteed savings energy performance contract (the "*EPC*") with BGA Inc./Con Ed Solutions (the "*Vendor*").

Structure: This transaction will be structured as a tax-exempt, "CBA Note". Documents to be acceptable to Lender.

Lender will require an Anti-Dilution test in the CBA Note similar to the one attached in Exhibit 2.

Approximate Proceeds:

Energy Project (approximate):	\$15,785,763
Borrower's Legal Expense and other Costs Of Issuance*:	to be determined
Lender's Legal Expense Allocated to Costs of Issuance**:	<u>\$7,500</u>
TOTAL PROCEEDS (approximate):	\$16,000,000

*Subject to Lender's approval, Borrower's legal or related fees may be included in the transaction proceeds as costs of issuance.

** Lender's legal expense may be paid directly by Borrower at closing or rolled into the costs of issuance of the transaction.

III. Funding, Interest Rate, Closing

Finance Term: Approximately 18.6 years.

Closing Date: Purely for purposes of this proposal, funding was calculated to be August 15, 2014.

Indicative

Fixed

Interest Rate: 3.52% - per the attached amortization schedule.

The calculation for the Indicative Fixed Interest Rate above is:

10-Yr Bloomberg Treasury SWAP Rate X 65% + Applicable Spread
Below:*

Scenario	SWAP*	Swap Index	* 65%	+ Spread	Tax-Exempt Rate
18.6 years	10 years	2.68%	1.742%	1.778%	3.52%

* As of June 19, 2014, the 10-yr Treasury Interest Rate SWAP as reported by Bloomberg.

**Rate Lock
Procedure:**

If this proposal is signed and returned to Lender within ten (10) business days, Lender will hold the respective Indicative Fixed Interest Rate for funding through August 19, 2014. If closing of the transaction occurs after such rate lock expiration, the respective Indicative Fixed Interest Rate for the transaction is subject to repricing at the discretion of Lender 15 business days prior to the scheduled closing date in accordance with the selected option formula above.

IF BORROWER ASKS LENDER TO LOCK THE RESPECTIVE INTEREST RATE ABOVE FOR FUNDING, BORROWER AGREES NOT TO SEEK FUNDING FOR THE PROJECT WITH ANOTHER LENDER FOR A PERIOD OF NINE MONTHS AS A MEANS TO CIRCUMVENT THE RATE THAT BORROWER HAS ASKED LENDER TO HOLD.

PLEASE BE ADVISED THAT THE PROPOSED INDICATIVE PRICING INDEX SET FORTH ABOVE IS ONLY AVAILABLE FOR A TRANSACTION THAT IS FULLY FUNDED OR FOR SPECIFIC EQUIPMENT THAT HAS COMMENCED FUNDING UNDER A FINANCING AGREEMENT PURSUANT TO THIS PROPOSAL WITHIN 180 DAYS. THEREAFTER, LENDER MAY AT ITS DISCRETION ADJUST ITS PRICING TO REFLECT ADVERSE CHANGES IN ITS COST OF FUNDS OR CHANGES GENERALLY IN MARKET CREDIT MARGINS.

PLEASE NOTE THAT THE PRICING AND RATE ABOVE ARE BASED ON THE AVERAGE LIFE OF THE ATTACHED DRAFT AMORTIZATION SCHEDULE. TO THE EXTENT THAT THE AVERAGE LIFE OF THE FINAL AMORTIZATION SCHEDULE CHANGES FROM THE ATTACHED, THE RESPECTIVE RATE ABOVE IS SUBJECT TO MODIFICATION BY LENDER TO ACCOUNT FOR ANY LENGTHENING OF THE AVERAGE LIFE OF THE FINAL TRANSACTION SCHEDULE.

Please contact Lender if you have any questions regarding the fixed interest rate determination and lock process, or to request additional payment or rate lock scenarios.

Closing Costs: Borrower will be responsible for its own closing costs, including its own legal costs for providing a legal/validity and tax opinion for the transaction. Borrower may include legal and financing costs in the transaction amount. Assuming that Lender's counsel is not asked to provide a legal opinion on behalf of the Borrower, Lender will allocate a maximum of \$7,500 of its legal expenses to the costs of issuance of the transaction.

IV. Repayment, Prepayment and Other Terms

Payments: Semi-annual payments

Prepayment: With 30 days advance notice, Borrower will have the option to prepay the financing schedule on any principal and interest payment date by paying the applicable Termination Value which shall be calculated as 103% of the outstanding principal value of transaction.

Opinion of Counsel: Counsel to Borrower shall deliver an opinion to Lender at closing in form and substance satisfactory to Lender. The opinion of counsel will provide, among other matters:

- (a) the portion of the rental payments designated as and constituting interest paid by Borrower and received by Lender is excluded from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code of 1986 and is exempt from State personal income taxes (if applicable);
- (b) such interest is not a specific preference item for purposes of the Federal individual or corporate alternative minimum taxes;
- (c) counsel has examined, approved and attached the text of the enabling resolution of Borrower's governing body authorizing Borrower to enter into the transaction; and
- (d) the transaction has been duly executed by Borrower and is a valid, binding and enforceable obligation against Borrower.

Borrower will work with its Bond Counsel to make sure that the proposed project and transaction complies with IRS and State requirements for tax-exempt financings, including but not limited to compliance with estimated useful life calculations, and the generation and execution of the 8038-G form.

Tax Exempt Financing: The payments have been calculated on the following assumptions and representations by Borrower that Borrower:

1. is a state or political subdivision of a state within the meaning of Section 103(c) of the Internal Revenue Code (the "Code") and duly created and validly existing under the laws of the State of Florida;

2. is authorized under the laws of the State of Florida to enter into the transaction contemplated thereby and to perform all of Borrower's obligations thereunder; and
3. has duly authorized the execution and delivery of the transaction under the terms of a resolution of its governing body or by other appropriate official approval, and all requirements and procedures have been satisfied in order to ensure the enforceability of the transaction, and Borrower has complied with all applicable public bidding requirements.

Borrower shall provide Lender with such evidence as Lender may request to substantiate and maintain such tax status, and shall make such further representations and certifications as are customary in tax exempt transactions.

In the event Lender suffers a loss of Federal income tax exemption of the interest portion of the rental payments, Borrower will pay Lender amounts calculated at a taxable rate sufficient to maintain Lender's yield in the transaction. Borrower shall comply with the filing requirements of Section 149(e) of the Code.

Final Approval:

This proposal and the terms set forth herein are an indication of interest in the transaction, and are not and should not be construed as a commitment nor obligation of Lender or its affiliates to provide any financing. The proposed transaction and the terms set forth herein are subject to all credit, risk, documentation and legal approvals of Lender as well as execution and delivery of documentation acceptable to all parties. All disbursements are subject to no material adverse change in the financial condition of Borrower.

Assignment:

Lender shall be entitled to assign its right, title and interest in the Transaction, *in whole or part*, on a private placement basis to qualified purchasers. In addition, Lender shall be entitled to assign its right, title and interest in the Transaction to a trustee for the purpose of issuing certificates of participation or other forms of certificates evidencing an undivided interest in such Transaction, provided such certificates are sold only on a private placement basis (and not pursuant to any "public offering") to a purchaser(s) who represent that (I) such purchaser has sufficient knowledge and experience in financial and business matters to be able to evaluate the risks and merits of the investment (ii) such purchaser understands neither the Transaction or certificates will be registered under the Securities Act of 1933, (iii) such purchaser is either an "accredited investor" within the meaning of Regulation D under the Securities Act of 1933, or a qualified institutional buyer within the meaning of Rule 144A, and (iv) that it is the intention of such purchaser to acquire such certificates (A) for investment for its own account or (B) for resale in a transaction exempt from registration under the Securities Act of 1933. At any time, Lender may sell, assign or encumber all or any part of its right title and interest in the Transaction, *in whole or part*; however, in no event shall the Lender assign this agreement as a public

offer of participation. Borrower consents to a private placement transaction within the meaning of applicable federal securities laws.

**“Non-Bank
Qualified”:**

This proposal assumes the transaction will be deemed “Non-Bank Qualified” for federal tax purposes.

**Proposal Expiration
Date:**

This proposal must be accepted within ten (10) business days to be valid.

**Market
Disruption:**

NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, IN THE EVENT ANY MATERIAL CHANGE SHALL OCCUR IN THE FINANCIAL MARKETS AFTER THE DATE OF THIS PROPOSAL LETTER, INCLUDING BUT NOT LIMITED TO ANY GOVERNMENTAL ACTION OR OTHER EVENT WHICH MATERIALLY ADVERSELY AFFECTS THE EXTENSION OF CREDIT BY BANKS, LEASING COMPANIES OR OTHER LENDING INSTITUTIONS, LENDER MAY MODIFY THE INDEX PRICING DESCRIBED ABOVE.

Questions:

Please contact Lender with any questions you may have regarding this proposal, or to request rates based on additional payment amortization scenarios.

EXHIBIT A

Draft Amortization Schedule

Financed Amount	16,000,000.00
Tax Exempt Interest Rate	3.520%
Average Life	11.106
Funding/Closing Date	8/15/14

Pmt. No.	Year No.	Payment Date	Payment Amount	Interest Portion	Principal Portion	Outstanding Balance
1	1	10/1/14	71,964.44	71,964.44	-	16,000,000.00
2	1	4/1/15	488,501.78	281,600.00	206,901.78	15,793,098.22
3	1	10/1/15	488,501.78	277,958.53	210,543.25	15,582,554.97
4	2	4/1/16	533,864.50	274,252.97	259,611.53	15,322,943.44
5	2	10/1/16	533,864.50	269,683.80	264,180.70	15,058,762.75
6	3	4/1/17	543,412.50	265,034.22	278,378.28	14,780,384.47
7	3	10/1/17	543,412.50	260,134.77	283,277.73	14,497,106.74
8	4	4/1/18	553,130.00	255,149.08	297,980.92	14,199,125.81
9	4	10/1/18	553,130.00	249,904.61	303,225.39	13,895,900.43
10	5	4/1/19	563,021.00	244,567.85	318,453.15	13,577,447.28
11	5	10/1/19	563,021.00	238,963.07	324,057.93	13,253,389.35
12	6	4/1/20	573,087.50	233,259.65	339,827.85	12,913,561.50
13	6	10/1/20	573,087.50	227,278.68	345,808.82	12,567,752.68
14	7	4/1/21	583,333.50	221,192.45	362,141.05	12,205,611.63
15	7	10/1/21	583,333.50	214,818.76	368,514.74	11,837,096.90
16	8	4/1/22	593,762.00	208,332.91	385,429.09	11,451,667.80
17	8	10/1/22	593,762.00	201,549.35	392,212.65	11,059,455.15
18	9	4/1/23	604,376.00	194,646.41	409,729.59	10,649,725.57
19	9	10/1/23	604,376.00	187,435.17	416,940.83	10,232,784.73
20	10	4/1/24	615,178.50	180,097.01	435,081.49	9,797,703.25
21	10	10/1/24	615,178.50	172,439.58	442,738.92	9,354,964.32
22	11	4/1/25	626,173.50	164,647.37	461,526.13	8,893,438.20
23	11	10/1/25	626,173.50	156,524.51	469,648.99	8,423,789.21
24	12	4/1/26	637,364.00	148,258.69	489,105.31	7,934,683.90
25	12	10/1/26	637,364.00	139,650.44	497,713.56	7,436,970.33
26	13	4/1/27	648,753.50	130,890.68	517,862.82	6,919,107.51
27	13	10/1/27	648,753.50	121,776.29	526,977.21	6,392,130.30
28	14	4/1/28	660,345.50	112,501.49	547,844.01	5,844,286.30
29	14	10/1/28	660,345.50	102,859.44	557,486.06	5,286,800.24
30	15	4/1/29	672,144.00	93,047.68	579,096.32	4,707,703.92
31	15	10/1/29	672,144.00	82,855.59	589,288.41	4,118,415.51
32	16	4/1/30	684,151.50	72,484.11	611,667.39	3,506,748.12
33	16	10/1/30	684,151.50	61,718.77	622,432.73	2,884,315.39
34	17	4/1/31	696,372.50	50,763.95	645,608.55	2,238,706.84
35	17	10/1/31	696,372.50	39,401.24	656,971.26	1,581,735.58

36	18	4/1/32	708,810.50	27,838.55	680,971.95	900,763.63
37	18	10/1/32	708,810.50	15,853.44	692,957.06	207,806.57
38	19	4/1/33	211,463.96	3,657.40	207,806.57	0.00
			22,183,028.52	6,183,028.52	16,000,000.00	

EXHIBIT B

Sample Anti-Dilution Test Language

Anti-Dilution. During such time as the Note is Outstanding, the County agrees and covenants with the Holders that for each Fiscal Year of the County, "Total Revenues" and "Total Other Financing Sources" as indicated on the "Schedule of General Fund Revenues, Expenditures and Changes in Fund Balance" or any successor thereto as set forth in the County's general purpose financial statements for the General Fund of the County for such Fiscal Year, less any transfers to the County's General Fund from the County's solid waste fund, less any mounts received by the County from federal grants and state grants, less any funds utilized for capital leases to which the County is the lessee and less any other grants and any other Non-Ad Valorem Funds which may not legally be used to pay debt service on the Note, plus the Ad Valorem Credit (as hereinafter defined), less the Maximum Bond Service Requirement for such Fiscal Year on Debt secured by and payable from specific source of Non-Ad Valorem Funds, less the County's total of general government expenditures and public safety expenditures (the "Adjusted Revenues"), shall be equal to at least 150% of the Maximum Bond Service Requirement on the Note and any other Debt (as defined in Section ___ hereof) of the County payable from the County's covenant to budget and appropriate Non-Ad Valorem Funds and 100% of any amounts owed in regard to amounts drawn under any surety bond or similar instrument deposited to a reserve fund issued in regard to the Debt payable from a County covenant to budget and appropriate Non-Ad Valorem Funds (collectively, the "Policy Costs").

OWNER - CONTRACTOR AGREEMENT

THIS AGREEMENT, in three (3) copies, made this 22 day of May 2015, by and between the **BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS** (herein referred to as the "Owner"), whose mailing address is 2725 Judge Fran Jamieson Way, Building A, Second Floor, Viera, Florida 32940 and **GULFSTREAM PETROLEUM SERVICES, INC.** (herein referred to as the "Contractor"), whose mailing address is 247 SW 8 Street, Suite 439, Miami, Florida 33130. All correspondence, submittals and notices relating to or required under this Contract shall be sent, in writing, to the Contractor's address above; unless either party is notified, in writing, of a change in address, and to the Facilities Construction Division, Brevard County, 2725 Judge Fran Jamieson Way, Building A, Second Floor, Viera, Florida 32940.

WITNESSETH:

WHEREAS, it is the intent of the Owner to obtain the services of the Contractor in connection with the construction of **#B-3-15-74 Utility Services Fuel Tank Replacements**, hereinafter referred to as the "Project" or the "Work"; and

WHEREAS, the Contractor desires to perform such construction on the project in accordance with the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the promises made herein and other good and valuable consideration, the following terms and conditions are hereby mutually agreed to, by and between the Owner and the Contractor:

Article 1 **DEFINITIONS**

- 1.1 All terms in this Agreement which are defined in the Advertisement for Bids, Information to Bidders and the General Conditions shall have the meanings designated herein.
- 1.2 The Contract Documents are as defined in the General Conditions and set forth herein. Such documents form the Contract, and all are as fully a part hereof as if attached to this Agreement or repeated therein. The General Conditions are those General Conditions set forth in Bid #B-3-15-74, attached hereto as Attachment 1.

Article 2 **STATEMENT OF THE WORK**

- 2.1 The Contractor shall provide and pay for all materials, tools, equipment, labor and professional and non-professional services, and shall perform all other acts and supply all other things necessary, to fully and properly perform and complete the Work, as

required by the Contract Documents, and in Attachment 2, Scope of Work, attached hereto and incorporated by reference.

- 2.2 The Contractor shall further provide and pay for all related facilities described in any of the Contract Documents, including all work expressly specified therein and such additional work as may be reasonably inferred therefrom, saving and excepting only such items of work as are specifically stated in the Contract Documents not to be the obligation of the Contractor. The totality of the obligations imposed upon the Contractor by this Article and by all other provisions of the Contract Documents, as well as the structures to be built and the labor to be performed, is herein referred to as the "Work".

Article 3 **DESIGN CONSULTANT**

- 3.1 The Design Consultant (as defined in the General Conditions) shall be Tilden Lobnitz Cooper Engineers whose mailing address is 874 Dixon Boulevard, Cocoa, FL provided, however, that the Owner may, without liability to the Contractor, unilaterally amend this Article from time to time by designating a different person or organization to act as its Design Consultant and so advising the Contractor in writing, at which time the person or organization so designated shall be the Design Consultant for purposes of this Contract.

Article 4 **TIME OF COMMENCEMENT AND COMPLETION**

- 4.1 The Contractor shall commence the Work promptly upon the date established in the Notice to Proceed. If there is no Notice to Proceed, the date of commencement of the Work shall be the date of this Agreement or such other date as may be established herein.
- 4.2 Time is of the essence. The Contractor shall achieve Completion, as defined in the General Conditions, within **One Hundred Twenty (120) calendar days** from the date of Notice to Proceed or the date otherwise established for the commencement of Work. This time period shall be designated the Contract Time.
- 4.3 The Contractor shall also complete the following activities of Work within the interim Milestone dates indicated, as applicable:

Activity

- | | |
|---------------------------|---|
| A. Substantial Completion | <u>Ninety (90) calendar days</u> from Notice to Proceed. <i>(includes two (2) weeks for Permitting)</i> . |
| A. Final Completion | (All required closeout documents)
<u>Thirty (30) calendar days</u> from contracted Substantial Completion |

- 4.4 Should the Contractor fail to substantially complete the Work on or before the date stipulated as a Milestone date in Article 4.3 above, or for Substantial Completion (or such later date as may result from an extension of time granted by the Owner), the Contractor shall (upon staff's recommendation to and approval by the Board of County Commissioners) pay the Owner as liquidated damages the sum of \$500 for each

consecutive calendar day that terms of the contract remain unfulfilled beyond the date allowed by the Contract, which sum is agreed upon as a reasonable and proper measure of damages which the owner will sustain per day by failure of the Contractor to complete within time as stipulated; it being recognized by the Owner and the Contractor that the injury to the Owner which could result from a failure of the Contractor to complete on schedule is uncertain and cannot be computed exactly. In no way shall cost for liquidated damages be construed as a penalty on the Contractor. The Owner may deduct any Liquidated Damages incurred under this paragraph from pending Payment Applications.

- 4.5 For each consecutive calendar day that the Work remains incomplete after the date established for Final Completion, the Owner shall (upon staff's recommendation to and approval by the Board of County Commissioners) retain from the compensation otherwise to be paid to the Contractor the sum of \$500. This amount is the minimum measure of damages the Owner will sustain as a failure of the Contractor to complete all remedial work, correct deficient work, clean up the project and other miscellaneous tasks as required to complete all work specified. This amount is in addition to the liquidated damages prescribed above and represents compensation for additional costs the Owner could incur or suffer caused by on-going construction while occupying the Project. Such costs could include, but are not limited to, additional inspections, additional security and safety measures, temporary facilities or structures, reduced employee efficiency, additional operating costs, employee overtime, split shift, insurance, etc.
- 4.6 The amount of liquidated damages set forth in Articles 4.4 and 4.5 hereinabove shall be assessed cumulatively. The items of cost included in the assessment of liquidated damages are as defined in the General Conditions.

Article 5 **CONTRACT SUM**

- 5.1 Provided that the Contractor shall strictly and completely perform all of its obligations under the Contract Documents, and subject only to additions and deductions by Modification or as otherwise provided in the Contract Documents, the Owner shall pay to the Contractor, in current funds and at the time and in the installments hereinafter specified, the sum of **One Hundred Sixty Nine Thousand, Eight Hundred Dollars (\$169,800.00)** herein referred to as the "Contract Sum".


Article 6 **PROGRESS PAYMENTS**

- 6.1 The Contractor hereby agrees that on or about the last day of every month during the performance of the Work the Contractor will deliver to the DESIGN CONSULTANT an Application for Payment of the work for the preceding thirty (30) days in accordance with the provisions of Article 9 of the General Conditions. This date may be changed upon mutual agreement, stated in writing, between the Owner and Contractor. Payment under this Contract shall be made as provided in the General Conditions and in accordance with Florida Statutes.


Article 7
OTHER REQUIREMENTS

- 7.1 The Contractor shall submit certified copies of the recorded Performance Bond and Payment Bond, as well as Certifications of Insurance as required by the Contract Documents *prior to commencing work on the jobsite.*
- 7.2 The Owner shall furnish to the Contractor, at the Contractor's request, any leftover/returned set(s) of drawings and specifications, at no extra cost, for use in the Construction of the Work. Additional sets of drawings or specifications shall be obtained by the Contractor at the Contractor's own expense.
- 7.3 The Contractor shall perform at least ten percent (10%) of the total Work with forces that are in the direct employment of the Contractor's organization.

This Agreement entered into as of the day and year first written above.

ATTEST: 

Scott Ellis, Clerk



**BREVARD COUNTY
BOARD OF COUNTY COMMISSIONERS**

By: 

Robin Fisher, Chairman

As approved by the Board on: C.I.P.



GULFSTREAM PETROLEUM SERVICES, INC.
(Seal)

ATTEST: 

By: Mark D. Watson

**GENERAL CONDITIONS OF THE
CONTRACT FOR CONSTRUCTION**

ARTICLE 1

CONTRACT DOCUMENTS

1.1 DEFINITIONS

1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents consist of the Owner-Contractor Agreement, the Conditions of the Contract (General, Supplementary and other Conditions), the Performance and Labor and Material Payment Bonds, Bid Bond, the Drawings, the Specifications, and all Addenda issued prior to and all Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order issued pursuant to the provisions of Article 12, (3) a written order for a minor change in the Work issued by the Design Consultant pursuant to Article 12. The Contract Documents include Bidding Documents such as the Invitation or Advertisement for Bids, the Information to Bidders, sample forms, the Contractor's Bid or portions of Addenda relating to any of these.

The Contract Documents do not include any other documents, including but not limited to soils, geotechnical or other reports, boundary or other surveys and analyses, hereinafter "technical data"; which may be printed, bound or assembled with the contract documents, or otherwise made available to the Contractor for review or information under this Contract, unless specifically enumerated and expressly incorporated by reference in the Owner-Contractor Agreement.

The Contractor may rely upon the general accuracy of the technical data contained in such reports and drawings, but such reports and drawings are not contract documents. Such technical data is identified in the Supplementary Conditions. Except for such reliance on such technical data, the Contractor may not rely upon or make any claim against Owner with respect to:

- A. The completeness of such reports and drawings for Contractor's purposes, including but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by the Contractor and safety precautions and programs incident thereto, or;
- B. Other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings, or;
- C. Any Contractor interpretation of or conclusion drawn from any technical data or any such data, interpretations, opinions or information.

1. The Drawings and Specifications referred to in the Contract Documents have been prepared by TLC Engineering.

1.1.2 THE CONTRACT

The Contract is the sum of all the Contract Documents. This Contract represents the entire and integrated Agreement between the Owner and the Contractor and

supersedes all prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification as defined in Subparagraph 1.1.1 and notwithstanding anything contained in the Contract Documents to the contrary, there can be no increase in the Contract Sum or Time without an executed change order approved by the Board of County Commissioners.

1.1.3 THE WORK

The Work comprises the completed construction required by the Contract Documents and includes all labor, supplies and other facilities or things necessary to produce such construction, and all materials, equipment, and supplies incorporated or to be incorporated in such construction.

1.1.4 FURNISH, INSTALL, PROVIDE

The terms "Furnish" or "Install" or "Provide", unless specifically limited in context, mean: Furnishing and incorporating a specified item, product or material in the work, including all necessary labor, materials, equipment to perform the work required, ready for use.

1.1.5 NOTICE

The term "Notice" as used herein shall mean written notice. Written notice shall be deemed to have been duly served when delivered to or at the last known business address of the person, firm or corporation for whom intended, or to their or its duly authorized agent, representative or officer; or when enclosed in a postage prepaid wrapper or envelope addressed to such person, firm or corporation at their or its last known business address and deposited in a United States mailbox.

1.1.6 MISCELLANEOUS WORDS OR TERMS

Whenever they refer to the work or its performance, "Directed", "Required", "Permitted", "Ordered", "Designated", "Prescribed", and words of like import shall imply the direction, requirements, permission, order, designation or prescription of the Owner or Design Consultant, and "Approved", "Acceptable", "Satisfactory", "in the judgment of" and words of like import shall mean approved by or acceptable to or satisfactory to, in the judgment of the Owner.

1.1.7 BIDDER: Any individual, company, corporation, partnership, or joint venture who submits a bid for work required as distinct from a sub-bidder who submits a bid to a prime bidder.

1.1.8 BIDDING DOCUMENTS: The Invitation or Advertisement for Bid, Contractor's Qualification Statement, Information to Bidders, Sample Forms, Proposal, Specifications, Drawings and Addenda issued prior to receipt of bids.

1.1.9 DIRECTED, REQUIRED, ACCEPTABLE: When these words refer to work or its performance, "directed," "required," "permitted," "ordered," "designated," "prescribed," and words of like implication, mean "by direction of," "requirements of," "permission of," "order of," "designation of," or "prescription of" the Design Consultant. Likewise, "acceptable," "satisfactory," "in the judgement of," and words of like import, mean "recommended by," "acceptable to," "satisfactory to," or "in the judgement of" the Design Consultant.

- 1.1.10 AS SHOWN, AS INDICATED, AS DETAILED: These words, and words of like implication, refer to information contained by drawings describing the work, unless explicitly stated otherwise in other Contract Documents.
- 1.1.11 MANUFACTURER: An individual, company, or corporation who manufactures, fabricates, or assembles a standard product. A standard product is one that is not made to special design, and is furnished by either direct sale or by contract to the Contractor, Subcontractor or Vendor.
- 1.1.12 MATERIAL SUPPLIER OR VENDOR: A person or organization who supplies, but who is not responsible for the installation of, materials, products and equipment of a standard nature that are not specifically fabricated for this particular Contract.
- 1.1.13 PLANS OR DRAWINGS: All drawings or reproduction of drawings pertaining to required work.
- 1.1.14 PRODUCT: The term "product" includes materials, systems and equipment.
- 1.1.15 PROPOSAL: A complete and properly signed document whereby a bidder proposes to do the work or designated portion thereof for the sums stipulated therein, supported by data called for by the bidding requirements.
- 1.1.16 SPECIFICATIONS: Descriptions, provisions and requirements, pertaining to method and manner of performing work, or to quantities and qualities of materials to be furnished under terms of the Contract.
- 1.1.17 DAY: Calendar day unless otherwise specifically designated. All dates shall mean midnight of the indicated day unless otherwise stipulated.

1.2 EXECUTION, CORRELATION AND INTENT

- 1.2.1 The Contract Documents shall be signed in not less than triplicate by the Owner and Contractor and each of which shall be deemed an original, but all of which shall constitute one and the same instrument. If either the Owner or the Contractor or both do not sign the Contract Documents, then they shall be as described in Paragraph 1.1.1.
- 1.2.2 By executing the Contract, the Contractor represents that the Contractor has visited the site, and become familiar with the local conditions under which the Work is to be performed, and correlated observations with the requirements of the Contract Documents. Contractor further represents that the Design Drawings and Specifications contain some minor errors and discrepancies, however, if such errors or discrepancies would affect contract time or price, the Contractor addressed them during the bidding phase. Such errors and discrepancies shall not form the basis of any claim by Contractor for defective design or breach of any implied warranties as to fitness of plans or specifications against Owner.
- 1.2.3 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work. The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all. Performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the intended results. Words and abbreviations which have well-known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings unless

otherwise specifically defined herein. The table of contents, index, titles, headings, running headlines and marginal notes contained herein and in said documents are solely to facilitate reference to various provisions of the Contract Documents and in no way affect, limit or cast light upon the interpretation of the provisions to which they refer.

1.2.4 The organization of the Specifications into divisions, sections and articles, and the arrangement of Drawings is for clarity only, and shall not control the Contractor in dividing the work among Subcontractors or in establishing the extent of Work to be performed by any trade. The Contractor may subcontract the Work in such divisions as the Contractor sees fit and the Contractor is ultimately responsible for furnishing all work shown on the drawings and/or in the Specifications.

1.2.5 Anything shown on the drawings and not mentioned in the specifications or mentioned in the specifications and not shown on the drawings shall have the same effect as if shown or mentioned respectively in both. Technical specifications take priority over general specifications and detail drawings take precedence over general drawings. Any work shown on one drawing shall be construed to be shown in all drawings and the contractor will coordinate the work and the drawings. If any portion of the Contract Documents shall be in conflict with any other portion, the various documents comprising the Contract Documents shall govern in the following order of precedence: The Owner- Contractor Agreement; Modifications; Addenda; any Supplementary Conditions; the General Conditions; the Specifications; the Drawings; as between schedules and information given on Drawings, the schedules shall govern; as between figures given on Drawings and the scaled measurements, the figures shall govern; as between large-scale Drawings and small scale Drawings, the larger scale shall govern. Any such conflict or inconsistency between or in the drawings shall be submitted to the Design Consultant whose decision thereon shall be final and conclusive.

1.2.6 The Contractor agrees that nothing contained in the Contract Documents or any contract between the Owner and the Design Consultant shall create any contractual relationship between the Design Consultant and the Contractor and any Subcontractor or Sub-subcontractors. The Contractor acknowledges and agrees that this Contract is not intended to create, nor shall any provision be interpreted as creating, any contractual relationship between the Owner or Contractor and any third parties.

1.2.7 The provisions of this Contract cannot be amended, modified, varied or waived by the Owner or its agents or representatives in any respect except by a modification approved and executed by the Brevard County Board of County Commissioners. The Contractor is hereby given notice that no person has authority to orally waive, or to release the Contractor from any of the Contractor's duties or to alter obligations under or arising out of this Contract. Any waiver, approval or consent granted by Modification to the Contractor shall be limited to those matters specifically and expressly stated thereby to be waived, approved or consented to and shall not relieve the Contractor of the obligation to obtain any future waiver, approval or consent.

1.2.8 Any material or operation specified by reference to published specifications of a manufacturer, a society, an association, a code, or other published standard, shall comply with requirements of the listed document which is current on date of receipt of bids. In case of a conflict between referenced document and project specifications, project specifications shall govern. In case of a conflict between

referenced documents, the one having more stringent requirements shall govern.

1.2.9 The Contractor, if requested, shall furnish an affidavit from manufacturer certifying that materials or product delivered to job meets requirements specified.

1.3 **OWNERSHIP AND USE OF DOCUMENTS**

1.3.1 All Drawings, Specifications and copies thereof furnished to the Contractor are and shall remain the property of the Design Consultant and/or Owner. They are to be used only with respect to this Project and are not to be used on any other project. With the exception of one contract set for each party to the Contract, such documents are to be returned or suitably accounted for to the Design Consultant on request at the completion of the Work. Submission or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Design Consultant's common law copyright or other reserved rights.

ARTICLE 2

THE DESIGN CONSULTANT

2.1 **DEFINITIONS**

2.1.1 The terms "Design Consultant" or "A/E" or "Architect" or "Engineer" as used or set forth in the Contract Documents, shall mean the entity and its consulting firm or agencies, or their duly authorized representatives, that is responsible for designing or engineering the work, and performing the activities specified herein, as identified in the Owner-Contractor Agreement, including any consulting-engineers or subcontractors to said entity or firm. Such firm or agency and its representatives shall act severally within the scope of particular duties entrusted to them, unless otherwise provided for in the Contract.

2.1.2 The Design Consultant is identified in the Owner-Contractor Agreement and is referred to throughout the Contract Documents as if singular in number. The Design Consultant is further described as and, throughout this document, shall mean one or both of the following:

2.1.2.1 ARCHITECT, a person or other legal entity lawfully licensed to practice architecture in the state wherein the Project is located; or

2.1.2.2 ENGINEER, a person or other legal entity lawfully licensed to practice engineering in the state wherein the Project is located.

2.1.3 DESIGN CONSULTANT: TLC Engineering, 874 Dixon Boulevard, Cocoa, Florida

2.2 **SERVICES OF THE DESIGN CONSULTANT**

2.2.1 The Design Consultant will provide certain services as hereinafter described.

2.2.2 Should errors, omissions, or conflicts in the Drawings, Specifications, or other Contract Documents prepared by the Design Consultant be discovered, the Design Consultant will prepare such amendments or supplementary documents and provide consultation as may be required.

2.2.3 The Design Consultant will visit the site at intervals appropriate to the stage of construction to familiarize itself generally with the progress and quality of the

Work. The Design Consultant will not be required to make exhaustive or continuous on-site inspections to check the quality and quantity of the Work, but shall make as many inspections as may reasonably be required to fulfill its obligations to the Owner. On the basis of such on-site observations and his powers under the Contract, the Design Consultant shall endeavor to secure the faithful performance of the Contract by Owner and Contractor. The Design Consultant shall:

- determine the progress and quality of the Work, subject to the right of the Owner to make an overriding decision to the contrary;
- interpret the requirements of the drawings and specifications and issue supplemental instructions to the Contractor as may be required;
- recommend to the Owner suspension of the Work (in whole or in part) whenever such suspension may be necessary to ensure the proper execution of the Contract;
- have authority to reject, in writing, Work which does not conform to the requirements of the drawings and specifications.

The Design Consultant shall have no authority to approve or order changes in the Work which alter the design concept or which call for an extension of time or a change in the contract price. Upon request, the Design Consultant shall confirm, in writing, within ten (10) days, any oral order or determination made by the Design Consultant.

2.2.4 The Design Consultant will render written field reports to the Owner in the form required by the Owner relating to the periodic visits and inspections of the Project required by Subparagraph 2.2.3.

2.2.5 The Design Consultant and Owner shall at all times have access to the Work wherever it is in preparation or progress. The Contractor shall provide safe facilities for such access so the Design Consultant may perform the Design Consultant's functions under the Contract Documents.

2.2.6 As required, the Design Consultant will render to the Owner, within a reasonable time, interpretations concerning the design and other technical aspects of the Work and the Contract Documents.

2.2.7 All communications, correspondence, submittals, and documents exchanged between the Design Consultant and the Contractor in connection with the Project shall be copied to the Owner and/or in a manner prescribed by the Owner.

2.2.8 Although the Owner is bound by the terms of the Contract with the Contractor, including the drawings and specifications, the Owner shall have the right, but not the duty, to countermand any decision of the Design Consultant and to follow or reject the advice of the Design Consultant, including but not limited to acceptance of the Work, as the Owner deems best. In those instances where the Design Consultant has been given authority to inspect, recommend, make a decision, etc., the Design Consultant shall promptly do so, but in the case of disagreement between them, the decision of the Owner shall be final. The party taking issue with the determination, interpretation or decision of the Design Consultant shall give the other party written notice of such fact within seven (7) calendar days after the determination, interpretation or decision is communicated by the Design Consultant. In the actual performance of the Work, however, the Contractor shall, in the first instance, proceed in accordance with the instructions given by the Design Consultant unless the Owner and the Contractor mutually agree that the Contractor shall proceed otherwise.

- 2.2.9 The Design Consultant's decisions in matters relating to artistic effect will be final if consistent with the intent of the Contract Documents.
- 2.2.10 All orders from the Owner to the Contractor shall either be transmitted through the Design Consultant or the Design Consultant shall be informed of the order by the Owner.
- 2.2.11 The Design Consultant shall provide to the Owner and the Contractor after each visit to the site, a written report indicating the date, time of day, weather conditions and the names of the persons representing the Design Consultant who participated in the visit. The report shall advise the Owner of any problems that were noted and shall compare the Design Consultant's observations of the actual progress of the Work with that reported by the Contractor. On the basis of the Design Consultant's on-site observations, the Design Consultant shall make every reasonable effort to guard the Owner against defects and deficiencies in the Work of the Contractor. If the Design Consultant observes any Work that does not conform to the Contract Documents, the Design Consultant shall report this observation to the Contractor and Owner. The Design Consultant will prepare and submit to the Contractor and Owner a field report which will identify the Contractor's Work which is not in conformance with the Contract Documents. The Design Consultant shall have reasonable time to complete the field report. The Contractor shall, upon receipt of the field report, cause the defective, omitted or non-conforming work listed in the field report to be corrected and/or completed, and its acceptance acknowledged before.
- 2.2.12 The Design Consultant shall not be responsible for construction means, methods, techniques, sequences or procedures (other than those expressly specified in the Contract Documents), or for safety precautions and programs in connection with the Work, and the Design Consultant shall not be responsible for the Contractor's failure to carry out the Contractor's own responsibilities.
- 2.2.13 The Design Consultant shall have the authority and responsibility to inspect the Work, to note and report defective Work and deviations from the Contract Documents to the Owner, to reject same, and to recommend to the Owner the suspension of the Work when necessary to prevent defective Work from proceeding or being covered.
- 2.2.14 All material and workmanship shall be subject to inspection, examination and test by the Owner and/or its Design Consultant at any and all times during manufacture and/or construction. The Design Consultant shall have authority to reject defective materials and workmanship and require its correction. Rejected workmanship shall be satisfactorily corrected and rejected materials shall be satisfactorily replaced with proper material without charge therefore and the Contractor shall promptly segregate and remove the rejected material from the premises. If the Contractor fails to proceed at once with replacement of rejected material and/or the correction of defective workmanship, the Owner may, by contract or otherwise, replace such material and/or correct such workmanship and charge the cost to the Contractor, or may terminate the right of the Contractor to proceed as provided in the General Conditions, the Contractor and surety being liable for any damages.
- 2.2.15 Jobsite inspections, tests conducted on site or tests of materials gathered on site, which the Contract requires to be performed by independent entities, shall be contracted and paid for by the Owner, unless specified otherwise. Examples of such tests are the testing of cast in-place concrete, foundation materials, soil

compaction, pile installations, caisson bearings and steel framing connections. Although conducted by independent testing entities, the Owner will not contract and pay for test or certifications of materials, manufactured products or assemblies which the Contract, codes, standards, etc., require to be tested and/or certified for compliance with industry standards such as Underwriters Laboratories, Factory Mutual or ASTM. If there are any fees to be paid for such tests and certifications, they will be paid by the Contractor. The Contractor shall also pay for inspections, tests and certifications which the Contract specifically requires the Contractor to perform or pay, together with any inspections and tests which the Contractor chooses to perform for the Contractor's own quality control purposes. The Contractor shall promptly furnish, without additional charge, all reasonable facilities, labor and materials necessary and convenient for making such tests. Except as provided below, whenever such examination and testing finds defective materials, equipment or workmanship, the Contractor shall reimburse the Owner for all costs of re-examination and re-testing.

- 2.2.16 Should it be considered necessary or advisable by the Owner or the Design Consultant at any time before final acceptance of the entire Work to make an examination of any part of the Work already completed, by removing or tearing out portions of the Work, the Contractor shall, on request, promptly furnish all necessary facilities, labor and materials to expose the Work to be tested to the extent required. If such Work is found to be defective in any respect, due to the fault of the Contractor or his subcontractors, the Contractor shall pay all expenses of uncovering and identifying the Work, of examination and testing, and of satisfactory reconstruction. If, however, such Work is found to meet the requirements of the Contract, the actual cost of the Contractor's labor and material necessary involved in uncovering the Work, the cost of examination and testing and Contractor's cost of material and labor necessary for replacement shall be paid to the Contractor and the Contractor shall, in addition, if completion of the Work has been delayed thereby, be granted a suitable extension of time.
- 2.2.17 The Design Consultant will recommend to the Owner that the Work be suspended when in the Design Consultant's judgment the drawings and specifications are not being followed. Any such suspension shall be continued only until the matter in question is resolved to the satisfaction of the Owner. The cost of any such Work stoppage shall be borne by the Contractor unless it is later determined that no fault existed in the Contractor's Work.
- 2.2.18 The Design Consultant will review Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for conformance with the design concept of the Work and for general compliance with the Contract Documents. Such action shall be taken within **fourteen (14) days** of receipt unless specified otherwise.
- 2.2.19 The Owner will establish with the Design Consultant procedures to be followed for review and processing of all Shop Drawings, catalog submittals, project reports, test reports, maintenance manuals, and other necessary documentation, as well as requests for changes and applications for extensions of time.
- 2.2.20 The Design Consultant will review Change Orders as required under the Contract Documents.
- 2.2.21 The Design Consultant and the Owner will conduct inspections to determine the dates of Substantial Completion and Final Completion, and will jointly issue a final Certificate for Payment. The Design Consultant and Owner shall be responsible for issuance of Certificates of Substantial and Final Completion.

2.2.22 The Design Consultant will prepare a set of reproducible record prints of Drawings showing significant changes in the Work made during the construction process, based on neatly and clearly marked-up prints, Drawings, and other data furnished by the Contractor. The Design Consultant will also provide the Owner assistance in the original operation of any equipment or system such as initial start-up, testing, adjusting, and balancing.

2.2.23 In case of the termination of the employment of the Design Consultant, the Owner may appoint a new Design Consultant whose status under the Contract Documents shall be that of the former Design Consultant, or the Owner may assume all of the services of the Design Consultant thereafter.

ARTICLE 3

OWNER

3.1 DEFINITION

3.1.1 The Owner is the person or entity identified as such in the Owner-Contractor Agreement and is represented by the Facilities Construction Division. The Owner is referred to throughout the Contract Documents as if singular in number.

3.1.2 Owner: **Brevard County Board of County Commissioners
Facilities Engineering & Construction
Attn: Joan Van Sickle, Construction Manager
2725 Judge Fran Jamieson Way
Building A, 2nd Floor
Viera, Florida 32940
(321) 633-2050; fax (321) 633-2101**

3.2 CONSTRUCTION PROGRAM MANAGER (IF APPLICABLE)

3.2.1 The Owner may contract with a Construction Program Manager who will assist and advise the Owner during Project construction and until the issuance of the final Certificate for Payment. If a Construction Program Manager is utilized, the Owner's communications with the Contractor and the Design Consultant shall generally be through the Construction Program Manager, who will assist the Owner with regard to the Project. The Owner must approve all payments to the Contractor and, notwithstanding anything in the Contract Documents to the contrary, **only the Brevard County Board of County Commissioners has the authority to authorize or issue Change Orders.** Neither the Design Consultant nor Construction Program Manager shall have any authority to authorize or issue change orders. If applicable, all of the Contractor's communications to the Owner or to the Design Consultant shall be exclusively through the Construction Program Manager.

3.2.2 The Construction Program Manager, **if applicable**, will represent the Owner, but the Owner has the right but not the duty to countermand any decision or action of the Construction Program Manager, and to follow or reject the advice of the Construction Program Manager. The Construction Program Manager is not authorized to revoke, alter, change, relax, or release any requirements of the Contract, nor to approve or accept any portion of the Work not performed in accordance with, nor to issue instructions contrary to, the Contract Documents.

3.3 INFORMATION, SERVICES AND RIGHTS OF THE OWNER

- 3.3.1 The Owner will provide administration of the Contract as hereinafter described.
- 3.3.2 The Owner shall at all times have access to the Work whenever it is in preparation or progress. The Contractor shall provide safe facilities for such access.
- 3.3.3 Owner shall not be responsible for or have control or charge of construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with Work, and will not be responsible for Contractor's failure to carry out the Work in accordance with the Contract Documents.
- 3.3.4 The Owner or Design Consultant will have authority to require special inspection or testing of the work in accordance with Subparagraph 2.2.14, whether or not such Work has been fabricated, installed, or completed. However, neither the Owner's or Design Consultant's authority to act under this Subparagraph, nor any decision made by the Owner or Design Consultant in good faith either to exercise or not to exercise such authority shall give rise to any duty or responsibility of the Owner or Design Consultant to the Contractor, any Subcontractor, any of their agents or employees, or any other person performing any of the Work.
- 3.3.5 The Owner shall have the authority and discretion to call, schedule, and conduct job meetings to be attended by the Contractor, representatives of his Subcontractors, and the Design Consultant, to discuss such matters as procedures, progress, problems, and scheduling.
- 3.3.5.1 Each Contractor is requested and required to attend scheduled job site progress conferences as called by the Design Consultant. Contractor shall be represented at these job progress conferences by an authorized representative of the home office of the Contractor as well as by project personnel representatives. These meetings shall be open to subcontractors and material suppliers, and any others who can contribute shall be encouraged by Contractor to attend. It shall be the principal purpose of these meetings, or conferences, to affect coordination, cooperation and assistance in every practical way toward the end of maintaining progress of the project on schedule and to complete the project within the specified Contract Time. Each Contractor shall be prepared to assist progress of the work and to recommend remedial measures for the correction of progress as may be appropriate. The Owner shall be the coordinator of the conferences and shall preside as chairman or assign the responsibility to the Design Consultant.
- 3.3.6 The Owner, with the Design Consultant's assistance, will establish procedures to be followed for processing all Shop Drawings, catalogs, pay requests, change orders, test reports, maintenance manuals, and any other project reports and/or documentation.
- 3.3.7 The Design Consultant will review and make recommendations regarding all requests for changes and the Design Consultant shall implement the processing of Change Orders, including applications for extension of the Contract Time.
- 3.3.8 The Owner, however, will not be responsible for the failure of Contractor to plan, schedule, and execute the Work in accordance with the approved schedule or the failure of the Contractor to meet scheduled completion dates or the failure of the Contractor to schedule and coordinate the Work of the Contractor's own trades and Subcontractors or to coordinate and cooperate with other separate contractors.

- 3.3.9 The Owner, in consultation with the Design Consultant, will each review and process all Applications for Payment by the Contractor, including the final Application for Payment within seven (7) calendar days.
- 3.3.10 The Owner and Design Consultant shall not be responsible or liable to Contractor for the acts, errors or omissions of the Contractor, any separate Subcontractor, any separate contractor or any contractor's or subcontractor's agents or employees, or any other persons performing any of the Work.
- 3.3.11 The Owner shall furnish all surveys describing the physical characteristics, legal limitations and utility locations for the site of the Project. Such documents are not part of the Contract Documents and are provided for Contractor's information only.
- 3.3.12 The Owner shall secure and pay for necessary easements required for permanent structures or for permanent changes in existing facilities. The Contractor shall provide all necessary as-built legal descriptions and documentation required for applicable easements, on a timely basis in order to avoid any adverse impact on project schedule.
- 3.3.13 The Owner will make available for the Contractor's reasonable review, at the Owner's offices or together with the Contract Documents, certain boring logs, geotechnical, soils and other reports, surveys and analyses pertaining to the Contract site of which the Owner is aware and has in its possession. Any boring logs that are provided to the Contractor are only intended to reflect conditions at the locations of the borings and do not necessarily reflect site conditions at other locations. Any reports, surveys, boring logs and analyses provided by Owner are for the Contractor's information only, and their accuracy and completeness are not guaranteed or warranted by the Owner or the Design Consultant, and such reports are not adopted by reference into, nor are they part of the Contract Documents. Notwithstanding any factual statement, conclusion, or any language or recommendations contained in such reports, the Contractor assumes full responsibility for inspection of the site and determination of the character, legal limits, quality and quantity of any soil, surface or subsurface conditions that may be encountered or which may affect the Work, and for the means and methods of construction that the Contractor employs when performing the Work.
- 3.3.14 The foregoing rights are in addition to other rights of the Owner enumerated herein and those provided by law.

3.4 **OWNER'S RIGHT TO STOP OR TO SUSPEND THE WORK**

- 3.4.1 If Contractor fails to correct defective Work as required by Paragraph 13.2 or fails to carry out the Work or supply labor and materials in accordance with the Contract Documents, the Owner by a written order may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated.
- 3.4.2 The Owner may order the Contractor in writing to suspend, delay, or interrupt all or any part of the Work for such period of time as the Owner may determine to be appropriate for the convenience of the Owner.
- 3.4.3 If the performance of all or any part of the Work is, for an unreasonable period of time, suspended, delayed, or interrupted by an act of the Owner or the Design Consultant in the administration of this Contract, or by failure of any one of them to act within the time specified in this Contract (or if no time is specified, within a

reasonable time), an adjustment shall be made for an increase in the actual time required for performance of the Work by the Contractor, due solely to such unreasonable suspension, delay, or interruption and the Contract modified in writing accordingly. However, no claim for an extension of time shall be made under this Subparagraph 3.4.3 for any suspension, delay, or interruption pursuant to Subparagraph 3.4.1, or for which claim is provided or excluded under any other provision of this Contract. No claim under this Subparagraph shall be allowed for an extension of time required for performance, unless the claim for an extension of time is asserted in writing as soon as practicable after the termination of such suspension, delay, or interruption, or no later than 20 days after the act or failure to act involved. The Contractor must submit to the Owner a written statement setting forth, as then practicable, the extent of such claimed time extension. Any time extension granted shall only be for the unreasonable portion of the delay to critical work activities and in accordance with Article 8 hereof.

- 3.4.4 In the event of a suspension of work or delay or interruption of work per Article 3.4.3, the Contractor will and will cause the Contractor's subcontractors to protect materials and work against damage or injury from the weather and maintain completed and uncompleted portions of the work as required by the Contract Documents. If, in the opinion of the Owner any work or material shall have been damaged or injured by reason of failure on the part of the Contractor or any of its subcontractors to so protect same, such work and materials shall be removed and replaced at the expense of the Contractor.
- 3.4.5 No claim by the Contractor for an equitable adjustment under Subparagraph 3.4.3 shall be allowed if asserted after final payment under this Contract.

3.5 **OWNER'S RIGHT TO CARRY OUT THE WORK**

- 3.5.1 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within seventy two (72) hours after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, with a copy of such notice sent to the Contractor's surety, and without prejudice to any other remedy, make good such deficiencies and may further elect to complete all Work or any portion thereof, through such means as the Owner may select, including the use of a new contractor pursuant to Article 3.5.2. In such case the Owner shall provide notice to the Contractor's surety and an appropriate Change Order shall be issued deducting from the payments then or thereafter due the Contractor the cost of correcting such deficiencies, including compensation for the Design Consultant's, the Owner's additional services made necessary by such default, neglect or failure. Notwithstanding the Owner's right to carry out a portion of the work, maintenance and protection of the work remains the Contractor's and Surety's responsibility as provided for in the Performance Bond and Guarantee of Contractor.
- 3.5.2 Whenever the Contractor is declared by the Owner to be in default under the Contract, the Surety shall promptly remedy the default, or shall promptly:
- 1) Complete the Contract in accordance with its terms and conditions, or,
 - 2) Obtain a bid or bids for completing Contract in accordance with its terms and conditions upon determination by Owner and Surety jointly of lowest qualified bidder, arrange for a contract between such bidder and Surety to complete Work and provide any required warranty work on service.

ARTICLE 4

CONTRACTOR

4.1 DEFINITION

4.1.1 The Contractor is the person or organization identified as such in the Owner-Contractor Agreement and is referred to throughout the Contract Documents as if singular in number. The term Contractor means the Contractor or its authorized representative, who shall have authority to bind the Contractor in all matters pertinent to this Contract.

4.1.2 This entire Contract is not one of agency by the Contractor for Owner but one in which Contractor is engaged independently in the business of providing the services and performing the Work herein described as an independent contractor.

4.2 REVIEW OF CONTRACT DOCUMENTS

4.2.1 Before placing a proposal to the Owner, and continuously after execution of the Contract, the Contractor shall carefully study and compare the Contract Documents and shall at once report to the Owner through the Design Consultant any error, inconsistency or omission the Contractor may discover, including any requirement which may be contrary to any law, ordinance, rule, regulation or order of any public authority bearing on the performance of the Work. If the Contractor has reported in writing an error, inconsistency or omission, has promptly stopped the affected work until otherwise instructed, and has otherwise followed the instructions of the Owner, the Contractor shall not be liable to the Owner or the Design Consultant for any damage resulting from any such errors, inconsistencies or omissions in the Contract Documents. The Contractor shall perform no portion of the Work at any time without being awarded the Contract and receiving a Notice to Proceed under these Contract Documents, and, where required, possessing approved Shop Drawings, Product Data or Samples for such portion of the Work.

4.2.2 The Contractor and all Subcontractors shall keep at the site of the Work at least one copy of an approved set of drawings and specifications, including all modifications and clarifications, and approved submittals and shall at all times give the Owner and the Design Consultant, inspectors, as well as other representatives of the Owner access thereto.

4.3 SUPERVISION AND CONSTRUCTION PROCEDURES

4.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over all construction means, methods, techniques, sequences and procedures of construction and for coordinating all portions of the Work under the Contract.

4.3.1.1 It shall be the responsibility of the Contractor to coordinate the work with other Prime Contractors; to maintain a progress schedule for all Prime Contractors for this project; and to notify the Owner and the Design Consultant of any changes in the progress schedule. The Contractor shall be responsible for providing adequate notice to all Prime Contractors to insure efficient continuity of all phases of the project work. Each other Prime Contractor is held responsible for keeping the Contractor fully informed as to its work progress, including

immediate notification of any work progress changes.

4.3.2 The Contractor shall be responsible to the Owner for the acts and omissions of the Contractor's employees, Subcontractors and Sub- subcontractors, suppliers, their agents and employees, and other persons performing any of the Work and for their compliance with each and every requirement of the Contract Documents, in the same manner as if they were directly employed by the Contractor.

4.3.3 The Contractor shall not be relieved from any obligations to perform the Work in accordance with the Contract Documents either by the acts, failures to act or duties of the Owner or the Design Consultant in their administration of the Contract, or by inspections (or lack thereof), tests or approvals (or lack thereof) required or performed under Paragraph 7.6 by persons other than the Contractor.

4.3.4 Before starting any section of work, the Contractor shall carefully examine all preparatory work that has been executed to receive the Contractor's work to see that it has been completed in accordance with the Contract Documents. The Contractor shall check carefully, by whatever means are required, to ensure that all Work and adjacent, related work will finish to proper and required standards for quality, contours, planes, and levels.

4.3.5 The Contractor understands and agrees that the Owner and Design Consultant will not be responsible for and will not have control or charge of construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, and they will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents. The Owner and the Design Consultant will not be responsible for or have control or charge over the acts or omissions of the Contractor, Subcontractors, or any of their agents or employees, or any other persons performing any of the Work.

4.3.6 The Contractor shall employ no plant, equipment, materials, methods or persons to which the Owner and Design Consultant have a reasonable objection and shall remove no portion of the Work or stored materials from the site of the Work.

4.4 **CONTRACTOR'S REPRESENTATIONS**

4.4.1 By entering into this Contract with the Owner, the Contractor represents and warrants the following, together with all other representations and warranties in the Contract Documents:

- .1 that the Contractor is experienced in and competent to perform the type of work required and to furnish the plant, materials, supplies or equipment to be so performed or furnished by the Contractor;
- .2 that the Contractor is financially solvent, able to pay its debts as they mature, and possessed of sufficient working capital to initiate and complete the Work required under the Contract;
- .3 that the Contractor is familiar with all Federal, State, and County laws, ordinances, permits, regulations and resolutions which may in any way affect the Work or those employed therein, including but not limited to any special laws or regulations relating to the Work or any part thereof;
- .4 that such temporary and permanent work required by the Contract Documents which is to be done by the Contractor will be satisfactorily

constructed and fit for use for its intended purpose and that such construction will not injure any person, or damage any property;

- .5 that the Contractor has carefully examined the Contract Documents and the site of the Work and that from those investigations, the Contractor is satisfied and familiar with: (1) the nature and location of the Work; (2) the character, legal limits, quality and quantity of surface and subsurface materials likely to be encountered, including, but not limited to, all structures and obstructions on or at the project site, both natural and man-made; (3) the character of equipment and other facilities needed for the performance of the Work; (4) the general and local conditions including without limitation its climatic conditions, the availability and cost of labor and the availability and cost of materials, tools and equipment; (5) the quality and quantity of all materials, supplies, tools, equipment, labor and professional services necessary to complete the work in the manner required by the Contract Documents; and (6) all other matters or things which could in any manner affect the performance of the Work;
- .6 that the Contractor will fully comply with all requirements of the Contract Documents;
- .7 that the Contractor will perform the Work consistent with good workmanship, sound business practice, and in the most expeditious and economical manner consistent with the best interests of the Owner;
- .8 that the Contractor will furnish efficient business administration and experienced superintendence and an adequate supply of workers, equipment, tools and materials at all times;

Per Board of County Commissioners October 7, 1997 meeting: "The Contractor will provide all subcontractors and suppliers with a copy of the Payment Bond required for this project, and of notices required to make a claim under such bond;"

- .9 that the Contractor has carefully reviewed the Work required and that the Work can be planned and executed in a normal and orderly sequence of Work and reasonably scheduled so as to ensure completion of the work in accordance with the Contract Documents, allowing for normal and reasonably foreseeable weather, labor and other delays, interruptions and disruptions of the Work;
- .10 that the Contractor will complete the Work within the Contract Time and all portions thereof within any required Contract milestones: and
- .11 that his Contract price is based upon the labor, materials, systems and equipment required by or reasonably inferable from the Contract Documents, without exception.

4.5

LABOR AND MATERIALS

4.5.1

Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for all labor, materials, equipment, supplies, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary or proper for or incidental to the execution and completion of the Work required by and in accordance with the Contract Documents and any applicable code or statute, whether specifically required by

the Contract Documents or whether their provision may reasonably be inferred as necessary to produce the intended results, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. Final payment will not be made until the Work is so completed. The Contractor hereby acknowledges that its bid price is not based upon any claim to the land, timber, soils or other resources at the Construction site, except to the use of soils for necessary site work unless specified otherwise in the drawings and/or specifications.

4.5.2 The Contractor shall at all times enforce strict discipline and good order among its employees and shall not employ on the Work any unfit subcontractor or person or anyone not skilled in the task assigned. The Owner may, by notice in writing, require the Contractor to remove from the work any subcontractor or employee the Owner deems incompetent, careless or otherwise objectionable and Contractor shall provide for this contingency in all Subcontracts.

4.5.3 The Contractor shall be responsible for ensuring that the work is completed in a skillful and workmanlike manner.

4.5.4 The Contractor shall perform at least that percentage of the Work, if any, specified in Article 7 of the Owner-Contractor Agreement, with forces that are in the direct employment of the Contractor's organization. The Contractor shall submit to the Owner and/or Construction Program Manager within thirty (30) calendar days after award of the Contract for the Work, and prior to the first Application for Payment, an identification and percentage of the Work to be performed by the Contractor with his own forces. The Contractor shall also identify the Work and percentage of Work to be performed by MBE and WBE subcontractors and vendors. The percentage of the Work to be performed shall be calculated by adding the amount of work performed and dividing this sum by the total amount of the Contract. No portion of the Contract shall be subcontracted or otherwise performed by a party not the Contractor, except with the written consent of the Owner.

4.5.5 All equipment, apparatus and/or devices of any kind to be incorporated into the work that are shown or indicated on the drawings or called for in the specifications or required for the completion of the work shall be entirely satisfactory to the Owner and the Design Consultant as regards operations, capacity and/or performance. No approval, either written or verbal, of any drawings, descriptive data or samples of such equipment, apparatus and/or device shall relieve the Contractor of the responsibility to turn over the same in good working order for its intended purpose at the completion of the Work in complete accordance with the Contract Documents. Any equipment, apparatus and/or device not fulfilling these requirements shall be removed and replaced by proper and acceptable equipment, etc. or put in good working order satisfactory to the Owner and Design Consultant without additional cost to the Owner.

4.5.6 The General Contractor shall take all necessary precautions for the safety of persons in the execution of the Contract. Compliance with rules of the Department of Labor Occupational Safety and Health Administration, hereafter referred to as OSHA, is required as an established minimum.

4.6 **WARRANTY**

4.6.1 The Contractor warrants to the Owner and the Design Consultant that all materials and equipment furnished under this Contract will be new unless otherwise specified, and that all workmanship will be of first class quality, free

from faults and defects and in conformance with the Contract Documents and all other warranties and guaranties specified therein. Where no standard is specified for such workmanship or materials, they shall be the best of their respective kinds. All Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. If required by the Owner or the Design Consultant, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. This warranty is not limited by the provisions of Article 13.

4.6.2 The Work included in this Contract is heretofore specified. The Contractor will be required to complete the Work specified and to provide all items needed for construction of the project, complete and in good order.

4.6.3 The warranties set forth in this Paragraph 4.6 and elsewhere in the Contract Documents shall survive Final Completion of the Work under Paragraph 9.9.

4.6.4 The Contractor and Surety guarantee and warrant to the Owner all work as follows:

.1 that all materials and equipment furnished under this Contract will be new and the best of its respective kind unless otherwise specified;

.2 that all Work will be of first-class quality and free of omissions and faulty, poor quality, imperfect and defective material or workmanship;

.3 that the Work shall be entirely watertight and leak proof in accordance with all applicable industry customs and practices, and shall be free of shrinkage and settlement;

.4 that the Work, including but not limited to, mechanical and electrical machines, devices and equipment, shall be complete systems, fit and fully usable for its intended and specified purpose and shall operate satisfactorily with ordinary care;

.5 that consistent with requirements of the Contract Documents the Work shall be installed and oriented in such a manner as to facilitate unrestricted access for the operation and maintenance of fixed equipment; and

.6 that the Work will be free of abnormal or unusual deterioration which occurs because of poor quality materials, workmanship or unsuitable storage.

4.6.5 All Work not conforming to guarantees and warranties specified in the Contract Documents, including substitutions not properly approved and authorized, may be considered defective. If required by the Design Consultant, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

4.6.6 If, within one (1) year after the Date of Final Completion of the Work or within such longer period of time as may be prescribed by law or by the terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be defective, not in accordance with the Contract Documents, or not in accordance with the guarantees and warranties specified in the Contract documents, the Contractor shall correct it within five (5) working days or such other period as mutually agreed, after receipt of a written notice from the Owner to do so. The Owner shall give such notice with reasonable promptness after

discovery of the condition.

4.6.7 If at any time patent deficiencies in the Work are discovered, the Contractor will be liable for replacement or correction of such Work and any damages which Owner has incurred related thereto, regardless of the time limit of any guarantee or warranty.

4.6.8 Any materials or other portions of the Work, installed, furnished or stored on site which are not of the character or quality required by the specifications, or are otherwise not acceptable to the Owner or the Design Consultant, shall be immediately removed and replaced by the Contractor to the satisfaction of the Owner and Design Consultant, when notified to do so by the Owner and Design Consultant.

4.6.9 If the Contractor fails to correct defective or nonconforming Work as required by Article 4.6.6 or 4.6.7, or if the Contractor fails to remove defective or nonconforming Work from the site, as required by Article 4.6.8, the Owner may elect to either correct such Work in accordance with Article 3.5 or remove and store materials and equipment at the expense of the Contractor. If the Contractor does not pay the cost of such removal and storage within ten (10) days thereafter, the Owner may upon ten (10) additional days' written notice sell such Work at auction or at private sale and shall account for the net proceeds thereof, after deducting all the costs that should have been borne by the Contractor, including compensation for the Owner's and/or the Design Consultant's additional services made necessary thereby. If such proceeds of sale do not cover all costs which the Contractor should have borne, the difference shall be charged to the Contractor and an appropriate Change Order shall be issued. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner

4.6.10 The Contractor shall bear the cost of making good all work of the Owner, separate contractors or others, destroyed or damaged by such correction or removal required under this Article 4, Article 13 or elsewhere in the Contract Documents.

4.7 **TAXES**

4.7.1 The Contractor shall pay all sales, consumer, use and other similar taxes for the Work or portions thereof provided by the Contractor which are legally enacted at the time bids are received, whether or not yet effective. Owner reserves the right to direct purchase materials to realize a tax savings and adjust the contract amount accordingly. Contractor hereby agrees to permit Owner to direct purchase from the Contractor's suppliers at prices quoted to Contractor and for Owner to retain any tax savings generated thereby.

4.8 **PERMITS, FEES AND NOTICES**

4.8.1 The Owner shall pay, on behalf of Brevard County, all **Brevard County** permit, inspection and impact fees required to obtain a Certificate of Occupancy. Fees for temporary construction trailer permit shall be the responsibility of the Contractor.

All other fees required by agencies/municipalities **other than Brevard County** to obtain a Certificate of Occupancy shall be the responsibility of the General Contractor. Examples of such fees include, but are not limited to, the following: connection fees, building permit fees, plan review fees, inspection fees, impact

fees, etc.

"Public Bid Disclosure Act": Reference is made to Section 218.80, Florida Statutes, known as Public Bid Disclosure Act, and is on file for review by Bidders in the Facilities Construction Division Office.

4.8.2 The Contractor shall give all notices and comply with all laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the performance of the Work.

4.9 **SUPERINTENDENT**

4.9.1 The Contractor 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 Contractor and all communications given to the superintendent shall be as binding as if given to the Contractor.

4.9.2 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 Contractor or until completion or termination of the Contract. It is understood that such Superintendent shall be acceptable to the Owner and the Design Consultant 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 Contractor or any other entity during the course of the Work.

4.9.3 In the event any of the following conditions shall exist, the Contractor, at no additional expense to the Owner, shall require that the Superintendent be at the Project site not less than ten (10) hours per day, six (6) days per week:

- .1 should Substantial Completion not be accomplished on schedule.
- .2 should Final Completion not be accomplished on schedule.
- .3 should the progress schedule indicate in the opinion of the Owner or Design Consultant that the Contractor is fourteen (14) or more days behind schedule at any time during construction up until thirty (30) days prior to scheduled Substantial Completion.
- .4 should the progress schedule indicate in the opinion of the Owner or Design Consultant that the Contractor is seven (7) or more days behind schedule at any time during the last thirty (30) days prior to scheduled Substantial Completion.

4.10 **PROGRESS SCHEDULE**

- (a) The Contractor is responsible for the sequencing, scheduling and coordinating of the Work, for monitoring the progress of the Work, and for taking appropriate action to keep the Work on schedule. Within two (2) weeks after signing the Contract, the Contractor shall prepare and submit to the Owner and/or Construction Program Manager and Design Consultant a preliminary Critical Path Method Schedule "CPM" for completing the Work on the completion date stated in the Contract. A fully complete CPM schedule for accomplishing the work must be

submitted in like manner no later than sixty (60) days after signing the contract. No progress payments will be payable to the Contractor until the Contractor has submitted a preliminary CPM schedule which is acceptable to the Owner. Neither the second progress payment nor any subsequent payments shall be payable to the Contractor until the Contractor has submitted a final, acceptable CPM schedule.

Failure to provide a satisfactory preliminary or final CPM schedule for accomplishing the Work within the time provided shall be a breach of contract schedule, which the Owner may terminate the Contract in the manner provided in these General Conditions. Both the preliminary CPM Schedule and the final CPM Schedule for accomplishing the Work shall be of the type set forth in subparagraph I or II below, as appropriate:

- I. For Contracts with a price \$750,000 or less, a bar graph will satisfy the above CPM requirements. The schedule shall indicate the estimated starting and completion dates for each major element of the work. As a minimum the elements of Work shall reflect the Contractor's approved Schedule of Values for payment and shall detail any elements of work requested by the Owner. The actual progress of those elements of the Work will be reported monthly through the Design Consultant at the time of submission of the request for payment. If any elements of the Work are behind schedule, regardless of whether they may prevent the Work from being completed on time, the Contractor must indicate, in writing, what measures the Contractor is taking and plans to take to bring each element back on schedule and to insure that the time of completion is not exceeded.
 - II. For Contracts with a price over \$750,000, a Critical Path Method Schedule "CPM" shall be utilized to control the planning and scheduling of the project. The CPM schedule shall be the responsibility of the Contractor and shall be paid for by the Contractor.
- (b) **CPM Schedule:** The working plan and schedule will be developed in the form of a CPM network diagram using the Contractor's logic and time estimates. The network shall be in the time-scaled precedence format. The network diagram shall be drawn or plotted with activities grouped or zoned by work area or subcontract as opposed to a random (or scattered) format.

The network diagram shall be scaled on a weekly basis and shall be drawn at a level of detail and logic which will schedule all salient features of the Work, including the placing of orders for materials, submission of shop drawings and other submittals for approval, approval of shop drawings by the Design Consultant, fabrication and delivery of material, and all work activities to be performed by the Contractor and the Owner's Contractors. The duration of activities to be performed by the Design Consultant shall be in accordance with the relevant provisions, if any, of the specifications or shall be determined by agreement between the Design Consultant and Contractor. If they are unable to agree, the Owner shall determine the appropriate duration of such Design Consultant activities. Each work activity will be assigned a time estimate by the Contractor. If requested by the Owner or Design Consultant the Contractor shall justify the inclusion or exclusion of a work activity and/or

justify by quantity of work, productivity and labor the Contractors time estimate for an activity. One day shall be the smallest time unit used.

On completion of the network diagram, the Contractor shall generate a computer plot of the schedule with master early start, float, successor/predecessor reports, and provide the Owner through the Design Consultant with two (2) copies. In the event the completion date indicated by the schedule exceeds the Contract completion date, the logic and time estimates used to develop the Plan will be reviewed, changes made in the logic and time estimates, and another computer run made to generate a new schedule. This procedure shall be repeated, if necessary, to provide a Plan and Schedule meeting the Contract completion date.

When completed, the working plan and schedule will be submitted to the Owner and Design Consultant for review. The working plan will identify and describe each activity, state the duration of each activity, the calendar dates for the early and late start and the early and late finish of each activity, the total float and clearly highlight all activities on the critical path. "Total float" and "free float", as those terms are defined in ANSI standard No. Z94.2, shall be indicated for all activities. On contracts with a price over \$10,000,000, the CPM Schedule shall also show the planned workforce (crew size and number of crews) and the major pieces of equipment required for each activity on the schedule. When reviewed and accepted by the Owner and Design Consultant as to compliance with the requirements of this section but not as to logic, this shall become the plan and schedule for the project.

- (c) **Project Control:** The Contractor shall review progress not less than each month, but as often as necessary to properly manage the project and stay on schedule. The Contractor shall collect and preserve information on Change Orders, including extensions of time. The Contractor shall evaluate this information and update the CPM schedule as necessary to finish on the completion date. The scheduled completion date shall be the date identified by the Contract for completion of construction, as amended by Change Order.
- (d) **Progress Plot and Reports:** A progress plot with reports showing the work completed to date, in comparison with the work scheduled for completion, and the overall project schedule, shall be provided to the Owner and the Design Consultant with each monthly invoice. Any revisions to logic, duration and/or activities shall be specifically identified, and master reports and plots will be submitted to benchmark the revisions at the Owner's or Design Consultant's request. The form of the plot reports shall be approved by the Owner and Design Consultant.
- (e) **Progress Delay:** Should any of the following conditions exist, the Owner or Design Consultant may require the Contractor to prepare, at no extra cost to the Owner, a Plan of Action and a CPM Recovery Schedule for completing the Work by the contractual date. The Plan of Action and CPM Recovery Schedule shall explain and indicate how the Contractor intends to regain compliance with the original CPM schedule. The plan of action and CPM recovery schedule, when required, shall be submitted and accepted prior to submission of the next monthly invoice:
 - (1) Should the Contractor's monthly progress report indicate delays, in the opinion of the Owner or Design Consultant, such that a

CPM Recovery Schedule is required;

- (2) Should the CPM schedule show the Contractor to be thirty (30) or more days behind schedule at any time during construction up to thirty (30) days prior to schedule completion date;
- (3) Should the Contractor request to make changes in the logic of the CPM schedule which, in the opinion of the Owner or Design Consultant, are a major nature.

4.11 **RESPONSIBILITY FOR COMPLETION**

4.11.1 The Contractor shall furnish such labor, materials, facilities and equipment and shall work such hours, as may be necessary to ensure the performance of the Work in accordance with the Schedule and within the Milestone and Completion dates specified in the Owner-Contractor Agreement. If it becomes apparent to the Owner and/or Design Consultant that the Work will not be completed in accordance with the Schedule and within required Milestone or Completion dates, the Contractor agrees to undertake some or all of the following actions, at no additional cost to the Owner, in order to ensure, in the opinion of the Owner and/or Design Consultant that the Contractor will comply with all Milestone and Completion date requirements:

- .1 increase manpower, materials, crafts, equipment and facilities to accelerate performance of the Work;
- .2 increase the number of working hours per shift, shifts per working day, working days per week, or any combination of the foregoing; and/or
- .3 reschedule activities to achieve maximum practical concurrence of accomplishment of activities.

4.11.2 In undertaking the actions required under paragraph 4.12.1, Contractor shall comply with the requirements for a Recovery Schedule set forth in Article 4.11.

4.11.3 If, in the opinion of the Owner or Design Consultant, the actions taken by the Contractor pursuant to this Article or the progress or sequence of Work are not accurately reflected on the Construction Schedule, the Contractor shall revise such schedule to accurately reflect the actual progress and sequence of Work.

4.11.4 Failure of the Contractor to substantially comply with the requirements of this Article may be considered grounds for a determination by the Owner, pursuant to Article 14, that the Contractor is failing to prosecute the Work with such diligence as will ensure its completion within the time specified.

4.11.5 This paragraph does not eliminate the Contractor's responsibility to comply with the local noise ordinances, all highway permit requirements and all other applicable laws, regulations, rules, ordinances, resolutions, and permit requirements.

4.12 **DOCUMENTS AND SAMPLES AT THE SITE**

4.12.1 The Contractor shall maintain at the site for the Owner one record copy of all Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to record all changes made during construction, and approved Shop Drawings, Product Data and Samples. The Contractor shall

also maintain document control logs to track all drawings, specifications, Architectural Supplemental Instructions, Change Proposals, Request for Information and Submittals. These shall be delivered to the Design Consultant for the Owner upon completion of the Work.

4.13 SUBMITTALS

- 4.13.1 Submittals are shop drawings, diagrams, schedules, product data instructions, brochures, samples, manuals, certifications, warranties or any other information required by the technical specifications to be reviewed by the Design Consultant.
- 4.13.2 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or any Subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.
- 4.13.3 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate a material, product or system for some portion of the Work.
- 4.13.4 Samples are physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.
- 4.13.5 Manuals are manufacturer's installation, start-up, operating, maintenance and repair instructions together with parts lists, pictures, sketches and diagrams which set forth the manufacturer's requirements for the benefit of the Contractor and the Owner.
- 4.13.6 The Contractor shall review, approve and submit, with reasonable promptness and in such sequence as to cause no delay in the Work or in the work of the Owner or any separate contractor, all Submittals required by the Contract Documents.
- 4.13.6.1 Unless otherwise directed in writing, **the Contractor shall submit no less than six (6) copies, unless specified otherwise, of each Submittal to the Design Consultant.** Routing of said Submittals will be from the Contractor to the Design Consultant to the Owner and/or Construction Program Manager. The Design Consultant will return three (3) copies of each Submittal directly to the Contractor and provide copies to the Owner and/or Construction Program Manager.
- 4.13.6.2 For standard manufactured items not requiring special shop drawings for manufacture, submit six (6) copies, unless specified otherwise, of manufacturer's catalog sheets showing illustrated cuts of item to be furnished, scale details, sizes, dimensions, performance characteristics, capacities, wiring diagrams and controls, and all other pertinent information. Four (4) copies of reviewed submissions will be returned to the Contractor.
- 4.13.6.3 For all other shop drawings, submit one (1) legible, unfolded, reproducible (positive side up sepia) transparencies and five (5) opaque prints for each drawing. Each drawing shall have a clear space for stamps. When phrase "by others" appears on shop drawings, the Contractor shall indicate on the drawing who is to furnish material or operations so marked before submittal.
- 4.13.6.4 The Contractor shall submit samples in triplicate of adequate size showing quality, type, color range, finish and texture, unless otherwise specified.

- 4.13.6.5 Where the technical specifications call for the submittal of manufacturer's data or any other information to the Design Consultant for information only, such Submittals shall be made before the commencement of any portion of the Work requiring such submission. Four (4) copies shall be submitted and one (1) will be returned to the Contractor.
- 4.13.6.6 For use of all trades, the Contractor shall provide number of prints which are required for field distribution.
- 4.13.6.7 All communications and transactions with manufacturers or Subcontractors shall be through the General Contractor.
- 4.13.6.8 Where specifications require manufacturer's printed installation instructions, the Contractor shall submit copies of such instructions for review.
- 4.13.6.9 Where several materials are specified by name for one use, select for use any of those so specified.
- 4.13.6.10 Whenever item or class of material is specified exclusively by trade name, manufacturer's name, or by catalog reference, use only such item, unless written approval for substitution is secured, as outlined in A- 17, Instructions to Bidders, or the General Conditions.
- 4.13.6.11 No portion of the Work requiring submission of Submittals shall be commenced or fabricated by the Contractor except at the Contractor's own risk, until the Submittal has been reviewed by the Design Consultant as provided in Article 2. All such portions of the Work shall be in accordance with reviewed Submittals.
- 4.13.7 By approving and submitting Shop Drawings, Product Data, Manuals and Samples, etc. the Contractor represents that the Contractor has determined and verified all materials, field measurements, and field construction criteria and that the Contractor has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents. The Contractor shall adhere to any supplementary processing and scheduling instructions pertaining to Shop Drawings which may be issued by the Owner.
- 4.13.7.1 Parts and details not fully indicated on the contract drawings shall be detailed by the Contractor in accordance with standard engineering practice. Dimensions on the Contract Drawings, as well as detailed drawings themselves are subject in every case to measurements of existing, adjacent, incorporated and completed work, which shall be taken by the Contractor before undertaking any work dependent on such data.
- 4.13.8 The Contractor shall not be relieved of responsibility for any deviation from the requirements of the Contract Documents by the Design Consultant's review of any Submittal under Subparagraph 2.2.18 and 2.2.19 unless the Contractor has specifically informed the Design Consultant in writing of such deviation at the time of submission and the Design Consultant and Owner have given written approval to the specific deviation by a written order. The Contractor shall not be relieved from responsibility for construction means and methods shown in the submittal or for errors or omissions in the Shop Drawings, Product Data, Samples, or Manuals, etc. by the Design Consultant's review thereof.
- 4.13.9 The Contractor shall make corrections required by the Design Consultant and shall resubmit the required number of corrected copies of Submittals. The

Contractor shall direct specific attention, in writing or on resubmitted Submittals, to revisions other than those requested by the Design Consultant on previous Submittals. Resubmittals necessitated by required corrections due to Contractor's errors or omissions shall not be cause for extension of Contract Time.

4.13.11 Shop Drawings, Product Data and Samples shall be dated and shall bear the name of the Project; a description or the names or equipment, materials and items; reference to the appropriate Specification Section; and complete identification of locations at which materials or equipment are to be installed.

4.13.12 Submittals shall be accompanied by a transmittal letter, in duplicate, containing the name of the Project, the Contractor's name, the number of Shop Drawings, Product Data, Samples, or Manuals and titles and other pertinent data.

4.14 **EQUAL PRODUCTS AND SUBSTITUTIONS**

4.14.1 All materials, supplies and articles furnished under this Contract shall, whenever specified and otherwise practicable, be the standard products of recognized, reputable manufacturers. Unless otherwise specifically provided in the Contract Documents, the naming of a certain brand, make, manufacturer or article, device, product, material, fixture or type of construction shall convey the general style, type, character and standard of quality of the article desired and shall not be construed as limiting competition. The Contractor, in such cases, may with Owner approval, use any brand, make, manufacturer, article, device, product, material, fixture, form or type of construction which in the judgment of the Owner is equal to that specified. An item may be considered equal to the item so named or described if, in the opinion of the Owner (1) it is at least equal in quality, durability, appearance, strength, and design; (2) it will perform at least equally the specific function imposed by the general design for the work being contracted for or the material being purchased; and (3) it conforms substantially, even with deviations, to the detailed requirements for the item in the specifications. Approval by the Owner will be granted based upon considerations of quality, workmanship, economy of operation, suitability for the purpose intended, and acceptability for use on the Project.

4.14.2 To obtain such approval on makes or brands of material other than those specified in Contract Documents, and not previously approved during the bidding, the Contractor's request for approval of any substitution shall include:

- .1 complete data substantiating compliance of the proposed substitution with the Contract Documents;
- .2 product identification including manufacturer's name, address, and phone number;
- .3 manufacturer's literature showing complete product description, performance and test data, and all reference standards;
- .4 samples and colors in the case of articles or products;
- .5 name and address of similar projects on which the product was used and date of installation;
- .6 for construction methods, include a detailed description for the proposed method and drawings illustrating same;

- .7 itemized comparison of proposed substitution with product or method specified and any cost reduction which shall benefit the Owner;
- .8 accurate cost data on proposed substitution in comparison with product or method specified; and
- .9 all directions, specifications, and recommendations by manufacturers for installation, handling, storing, adjustment, and operation.

4.14.3

The Contractor shall also submit with his request for approval a sworn and notarized statement which shall include all of the following representations by the Contractor, namely that:

- .1 contractor has investigated the proposed product or method and determined that it is equal or better in all respects to that specified and that it fully complies with all requirements of the Contract Documents;
- .2 contractor will meet all contract obligations with regard to this substitution;
- .3 contractor will coordinate installation of accepted substitutions into the work, making all such changes and any required schedule adjustments, at no additional cost to the Owner, as may be required for the Work to be complete in all respects;
- .4 contractor waives all claims for additional costs and additional time related to substitutions which consequently become apparent. Contractor also agrees to hold the Owner harmless from claims for extra costs and time incurred by other Subcontractors and suppliers, or additional services which may have to be performed by the Construction Program Manager and/or Design Consultant, for changes for extra work that may, at some later date, be determined to be necessary in order for the Work to function in the manner intended in the Contract Documents;
- .5 contractor will provide the same warranty and guarantee, and perform any work required in accordance therewith, for the substitution that is applicable to the specified item for which the substitution is requested;
- .6 material will be installed, handled, stored, adjusted, tested, and operated in accordance with the manufacturers' recommendation and as specified in the Contract Documents.
- .7 in all cases new materials will be used unless this provision is waived by notice from the Owner, or unless otherwise specified in the Contract Documents;
- .8 all material and workmanship will be in every respect in accordance with that which, in the opinion of the Owner, is in conformity with approved modern practice;
- .9 contractor has provided accurate cost data on the proposed substitution in comparison with the product or method specified.

4.14.4

Subject to the provisions of any applicable laws, approval for substitutions or equal products shall be at the sole discretion of the Owner, shall be in writing to be effective, and the decision of the Owner shall be final. The Owner may require tests of all materials proposed for substitution so submitted to establish quality

standards, at the Contractor's expense. After approval of a substitution, if it is determined that the Contractor submitted defective information or data regarding the substitution upon which Owner's approval was based, and that unexpected or unanticipated extensive redesign or rework of the project will be required in order to accommodate the substitution, or that the substituted item will not perform or function as well as the specified item for which substitution was requested, the Contractor will be required to furnish the original specified item or request approval to use another substitution; the Contractor shall pay all costs, expenses or damages associated with or related to the unacceptability of such a substitution and the resultant use of another item and no time extension shall be granted for any delays associated with or related to such substitution.

4.14.5 If a substitution is approved, no change in brand or make will be permitted unless satisfactory, written evidence is presented to and approved by the Owner that the manufacturer cannot make scheduled delivery of the approved substituted item. Substitutions will not be considered for approval by the Owner if:

- .1 the proposed substitution is indicated or implied on the Contractor's shop drawing or product data submittal and has not been formally submitted for approval by the Contractor in accordance with the above-stated requirements, or
- .2 acceptance of the proposed substitution will require substantial design revisions to the Contract Documents or is otherwise not acceptable to the Owner.

4.14.6 Except as otherwise provided for by the provisions of any applicable laws, the Contractor shall not have any right of appeal from the decision of the Owner condemning any materials submitted if the Contractor fails to obtain the approval for substitution under this Article.

4.15 **USE OF SITE**

4.15.1 The Contractor shall confine operations at the site to areas provided by the Owner and as permitted by law, ordinances, permits, easements, right-of-way agreements and the Contract Documents. The Contractor shall not unreasonably encumber the site, in the opinion of the Owner with any materials, equipment or trailers, nor shall the Contractor block the entrances or otherwise prevent reasonable access to the site, other working and parking areas, completed portions of the Work and/or properties, storage areas, or areas of other facilities that are adjacent to the worksite. If the Contractor fails or refuses to move said material, equipment or trailers within 24 hours of notification by the Owner to so do, the Owner shall have the right, without further notice, to remove, at the Contractor's expense, any material, equipment and/or trailers which the Owner deems are in violation of this paragraph.

4.16 **CUTTING AND PATCHING OF WORK**

4.16.1 The Contractor shall be responsible for all cutting, fitting or patching that may be required to complete the Work or to make its several parts fit together properly and in accordance with the Contract Documents.

4.16.2 The Contractor shall not cut or otherwise alter the work of the Owner or any separate contractor except with the written consent of the Owner and of such separate contractor. After consent is given, the Contractor shall not damage or endanger any portion of the Work or the work of the Owner or any separate

contractors in cutting, patching or otherwise altering any work, or by excavation. The Owner shall not be required to accept Work with a cut, splice, or patch when such cut, splice or patch is not generally accepted practice for the particular work involved or is otherwise unworkmanlike in the opinion of the Owner.

4.16.3 Existing structures and facilities including but not limited to building, utilities, topography, streets, curbs, walks, etc., that are damaged or removed due to required excavations or other construction work, shall be patched, repaired or replaced by the Contractor to satisfaction of the Owner of such structures and facilities and authorities having jurisdiction. In event the local jurisdictional authorities require that such repairing and patching be done with their own labor and materials, the Contractor shall abide by such regulations and pay for such work.

4.17 **CLEANING UP**

4.17.1 The Contractor shall at all times keep the premises free from accumulation of waste materials or rubbish caused by the Contractor's operations. As a condition of Substantial Completion of the Work, the Contractor shall remove all the Contractor's waste materials and rubbish from and about the Project. Before final payment is made, the Contractor shall remove the Contractor's tools, construction equipment, machinery and surplus materials.

4.17.2 If the Contractor fails to clean up by Substantial Completion of the Work, the Owner may do so as provided in Paragraph 6.3 and the cost thereof shall be charged to the Contractor.

4.17.3 Burning of rubbish on the premises will NOT be permitted.

4.17.4 Debris shall be hauled to a place of legal disposal in a manner satisfactory to the Owner's Representative.

4.18 **COMMUNICATIONS**

4.18.1 The Contractor shall forward its communications and communications from any subcontractors to the Owner through the Design Consultant, unless instructed otherwise.

4.19 **ROYALTIES AND PATENTS**

4.19.1 The Contractor shall pay all royalties and license fees. The Contractor shall defend all suits or claims for infringement of any patent rights and shall save the Owner harmless from loss, damages, costs or attorneys' fees on account thereof.

4.20 **INDEMNIFICATION**

4.20.1 To the fullest extent permitted by law, the Contractor shall, at the Contractor's sole cost and expense, indemnify, defend, and hold harmless the Owner and the Design Consultant and their agents, representatives, and employees from and against all claims, actions, judgments, costs, liabilities, penalties, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from the performance of the Work, provided that any such claim, action, judgment, cost, liability, penalty, damage, loss or expense (1) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom, and (2) is caused in whole or in part by any negligent act or omission of the

Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Paragraph 4.20. Contractor specifically agrees that it has included Fifty Dollars (\$50.00) in its bid price, over and above what it otherwise would have bid, to compensate Contractor for all indemnity obligations contained in the Contract Documents.

4.20.2 In any and all claims against the Owner or the Design Consultant or any of their agents, representatives, or employees by any employee of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this Paragraph 4.20 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

4.20.3 No provision of this Paragraph 4.20 shall give rise to any duties on the part of the Owner or the Design Consultant or any of their agents, representatives, or employees.

4.21 **PERSONS AUTHORIZED TO SIGN DOCUMENTS**

4.21.1 The Contractor, within five (5) days after the date of the Owner-Contractor Agreement, shall file with the Owner, a list of all persons who are authorized to sign documents such as contracts, certificates, and affidavits on behalf of the Contractor and to fully bind the Contractor to all the conditions and provisions of such documents in the event those persons are different from the Owner-Contractor Agreement signatures.

4.22 **CONDITIONS AFFECTING THE WORK**

4.22.1 The Contractor shall be responsible for taking all steps necessary to ascertain the nature and location of the Work and the general and local conditions which can affect the Work or the cost thereof. Failure by the Contractor to become fully acquainted with conditions which may affect the Work, including, but not limited to conditions relating to transportation, handling, storage of materials, availability of labor, water, roads, weather, topographic and subsurface conditions, multi-prime contract conditions, applicable provisions of law, and the character and availability of equipment and facilities needed prior to and during the execution of the Work, shall not relieve the Contractor of the Contractor's responsibilities under the Contract Documents and shall not constitute a basis for an adjustment in the Contract Sum or the Contract Time under any circumstances. The Owner assumes no responsibility for any understanding or representation about conditions affecting the Work made by any of the Owner's officers, employees, representatives, or agents prior to the execution of the Contract, unless such understandings or representations are expressly stated in the Contract Documents.

4.22.2 If in the execution of the Work any valuable or historical items or materials of any kind are discovered within the work, such items or materials shall be the property of the Owner. The Contractor shall take reasonable precautions to prevent any persons from removing or damaging such items or materials and shall immediately upon discovery thereof and before removal, acquaint the Owner with

such discovery and carry out the Owner's orders as to disposal of the same.

4.23 **AUDIT REQUIREMENTS**

In the performance of this Contract, the Contractor shall keep books, records and accounts of all activities related to the Contract, in compliance with generally accepted accounting procedures. Books, records and accounts related to the performance of this Contract shall be open to inspection during regular business hours by an authorized representative of the Contractor and shall be retained by the Contractor for a period of three (3) years after termination of this Contract. All records, books and accounts related to the performance of this Contract shall be subject to the applicable provisions of the Florida Public Records Act, Chapter 119, Florida Statutes. 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 Grantee in the United States or any other country. All records or documents created by Contractor or provided to Contractor by the County in connection with the activities or services provided by Contractor under the terms of this agreement, are public records and Contractor agrees to comply with any request for such public records or documents made in accordance with section 119.07 Florida Statutes.

ARTICLE 5

SUBCONTRACTORS

5.1 **DEFINITION**

5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform any of the Work at the site. The term Subcontractor is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or its authorized representative. The term Subcontractor does not include any separate contractor or that Contractor's subcontractors.

5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform any of the Work at the site. The term Sub-subcontractor is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative thereof.

5.1.3 Nothing contained in the Contract Documents is intended to, nor shall it create, any contractual relationship between the Owner, the Design Consultant, or any of their agents, consultants, employees, independent contractors, or representatives and any Subcontractor, Sub-subcontractor, supplier or vendor of the Contractor, but the Owner shall be entitled to performance of all obligations intended for the Owner's benefit, and to enforcement thereof.

5.1.4 The Owner and Design Consultant will not deal directly with any Subcontractor or Sub-subcontractor or materials supplier. Communication will be made only through the Contractor. Subcontractor, Sub-subcontractors or material suppliers shall route requests for information or clarification through the Contractor to the Design Consultant with copies to the Owner.

5.2 **AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF WORK**

5.2.1 **In addition to the prequalification of specified subcontractors prior to**

award of this Contract, the Contractor, in compliance with the requirements of the Contract Documents, shall furnish to the Owner, in writing, the names, contact name, addresses and telephone numbers of the subcontractors (including those who are to furnish materials or equipment fabricated to a special design) proposed for each of the principal portions of the Work prior to the first Application for Payment. The Owner will promptly reply to the Contractor in writing stating whether or not the Owner, or Design Consultant, after due investigation, has reasonable objection to any proposed person or entity that has not already been pre-qualified prior to award of this Contract. Failure of the Owner to reply within five (5) business days shall constitute notice of no reasonable objection. The Contractor understands and agrees that no contractual agreement exists for any part of the Work under this Contract between the Owner or Design Consultant and any of the Contractor's Subcontractors or Sub-subcontractors. Further, the Contractor understands and agrees that the Contractor alone is responsible to the Owner for all of the Work under this Contract and that any review of Subcontractors or Sub-subcontractors by the Owner will not in any way make the Owner responsible to any Subcontractor, nor responsible for the actions or failures of any Subcontractor or Sub-subcontractor.

5.2.1 The Contractor shall not contract with any such proposed person or entity to whom the Owner has made reasonable objection.

5.2.2 If the Owner has reasonable objection to any proposed person or entity under Subparagraph 5.2.1, the Contractor shall name a substitute to whom the Owner has no reasonable objection. The Contract Sum shall be increased or decreased by the difference in cost occasioned by such substitution and an appropriate Change Order shall be issued, subject to an audit of said difference by the Owner; provided, however, that no increase in the Contract Sum shall be allowed for any such substitution unless the Contractor has acted promptly and responsively in submitting names as required; or if the Owner has stated Owner's objection in writing before the submission by the Subcontractors of a bid acceptable to Contractor; or if the rejected Subcontractor was unable to enter into work; or if the rejected Subcontractor failed to comply with all applicable laws; or if the rejected Subcontractor was not an on-going business in the field of the proposed Subcontract; or if the rejected Subcontractor does not have a labor force and the means of supply compatible with the scope of the subcontract; or if the rejected Subcontractor does not meet any of the pre-qualification criteria of Section A-6 of the Information to Bidders.

5.2.3 If the Owner requires a change of any proposed Subcontractor or person or organization previously accepted by the Owner, except for reasons stated in 5.2.2, the Contract Sum shall be increased or decreased by the difference in cost occasioned by such change and an appropriate Change Order shall be issued, subject to an audit by Owner.

5.2.4 The Contractor shall make no substitution for any Subcontractor, person or entity previously selected if the Owner makes reasonable objection to such substitution.

5.3 **SUBCONTRACTUAL RELATIONS**

5.3.1 By an appropriate written agreement the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by the terms of these Contract Documents, and to assume toward the Contractor all the obligations and responsibilities which the

Contractor, by these Documents, assumes toward the Owner. Said agreement shall preserve and protect the rights of the Owner under the Contract Documents with respect to the Work to be performed by the Subcontractor so that the subcontracting thereof will not prejudice Owner's rights. Contractor shall also provide each subcontractor with a copy of the payment bond required by this Agreement, and with notice that (1) claims under such bond should be made in conformance with section 255.05 of the Florida Statutes, and (2) subcontractor should not execute Waivers of Claim under such bond unless the subcontractor has, in fact, been paid. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with his sub-subcontractors. The Contractor 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 Paragraph 5.3, and identify to the Subcontractor any terms and conditions of the proposed Subcontract which may be at variance with the Contract Documents. Each Subcontractor shall similarly make copies of such Documents available to his Sub-subcontractors.

- 5.3.2 The provisions herein regarding Subcontractor approvals shall in no way affect the liability of the Contractor to the Owner regarding performance of all obligations by or payment of Subcontractors. Approval to subcontract and of any given Subcontractor shall not to any degree relieve the Contractor of the Contractor's obligation to perform or have performed to the full satisfaction of the Owner all of the work required by this Contract.

5.4 **QUALIFICATION SUBMITTALS**

- 5.4.1 Specific qualification submittals, in addition to those set forth in the Information to Bidders, may be required of Subcontractors, installers and suppliers for certain critical items of the Work. These required qualification submittals are set forth in detail in the Technical Specifications and shall be collected and submitted by the Contractor for review and approval by the Design Consultant. All information required of a single Subcontractor, installer or supplier shall be contained in a single, complete submittal. The Contractor shall submit the required qualification information within ten (10) days after receipt of the Design Consultant's request.

- 5.4.2 The Owner may reject any proposed Subcontractor, installer or supplier, or any qualification submittals related thereto, for the following reasons:

- .1 the Contractor's failure to submit requested information within the specified time; or
- .2 the Contractor's failure to provide all of the requested information; or
- .3 the Contractor's submission of a Subcontractor, installer or supplier, or qualifications thereof, which are unacceptable in the judgment of the Owner, the Construction Program Manager, or Design Consultant.

5.5 **PREPARATORY WORK**

- 5.5.1 Before starting any Section of Work, the responsible Subcontractor shall carefully examine all preparatory work that has been executed to receive the Subcontractor's work. The Subcontractor shall check carefully, by whatever means are required, to ensure that the Subcontractor's work and adjacent related work will finish to proper contours, planes and levels. The Subcontractor shall promptly notify the Contractor and the Owner of any defects or imperfections in preparatory work which will, in any way, affect satisfactory completion of his Work. Absence of such notification will be construed as an acceptance of preparatory work and later claims of defects therein will not be recognized.

Contractor's work. The Contractor expressly warrants and guarantees that the Contractor will cooperate with other contractors and will do nothing to delay, hinder or interfere with the work of other separate contractors or the Owner. The Contractor also expressly agrees that, in the event the Contractor's work is hindered, delayed, interfered with or otherwise affected by a separate contractor, the Contractor's sole remedy will be a direct action against the separate contractor as described in this Article 6. Contractor will have no remedy, and hereby expressly waives and releases any remedy, against the Owner or Design Consultant on account of delay, hindrance, interference or other event caused by a separate contractor.

ARTICLE 7

MISCELLANEOUS PROVISIONS

7.1 **SUCCESSORS AND ASSIGNS**

7.1.1 The Owner and the Contractor each binds themselves, their partners, successors, assigns and legal representatives to the other party hereto and to the partners, successors, assigns and legal representatives of such other party in respect to all covenants, agreements and obligations contained in the Contract Documents. The Contractor shall not assign the Contract or sublet it as a whole without the written consent of the Owner, nor shall the Contractor assign any moneys due or to become due hereunder, without the previous written consent of the Owner and the Contractor's Surety.

7.2 **CLAIMS AND DISPUTES**

7.2.1 **Definition:** A claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. Claims must be made by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim.

7.3.2 **Decision of Architect:** Claims, including those alleging an error or omission by the Architect shall be referred initially to the Architect for action. Notice of Claim as required herein shall be required as a condition precedent to litigation of a Claim between the Contractor and the Owner as to all such matters arising prior to the date final payment is due, regardless of (1) whether such matters relate to execution and progress of the Work, or (2) the extent to which the Work has been completed.

7.3.3 **Time Limits on Claims:** Claims by either party must be made within ten (10) days after occurrence of the event giving rise to such Claim or within ten (10) days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Claims must be made by written notice. An additional Claim made after the initial Claim has been implemented by Change Order will not be considered unless submitted in a timely manner.

7.3.4 **Continuing Contract Performance:** Pending final resolution of a Claim, unless otherwise agreed in writing, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

- 7.3.5 **Waiver of Claims - Final Payment:** The making of final payment shall constitute a waiver of Claims by the Owner except those arising from:
1. liens, claims, security interests, or encumbrances arising out of the Contract and unsettled;
 2. failure of the Work to comply with the requirements of the Contract Documents; or
 3. terms of special warranties required by the Contract Documents.
- 7.3.6 **Claims for Concealed Unknown Conditions/Differing Site Conditions:** If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents, or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then notice by the observing party shall be given to the other party promptly before conditions are disturbed. The Owner and Design Consultant will promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Owner determines that the conditions at the site are not materially different from those indicated in the Contract Documents, and that no change in the terms of the Contract is justified, the Owner shall so notify the Contractor in writing stating the reasons. If the Owner and the Contractor cannot agree on an adjustment in the Contract Sum or Contract Time, the adjustment shall be referred to the Architect for final determination.
- 7.3.7 **Claims for Additional Cost:** If the Contractor wishes to make Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property. If the Contractor believes additional cost is involved for reasons including but not limited to (1) a written Interpretation from the Architect, (2) an order by the Owner to stop the Work where the Contractor was not at fault, (3) a written order for a minor change in the Work issued by the Architect, (4) failure of payment by the Owner, (5) termination of the Contract by the Owner, (6) Owner's suspension or (7) other reasonable grounds. Claim shall be filed in accordance with the procedure established herein.
- 7.3.8 **Claims for Additional Time:** If the Contractor wishes to make Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay only one Claim is necessary.
- 7.3.8.1 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time and could not have been reasonably anticipated, and that weather conditions had an adverse effect on the scheduled construction.
- 7.3.9 **Injury or Damage to Person or Property:** If either party to the Contract suffers injury or damage to person or property because of an act or omission of the other party, excluding claim for damage from delay, of any of the other party's employees or agents, or of others for whose acts such party is legally liable, written notice of such injury or damage, whether or not insured, shall be given to

- 5.5.2 Under no condition shall a Section of Work proceed prior to preparatory work having been completed, cured, dried, and otherwise made satisfactory to receive such related work. Responsibility for timely installation of all materials rests solely with the Contractor, who shall maintain coordination control at all times.

ARTICLE 6

WORK BY OWNER OR BY SEPARATE CONTRACTORS

6.1 OWNER'S RIGHT TO PERFORM WORK AND TO AWARD SEPARATE CONTRACTS

6.1.1 The Owner reserves the right to perform work related to the Project, including work proposed under a change order, with the Owner's forces, and to award separate contracts in connection with other portions of the Project or other work on the site under these or similar Conditions of the Contract.

6.1.2 When separate contracts are awarded for different portions of the Project or other work on the site, the term Contractor in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

6.2 MUTUAL RESPONSIBILITY

6.2.1 The Contractor shall afford other contractors and the Owner reasonable opportunity for the introduction and storage of their materials and equipment and the execution of their work, and shall properly connect and coordinate the Work with that of the Owner and other contractors, and to store the Contractor's apparatus, materials, supplies and equipment in such orderly fashion at the site of the Work as will not unduly or unreasonably interfere with the progress of the Work or the work of any other contractors.

6.2.1.1 If the execution or result of any part of the Work depends upon any work of the Owner or of any separate contractor, the Contractor shall, prior to proceeding with the Work, inspect and promptly report to the Owner in writing any apparent discrepancies or defects in such work of the Owner or of any separate contractor that render it unsuitable for such proper execution or result of any part of the Work.

6.2.1.2 Failure of the Contractor to so inspect and report shall constitute an acceptance of the Owner's or separate contractor's work as fit and proper to receive the Work, except as to defects which may develop in the Owner's or separate contractor's work after completion of the Work and which the Contractor could not have discovered by its inspection prior to completion of the Work.

6.2.2 Should the Contractor cause damage to the work or property of the Owner or of any separate contractor on the Project, or to other work on the Site, or delay or interfere with the Owner's work on ongoing operations or facilities or adjacent facilities or said separate contractor's work, the Contractor shall be liable for the same; and, in the case of another contractor, the Contractor shall attempt to settle said claim with such other contractor prior to such other contractor's institution of litigation or other proceedings against the Contractor.

6.2.2.1 If such separate contractor sues the Owner or Design Consultant on account of any damage, delay or interference caused or alleged to have been caused by the

Contractor, the Owner shall notify the Contractor, and the Contractor shall defend the Owner and Design Consultant in such proceedings at the Contractor's expense. If any judgment or award is entered against the Owner or Design Consultant, the Contractor shall satisfy the same and shall reimburse the Owner and Design Consultant for all damages, expenses, attorneys' fees and other costs which the Owner or Design Consultant incurs as a result thereof.

6.2.3 Should a separate contractor cause damage to the Work or to the property of the Contractor, or cause delay or interference with the Contractor's performance of the Work, the Contractor shall present directly to said separate contractor any claims it may have as a result of such damage, delay or interference (with an information copy to the Owner) and shall attempt to settle its claim against said separate contractor prior to the institution of litigation or other proceedings against said separate contractor.

6.2.3.1 In no event shall the Contractor seek to recover from the Owner or the Design Consultant, and the Contractor hereby warrants to the Owner and Design Consultant that it will not seek to recover from them, or any of them, any costs, expenses (including, but not limited to, attorney's fees) or damages or other losses incurred by the Contractor as a result of any damage to the Work or property of the Contractor or any delay or interference caused by any separate contractor.

6.2.3.2 In order to carry out the intent of this Article 6, Contractor agrees that privity of contract exists between Contractor and any separate contractor, as defined herein, for the purpose of disposing of the liabilities or obligations which are imposed upon said parties to each other hereunder; and Contractor agrees to accept service of process and to sue and be sued in Contractor's own name in any litigation which may arise hereunder between Contractor and any separate contractor.

6.2.4 Whenever Contractor receives items from another Contractor or from Owner for storage, erection or installation, the Contractor receiving such items shall give receipt for items delivered, and thereafter will be held responsible for care, storage and any necessary replacing of item or items received.

6.2.5 When certain items of equipment and other work are indicated as "NIC" (not in contract), or to be furnished and installed under other contracts, any requirements for preparation of openings, provision of backing, etc., for receipt of such "NIC" work will be furnished upon written request of the Contractor who shall properly form and otherwise prepare the Contractor's work in a satisfactory manner to receive such "NIC" work.

6.3 **OWNER'S RIGHT TO PERFORM DISPUTED WORK**

6.3.1 If a dispute arises between the Contractor and separate contractors as to their responsibility for cleaning up as required by Paragraph 4.17, or for accomplishing coordination, or doing required cutting, filling, excavating or patching as required by Paragraph 4.16, the Owner may carry out such Work and charge the cost thereof to the contractors responsible therefore as the Owner shall determine to be just. Such determination shall be final.

6.4 **COORDINATION OF THE WORK**

6.4.1 By entering into this contract, Contractor acknowledges that there may be other contractors on the site whose work will be coordinated with that of the

the other party within a reasonable time not exceeding twenty one (21) days after first observance. The notice shall provide sufficient detail to enable the other party to investigate the matter. If a Claim for additional cost or time related to this Claim is to be asserted, it shall be filed as provided in Subparagraphs 7.3.7 and 7.3.8.

7.4 PERFORMANCE BOND AND LABOR AND MATERIAL PAYMENT BOND (FOR BIDS \$100,000 AND OVER)

7.4.1 The Contractor shall furnish bonds, on the bond form provided in this document, covering the faithful performance of the Contract and the payment of all obligations and damages arising thereunder whether same be direct or indirect, real or consequential in a form and with a surety satisfactory to the Owner. It is expressly agreed that the Surety shall be responsible for any delay or liquidated damages assessed against Contractor.

7.4.2 The Contractor is required to furnish a Performance Bond and a Labor and Material Payment Bond, on the bond form provided in this document, each in the amount of one-hundred percent (100%) of the Contract sum, and recorded in the public records of Brevard County. Bonds and Notice of Commencement shall be submitted within five (5) days of Notice to Proceed. No work shall commence onsite and no payment shall be made until certified copies of the recorded Bonds are submitted and approved by the Owner. A copy of the Bonds shall be provided to each subcontractor.

7.5 RIGHTS AND REMEDIES

7.5.1 The duties and obligations of the Contractor imposed by the Contract Documents and the rights and remedies of the Owner available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

7.5.2 Except as may be specifically agreed in writing, the failure of the Owner or the Design Consultant to insist in any one or more instances upon the strict performance of any one or more of the provisions of this Contract, or to exercise any right herein contained or provided by law, shall not be construed as a waiver or relinquishment of the performance of any other provisions or right(s), or of the right to subsequently demand such strict performance or exercise such right(s), and the rights shall continue unchanged and remain in full force and effect.

7.5.3 The Contractor agrees that the Contractor can be adequately compensated by money damages for any breach of this Contract which may be committed by the Owner. The Contractor hereby agrees that no default, act, or omission of the Owner or the Design Consultant, except for failure to make progress payments as required by the Contract Documents, shall constitute a material breach of the Contract entitling the Contractor to cancel or rescind the provisions of this Contract, or (unless the Owner shall so consent or direct in writing) to suspend or abandon performance of all or any part of the Work.

7.6 TESTS

7.6.1 If the Contract Documents, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any portion of the Work to be inspected, tested, or approved, the Contractor shall give the testing agency, Owner and Design Consultant timely notice of its readiness so the Design Consultant and the Owner may observe such inspection, testing or approval. The

Contractor shall bear all costs of such inspections, tests or approvals conducted by public authorities such as bacteriological tests, pressure tests. Unless otherwise provided, the Owner shall bear all costs of other inspections, tests or approvals such as soil borings, soil testing, density, compaction, concrete slump and strength.

7.6.1.1 Unless otherwise stipulated in other Contract Documents, the Contractor shall pay for all utilities required for testing of installed equipment of all of the Contractor's work and work of each Subcontractor. Labor and supervision required for making such tests shall be provided at no additional cost to the Owner.

7.6.2 If the Owner and/or Design Consultant determine that any Work requires special inspection, testing, or approval which Subparagraph 7.6.1 does not include, the Owner will instruct the Contractor to order such special inspection, testing or approval, and the Contractor shall give notice as provided in Subparagraph 7.6.1. If such special inspection or testing reveals a failure of the Work to comply (1) with the requirements of the Contract Documents, or (2) with respect to the performance of the Work, with laws, ordinances, rules, regulations, or orders of any public authority having jurisdiction, the Contractor shall bear all costs thereof, including compensation for the Owner's and Design Consultant's additional services made necessary by such failure.

7.6.3 Inspections and tests required to establish compliance with Contract Documents, as provided for in the Contract Documents, will be made by a pre-qualified, independent testing agency selected by the Owner. The cost of the initial services of such agency will be paid by the Owner. When the initial tests indicate non-compliance with the Contract Documents, any subsequent testing occasioned by non-compliance shall be performed by the same agency and the cost thereof shall be borne by the Contractor. Representatives of the testing agency shall have access to the Work at all times. The Contractor shall provide facilities for such access in order that the agency may properly perform its functions.

7.6.4 The independent testing agency, employed by the Owner, shall prepare the test reports, logs, and certificates applicable to the specific inspections and tests and promptly deliver the specified number of copies to the designated parties. Certificates of inspection, testing or approval required by public authorities shall be secured by the Contractor and promptly delivered to the Owner, in adequate time to avoid delays in the Work or final payment therefore.

7.6.5 The Contractor shall pay for and have sole responsibility for inspections or testing performed exclusively for the Contractor's own convenience.

7.7 **FIELD ENGINEERING**

7.7.1 The Contractor shall provide and pay for field engineering services required for the project for Survey work required in the execution of the project and/or for Civil or other professional engineering services specified, or required to execute contractor's construction methods.

7.7.2 The Contractor shall retain the services of a registered land surveyor licensed in the State of Florida to identify existing control points and property line corner stakes indicated on the drawings, as required.

7.7.3 Any engineer or land surveyor selected by the Contractor must be acceptable to

the Owner and Engineer.

7.7.3.1 The Surveyor shall locate and protect control points prior to starting site work, and preserve all permanent reference points during construction; make no changes or relocations without prior written notice to the Engineer, and report to the Engineer when any reference point is lost or destroyed, or required relocation because of necessary changes in grades or locations. The Surveyor shall be required to replace Project control points which may be lost or destroyed and establish replacements based on original survey control.

7.7.4 The Contractor shall ensure the Project Survey establishes a minimum of two permanent bench marks on the site, referenced to data established by survey control points; includes record locations, with horizontal and vertical data, on Project Record Documents; establishes lines and levels, locate and layout, by instrumentation and similar means.

7.7.5 The Contractor shall furnish three (3) sealed copies of final certified as-built, showing location of project, pervious surfaces, topography and retention areas at a minimum.

7.8 **UNENFORCEABILITY OF ANY PROVISION**

7.8.1 If any provision of this Contract is held as a matter of law to be unenforceable, against public policy or unconscionable, the remainder of the Contract shall be enforceable without such provision.

7.9 **ATTORNEYS' FEES, VENUE AND OTHER EXPENSES**

7.9.1 In the event any action, suit, or proceeding is commenced to enforce the provisions of this document, each party shall bear its own attorney's fees and costs, and any trial shall be non-jury.

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. The Contract shall be governed by the laws of the State of Florida.

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.

7.10 **MISCELLANEOUS REQUIREMENTS**

Hard hats will be required at construction site in this Contract from start to completion of work (OSHA CFR 1926.100/OSHA CFR 1910.135). Each contractor, employee, and visitor at the construction site in this Contract will be required to wear a hard hat. The Contractor shall enforce the wearing of hard hats by contractors, employees and visitors. The Contractor shall post notice of "Hard Hat Area".

ARTICLE 8

TIME

8.1 **DEFINITIONS**

8.1.1 Unless otherwise provided, the Contract Time is the period of time allotted in the Contract Documents for Final Completion of the Work, as defined in Subparagraph 8.1.4, including adjustments under written change orders, if any. The Contractor shall complete the Work within the Contract Time.

8.1.2 **The date of commencement of the Work is the date of the Notice to Proceed. The Contractor shall not mobilize, commence Work or store materials or equipment on site until: (1) written Notice to Proceed is issued; (2) all Bonds and Certificates of Insurance have been executed, delivered to and accepted by the Owner; and (3) Contractor has delivered to Owner the Contractor's as-planned schedule, original job cost estimate, list of sub-contractors with 24 hour emergency phone numbers (general contractor, etc.), and corporate resolution designating the Contractor's representative.**

8.1.3 The Date of Substantial Completion of the Work is the Date certified by the Owner when the Work is sufficiently complete, in accordance with the Contract Documents, so the Owner can take beneficial occupancy and use the Work for the use for which it is intended, with all of the Project's parts and systems operable as required by the Contract Documents, and with only incidental corrective work and any final cleaning beyond that needed for the Owner's full use.

8.1.4 The date of Final Completion of the Work is the date certified by the Owner when the Work is totally complete, to include all items listed on the inspection report following substantial completion inspection, in accordance with the Contract Documents, and the Owner may fully occupy and use all of the Work for the use for which it is intended.

8.2 **PROGRESS AND COMPLETION**

8.2.1 All time limits stated in the Contract Documents are of the essence of the Contract.

8.2.2 The Contractor shall begin the Work on the date of commencement as defined in Subparagraph 8.1.2. The Contractor shall carry the Work forward expeditiously with adequate forces and shall achieve Substantial Completion and Final Completion within the time frames stated in the Contract Documents.

8.2.3 **SPECIFIC DATES**

The schedule below contains certain specific dates in addition to date of Notice to Proceed and Time for Substantial and Final Completion. These dates shall be adhered to and are the last acceptable dates unless modified, in writing, by mutual agreement between the Contractor and the Owner. All dates indicate midnight unless otherwise stipulated. The only exceptions to this schedule are defined in paragraph 8.3, DELAYS AND EXTENSIONS OF TIME.

Substantial Completion **Ninety (90) calendar days** from Notice to Proceed ***(includes two (2) weeks for Permitting)***.

Final Completion (All required closeout documents) **Thirty (30) calendar days** from contracted Substantial Completion

8.3 DELAYS AND EXTENSIONS OF TIME

- 8.3.1 The time during which the Contractor is delayed in the performance of the Work, by the acts or omissions of the Owner or the Design Consultant or their employees or agents, acts of god, unusually severe and abnormal climatic conditions, fires, epidemics, quarantine restrictions, strikes, riots, civil commotions or freight embargoes, or other conditions beyond the Contractor's control and which the Contractor could not reasonably have foreseen and provided against, shall be added to the time for completion of the Work (i.e., the Contract Time) stated in the Agreement; provided, however, that no claim by the Contractor for an extension of time for delays will be considered unless made in compliance with the requirements of this Article and other provisions of the Contract Documents. Contractor agrees that a change in the Contract Time may only be authorized by a written Change Order authorized and executed by the Brevard County Board of County Commissioners. No person has authority to orally, or in writing, grant any change in the Contract Time except as stated herein.
- 8.3.2 Neither the Owner nor the Design Consultant shall be obligated or liable to the Contractor for, and the Contractor hereby expressly waives and releases, any claims against the Owner and the Design Consultant on account of any indirect or direct damages, costs or expenses of any nature which the Contractor, its Subcontractors, or Sub-subcontractors, or any other person may incur as a result of any delays, interferences, changes in sequence or the like, which are reasonable, foreseeable, contemplated, or avoidable by Contractor, arising from or out of any act or omission of the Owner or its agents, employees, consultants, independent contractors or any governmental representative. **The Contractor's sole and exclusive remedy, in any such events, shall be an extension of the Contract Time, as determined under the provisions of these Contract Documents.**
- 8.3.3 The Contract Time shall be adjusted only pursuant to Paragraph 8.3.1 and Article 12. Contract Time may only be adjusted if the work is suspended pursuant to Paragraph 3.4 or the Contractor has experienced an excusable delay described in Subparagraphs 8.3.1 and 8.3.4. To request an extension of the Contract Time, the Contractor shall furnish such justification and supporting evidence as the Owner may deem necessary for a determination of whether or not the Contractor is entitled to an extension of time under the provisions of the Contract, and shall further conform to all of the requirements set forth below. The burden of proof to substantiate a claim for an extension of the Contract Time shall rest with the Contractor, including evidence that the cause was beyond the Contractor's control. If the Owner finds that the Contractor is entitled to any extension of the Contract Time, determination and all relevant data will be incorporated into the schedule in the first update after an Agreement is reached. The Contractor acknowledges and agrees that actual delays in activities which, according to the schedule do not affect the Contract Time, will not be the basis for a change in Contract Time. The Contractor acknowledges and agrees that contract time extensions will be granted only to the extent that excusable delays exceed the available float in the Contractor's schedule. The Contractor acknowledges and agrees that all available float in the Contractor's schedule belongs to the Owner and may be utilized, without additional cost, by the Owner.
- 8.3.3.1 When change orders or delays are experienced by the Contractor and the Contractor requests an extension of time, the Contractor shall submit to the Owner a written Time Impact Analysis illustrating the influence of each change or delay on the current contract schedule completion date. Each Time Impact

Analysis shall include a fragnet demonstrating how the Contractor proposes to incorporate the change order or delay into the Project Schedule. A fragnet is defined as a sequence of new activities and/or activity revisions that are proposed to be added to the existing schedule to demonstrate the influence of delay and the method for incorporating delays and impacts into the schedule as they are encountered.

8.3.3.2 Each Analysis shall demonstrate the estimated time impact based on the events of delay, the date the change was given to the Contractor, the status of construction at that point in time, and the event time computation of all activities effected by the change or delay. The event times used in the analysis shall be those included in the latest update of the Project Schedule or as adjusted for the events of delay.

8.3.3.3 Time extensions will be granted only to the extent that equitable time adjustments for the activity or activities affected exceed the total or remaining float along the path of activities at the time of actual delay or at the time notice to proceed was issued for a change. Each Time Impact Analysis shall be submitted within ten (10) calendar days after a delay occurs or notice of direction for proceeding with a change order is given to the Contractor. In cases where the Contractor does not submit a Time Impact Analysis for a specific change order or delay within the specified period of time, the Contractor shall be deemed to have irrevocably waived its rights to any additional time and cost.

8.3.3.4 Approval or rejection of each Time Impact Analysis by the Owner shall be made, in writing, within fifteen (15) calendar days after receipt of each Time Impact Analysis, unless subsequent meetings and negotiations are necessary. Upon approval by change order, a copy of a Time Impact Analysis shall be returned to the Contractor for incorporation into the schedule.

8.3.3.5 Upon mutual agreement by both parties, fragnets illustrating the influence of change orders and delays shall be incorporated into the Project Schedule during the first update after agreement is reached.

8.3.3.6 Extensions in the Contract Time and Change Orders are subject to extension-in-time audit by the Owner or Design Consultant at the discretion of the Owner.

The Contractor agrees that, even though the Owner, Contractor and Design Consultant have previously signed a Change Order containing an extension-in-time resulting from a change in or addition to the Work that said extension in the Contract Time may be adjusted by an audit after the fact by the Construction Program Manager. If such an audit is to be made, the Construction Program Manager must undertake the audit and make a ruling within thirty (30) days after the completion of the Work under the Change Order.

The Contractor agrees that any extension of the Contract Time to which the Contractor is entitled arising out of a change order undertaken on a force accounting (labor and materials) basis, shall be determined by an extension-in-time audit by the Owner after the Work of the change order is completed. Such rulings shall be made by the Owner within thirty (30) days after a request for same is made by the Contractor, except said thirty (30) days will not start until the Work under the Change Order is completed.

8.3.4 Subject to other provisions of the Contract, the Contractor may be entitled to an extension of the Contract Time (but no increase in the Contract Sum) for delays

arising from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, Subcontractors or suppliers as follows:

- .1 labor disputes and strikes (including strikes affecting transportation), that do, in fact, directly and critically affect the progress of the Work; however, an extension of Contract Time on account of an individual labor strike shall not exceed the number of days of said strike:
- .2 acts of God, tornado, fire, hurricane, blizzard, earthquake, or typhoon that damage completed work or stored materials:
- .3 unusually severe and abnormal inclement weather; however, the Contract Time will not be extended due to normal inclement weather. The time for performance of this Contract, as stated in the Contract Documents, includes an allowance for calendar days which may not be available for construction out-of-doors. For the purposes of this Contract, the Contractor agrees that this allowance of calendar days per month are to be considered as normal inclement weather. Unless the Contractor can substantiate to the satisfaction of the Owner that there was greater than normal inclement weather considering the full term of the Contract Time using a ten year average of accumulated record mean values from climatological data compiled by the U.S. Department of Commerce, National Oceanic and Atmospheric Administration for the locale of the Project, and that such alleged greater than normal inclement weather actually delayed the Work or portions thereof which had an effect upon the Contract Time, the Contractor shall not be entitled to an extension of time. If the total accumulated number of calendar days lost due to inclement weather, from the start of Work until Substantial Completion, exceeds the total accumulated number to be expected for the same period from the aforesaid table, time for completion will be extended by the number of calendar days needed to include the excess number of calendar days lost.
- .4 acts of the public enemy, acts of the state, Federal or local government in its sovereign capacity, and acts of another contractor in the performance of a contract with the Owner relating to the Project.

8.3.5

The Contractor shall not be entitled to and hereby expressly waives any extension of time resulting from any condition or cause unless said claim for extensions of time is made in writing to the Owner and Design Consultant within ten (10) days of the first instance of delay. Circumstances and activities leading to such claim shall be indicated or referenced in a daily field inspection report for the day(s) affected; otherwise, all such claims are waived and released by the Contractor. In every such written claim, the Contractor shall provide the following information:

- .1 Nature of the delay;
- .2 Date (or anticipated date) of commencement of delay;
- .3 Activities on the progress schedule affected by the delay, and/or new activities created by the delay and their relationship with existing activities; (Fragnet)
- .4 Identification of person(s) or organization(s) or event(s) responsible for the delay;

.5 Anticipated extent of the delay; and

.6 Recommended action to avoid or minimize the delay.

8.3.6 No change in Contract Sum will be authorized because of adjustment of Contract Time due to unusually severe and abnormal, inclement weather (tornado, hurricane, typhoon or flood).

8.3.7.1 If the said Contractor shall neglect, fail or refuse to complete the Work within the time herein specified, or any proper extension thereof granted by the Owner, then the Contractor does hereby agree, as a part consideration for the awarding of this contract, to pay the Owner the amount specified in the Owner-Contractor Agreement, not as a penalty but as liquidated damages for such breach of contract as hereinafter set forth, for each and every calendar day that the Contractor shall be in default after the time stipulated in the contract for completing the work.

8.3.7.2 The Liquidated Damages amount is fixed and agreed upon by and between the Contractor and the Owner because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the Owner would in such event sustain.

ARTICLE 9

PAYMENTS AND COMPLETION

9.1 CONTRACT SUM

9.1.1 The Contract Sum is stated in the Owner-Contractor Agreement and, including change orders thereto, is the total amount payable by the Owner to the Contractor for the Performance of the Work under the Contract Documents.

9.2 SCHEDULE OF VALUES

9.2.1 **Fifteen (15) days prior to the first Application for Payment, the Contractor shall submit to the Owner, through the Design Consultant, a Schedule of Values allocated to the various portions of the Work, and any other supporting data the Owner may require.** This Schedule of Values, unless objected to by the Owner, shall be used as a basis for the Contractor's Applications for Payment and only for this purpose. If no agreement can be reached as to the accuracy of the Schedule of Values, the Owner will determine the value and this will become the basis for the Contractor's Applications for Payment. **If approved by the Owner,** the Contractor may include in his Schedule of Values a line item for mobilization which shall include a reasonable amount of mobilization for the Contractor. Surety hereby consents to, agrees and accepts Contractor's Schedule of Values.

9.3 PAYMENTS TO THE CONTRACTOR

9.3.1 All requests for monthly payments must be submitted, in triplicate, in an AIA Form G702 "format" to the office of the Owner's Representative. If Contractor is using a format other than AIA G702 for submittal of payment applications, the format must be submitted to Owner's Representative for review and approval prior to submission of the first Application for Payment. The Facilities Construction Division shall be the office of the Owner's Representative.

9.3.2

The Contractor is required to pay all money due subcontractors and material dealers promptly. Each application for payment issued by the Contractor shall contain an affidavit which states "This is to certify that all subcontractors supplying services or items provided under previous Certificates for Payment are paid."

In addition, **NOTARIZED, ORIGINAL, "Waivers of Rights Against Payment Bond"** will be required from all subcontractors, material suppliers and vendors (whether the County was sent a "Notice to Owner" or not) with **each** monthly payment request which waives any claim the subcontractor, supplier or vendor might have against the payment bond through the previous month's pay request. **NO "CONDITIONAL" WAIVERS WILL BE ACCEPTED.**

Waivers of Rights Against Payment Bond must be submitted for anyone that has delivered materials or performed a service during the prior month's payment application period.

If a supplier/subcontractor/materialman **did not** provide materials or services for the period covered by the prior months payment application period, the Contractor will be required to provide the following to the Owner:

- a "certified", notarized list, including a statement that no deliverables have been received or services performed in the prior payment application period for the following:
- anyone that has submitted a Notice to Owner during any prior months payment application period;
- suppliers/subcontractors/materialmen that submitted a Partial Waiver in a prior months payment application period.

The Contractor shall provide such "certified", notarized list until a Final Waiver of Rights Against Payment Bond is received.

If a supplier/subcontractor/materialmen submits an affidavit which contradicts the Contractor's assertion that no deliverables or services were provided, a Waiver will be required.

The General Contractor shall inform subcontractors not to execute Affidavit of Payments unless the subcontractor has in fact been paid.

Notwithstanding the foregoing, pursuant to section 255.05(11), Florida Statutes, when the Contractor has furnished and recorded a payment and performance bond and provided the County with a written consent from the Surety regarding the Project or payment in question, no such waivers shall be required. The Surety may, in a writing served on the County, revoke its consent or direct that the County withhold a specified amount from a payment, which shall be effective upon receipt.

9.3.3

Per Brevard County Policy BCC-07, no Change Order or Change Directive work is to be started without proper signatures and paperwork being completed.

9.3.4

Waivers of Claims: Upon completion of the Contract and **before final payment**

is made, the Contractor shall submit **notarized, original final Waivers of Rights Against Payment Bond**, satisfactory to the Owner's representative, certifying all payrolls, material bills, supplier's bills and other indebtedness incurred by the Contractor in connection with the construction of the project have been paid in **full**. **NO "CONDITIONAL" WAIVERS WILL BE ACCEPTED.** Contractor shall comply with standard closeout procedures of Brevard County Facilities Construction Division, a copy of which is *attached hereto*, and also issued to the Contractor for signature at the pre-construction meeting.

Notwithstanding the foregoing, pursuant to section 255.05(11), Florida Statutes, when the Contractor has furnished and recorded a payment and performance bond and provided the County with a written consent from the Surety regarding the Project or payment in question, no such waivers shall be required. See Subparagraph 9.3.2 herein.

9.4 **APPLICATIONS FOR PAYMENT**

9.4.1 Prior to the date for each progress payment established in the Owner-Contractor Agreement, the Contractor, in accordance with the provisions herein, shall submit to the Owner, in the form specified by the Owner, an itemized Application for Payment. This Application shall be notarized, supported by such data substantiating the Contractor's right to payment as the Owner may require, including but not limited to, the Contractor's certification that all work for which payment is requested has been completed in full in accordance with the Contract Documents, and reflecting retainage, if any, as provided elsewhere in the Contract Documents. The Contractor shall also swear to and certify that the Contractor has paid all due and payable amounts due to subcontractors and material suppliers for which previous certificates for payment were issued and payments received from the Owner.

9.4.2 The Owner will hold retainage in accordance with Florida Statutes on the amount of all progress payments until acceptance and Final Completion of the Work, whether or not the Owner has occupied any or all of the Project before such time.

9.4.3 Payments **may** be made by the Owner at Owner's discretion, on account of materials or equipment not incorporated in the Work but delivered and suitably stored at the site by the Contractor. Payments for materials or equipment stored on the site shall only be considered upon submission by the Contractor of satisfactory evidence (for example, releases or paid invoices from the Seller) that the Contractor has acquired title to such material, an itemized inventory of materials and certification that the materials will be utilized on the Work prior to the next Payment Application under this Contract and that it is satisfactorily stored, protected, and insured or that other procedures satisfactory to the Owner that will protect the Owner's interests have been taken. Materials once paid for by the Owner become the property of the Owner and may not be removed from the work site without the Owner's written permission.

9.4.3.1 Owner will be under no obligation to make payment to the Contractor on account of materials or equipment not incorporated in the Work but delivered and stored at the site unless the Contractor, in the Contractor's Schedule of Values, includes line items for such delivered and stored materials or equipment.

9.4.3.2 It is specifically understood and agreed that an inspection of the materials by the Owner and/or Construction Program Manager, the Design Consultant, or any agency retained by any of them, shall not in any way subject the Owner to pay for the inspected materials, or any portion thereof, even though incorporated in

the Work, if the inspected materials shall in fact turn out to be unfit to be used in the Work, nor shall such inspection be considered as any waiver of objection to the Work on account of the unsoundness or imperfection of the material used.

9.4.3.3 Unless otherwise provided for elsewhere in the Contract Documents, no payments will be made for any materials or equipment stored off or away from the Work Site.

9.4.4 The Contractor warrants that title to all Work, materials and equipment covered by an Application for Payment will pass to the Owner either by incorporation in the construction or upon the receipt of payment by the Contractor, whichever occurs first, free and clear of all liens, claims, security interests or encumbrances, hereinafter referred to in this Article 9 as "liens"; and that no Work, materials or equipment covered by an Application for Payment will have been acquired by the Contractor, or by any other person performing Work at the site or furnishing materials and equipment for the Project, subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the Contractor or such other person.

9.5 CERTIFICATES FOR PAYMENT

9.5.1 The Design Consultant will, after receipt of the Contractor's Application for Payment, issue a Certificate for Payment to the Owner, with a copy to the Contractor, for such amount as the Design Consultant determines is properly due, or notify the Contractor in writing of their reasons for withholding a Certificate as provided herein.

9.5.2 The Owner's approval of the Contractor's submitted progress schedule and monthly updates as required herein shall be a condition precedent to the processing and payment of any Application for Payment. The Contractor shall be entitled to progress payments only as determined from the currently approved and updated schedule.

The submission of Superintendent Daily Reports, evidence of up-to-date as-built documents and updated Schedule shall also be a condition precedent of the processing and payment of any Application for Payment.

9.6 PROGRESS PAYMENTS

9.6.1 After a **complete and properly submitted** Certificate for Payment has been delivered to the Design Consultant, the Owner shall make payment in a manner consistent with the Florida Prompt Payment Act (Florida Statute 218.735).

9.6.2 The Contractor shall promptly pay each Subcontractor (including suppliers, laborers, and material suppliers) performing labor or furnishing material for the Work out of the amount paid to the Contractor on account of such Subcontractor's Work, the amount to which said Subcontractor is entitled, reflecting the percentage actually retained, if any, from payments to the Contractor on account of such Subcontractor's Work. The Contractor shall, by an appropriate agreement with each Subcontractor, also require each Subcontractor to make payments to his Sub-subcontractors in similar manner.

9.6.3 The Owner may, on request and at its discretion, furnish to any subcontractor information regarding the percentages of completion or the amounts applied for by the Contractor and the action taken thereon by the Design Consultant on account of Work done by such subcontractor.

9.6.4 Neither the Owner and/or the Design Consultant shall have any obligation to pay or to see to the payment of any monies to any subcontractor or materialman.

9.6.5 No Certificate for a progress payment, nor any progress payment, nor any partial or entire use or occupancy of the Project by the Owner, shall constitute an acceptance of any Work not in accordance with the Contract Documents.

9.6.6 Contractor acknowledges that the Contractor may not lien Owner's interest in the Project site, pursuant to Florida law. Contractor agrees to advise all subcontractors and material suppliers of the non-lienable nature of the project and to further furnish each such person or entity a copy of the Labor and Material Payment Bond for the project.

9.7 PAYMENTS WITHHELD

9.7.1 The Owner and/or Design Consultant may decline to certify payment and may withhold their Certificate, in whole or in part, to the extent necessary to protect the Owner. If the Design Consultant is unable to certify payment in the amount of the Application, they will notify the Contractor. If the Contractor and the Design Consultant cannot agree on a revised Payment Application, the Owner will issue payment for the percentage of work the Owner reasonably determines the Contractor has completed to date. The Design Consultant may decline to certify payment because of evidence or observations and may make adjustments in future certificates to such extent as may be necessary in their opinion to protect the Owner from loss, because of:

- .1 defective work not remedied,
- .2 third party claims filed, whether in court, in arbitration or otherwise, or reasonable evidence indicating the probability of filing of such claims,
- .3 failure of the Contractor to make payments properly to Subcontractors for labor, materials or equipment,
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum,
- .5 damage to the Owner or another contractor,
- .6 reasonable evidence that the Work will not be completed within the Contract Time, or within any Contract Milestones as established in the Contract Documents,
- .7 failure or refusal of the Contractor to carry out the Work in accordance with the Contract Documents, or
- .8 failure or refusal of the Contractor to properly schedule and coordinate the Work, to provide progress schedules, reports and updates, or to otherwise fully comply with Division 1 entitled "Schedules and Reports";

9.7.2 When the above grounds in Subparagraph 9.7.1 are resolved, payment shall be made for amounts withheld because of them.

9.8 FAILURE OF PAYMENT

9.8.1 If the Owner does not make payment to the Contractor, as required under Florida Prompt Payment Act (Florida Statute 218.735), upon receipt of the Contractor's **approved** Application for Payment by the Design Consultant, through no fault of the Contractor, and the Owner otherwise not being entitled under the Contract Documents or applicable law to withhold payment, then the Contractor may, upon seven (7) additional days' written notice to the Owner, stop the Work until payment of the amount owing according to the Contract Documents has been

received .

9.9 SUBSTANTIAL COMPLETION

The Contractor shall notify the Owner, in writing, that the Work will be ready for inspection to determine if it is substantially complete on or after a date stated in the notice. The notice shall be given at least seven (7) calendar days in advance and shall be forwarded to the Owner through the Design Consultant. Inspection and testing shall take place at a time(s) mutually agreeable to the Contractor, Design Consultant, and Owner. The Owner shall determine if Substantial Completion has been accomplished as defined in Subparagraph 8.1.3, and the Design Consultant shall produce a written list of unfinished Work and defective Work, commonly referred to as a "punchlist".

9.9.1 Prior to the Substantial Completion inspection, the Contractor shall provide the Owner with a list of items which, in the Contractor's opinion, are to be completed or corrected. This list is for the Owner's information only and does not waive the Owner's right to complete performance of the Contract. When the Design Consultant determines that the Work is substantially completed, then the Design Consultant will issue a Certificate of Substantial Completion which shall establish the Date of Substantial Completion. *Warranties required by the Contract Documents shall commence on the Date of Final Completion of the Work.*

9.9.2 The acceptance of any payment after the Certificate of Substantial Completion has been issued shall constitute a waiver and full release of all claims by the Contractor except those previously made in writing and identified by the Contractor as unsettled at the time of the Application for Payment for Substantial Completion, and except for the retainage sums due at Final Completion and acceptance.

9.9.3 The issuance of the Certificate of Substantial Completion does not indicate final acceptance of the project by the Owner, and the Contractor is not relieved of any responsibility for the Work and meeting the Contract Document requirements.

9.9.4 Should the Design Consultant determine that the Work is not substantially complete, they shall provide the Contractor with written notice stating why the Work is not substantially complete. The Contractor shall re-request in writing that the Owner and Design Consultant perform a Substantial Completion inspection. Costs, if any, associated with such reinspections shall be assessed to the Contractor.

9.10 FINAL COMPLETION AND FINAL PAYMENT

9.10.1 Upon receipt of the documentation required by Article 9.9, and of written notice and certification by the Contractor that the Work is ready for final inspection, and acceptance, and upon receipt of a final Application for Payment, the Owner will promptly make such inspection and, when the Owner finds the Work acceptable under the Contract Documents and the Contract fully performed, the Owner will issue a final Certificate of Payment stating that, to the best of their knowledge, information and belief, the Work has been completed in accordance with the terms and conditions of the Contract Documents, and that the entire balance found to be due the Contractor, and noted in said Final Certificate, is due and payable. The Final Certificate for Payment will constitute a further representation that the conditions precedent to the Contractor's being entitled to final payment as set forth in Subparagraph 9.9 and 9.10.2 have been fulfilled. Payment shall be made in full to the Contractor, in accordance with Florida's Prompt Payment Act

(Florida Statute 218.735), provided that the requirements of Article 9 have been fulfilled.

9.10.2 Neither the final payment nor the remaining retained percentage shall become due until the Work is free and clear of any and all liens and the Contractor submits to the Owner:

- .1 an affidavit from Contractor and all subcontractors, sub-subcontractors and material suppliers that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work have been paid or otherwise satisfied;
- .2 Consent of Surety, if any, to final payment;
- .3 if required by the Owner, other data establishing payment or satisfaction of all such obligations, such as receipts, releases and waivers of liens arising out of the Contract, to the extent and in such form as may be designated by the Owner;
- .4 as-built drawings in the form and quantity required by the Contract Documents and approved by the Design Consultant, operation and maintenance manuals, and other project close-out submittals, as required by the contract Documents; and
- .5 a written certification that:
 - .a the Contractor has reviewed the requirements of the Contract Documents,
 - .b the Work has been inspected by the Contractor for compliance with all requirements of the Contract Documents,
 - .c pursuant to this inspection, the Contractor certifies and represents that the Work complies in all respects with the requirements of the Contract Documents, and
 - .d the Contractor further certifies and represents that all equipment and systems have been installed in accordance with the Contract Documents and have been tested in accordance with specification requirements and are operational.

9.10.3 If any Subcontractor refuses to furnish an original, notarized release or waiver required by the Owner, the Owner may withhold from the final payment any sum that the Owner has reason to believe may be needed to satisfy any claim arising from the Work and instead pay those monies to the Surety, who shall disburse funds as the Surety deems approvable. Notwithstanding the foregoing, when the Contractor has furnished and recorded a payment and performance bond and provided the County with a written consent from the Surety regarding the Project or payment in question, no such release or waiver shall be required. See Subparagraph 9.3.2 herein.

9.10.4 The making of final payment **shall not** constitute a waiver of any claims by the Owner against the Contractor.

9.10.5 The acceptance of final payment **shall** constitute a waiver and release of all claims by the Contractor that have not been already made to the Owner, in

writing, and are stated as unsettled in the Application for Final Payment.

9.11 **OWNER'S RIGHT TO OCCUPY INCOMPLETE WORK**

9.11.1 Should the Project, or any portion thereof, be incomplete for Beneficial Occupancy or Final Completion at the scheduled dates, the Owner shall have the right to occupy any remaining portion of the Project. In such an event, the Contractor shall not be entitled to any extra compensation, nor shall the Contractor interfere in any way with said normal full use of that portion of the Project. In such event the Contractor shall not be relieved of any responsibilities of the Contract, including the required times of completion. Such occupancy by the Owner does not constitute Beneficial Occupancy or Final Completion.

9.12 **LIQUIDATED DAMAGES**

9.12.1 Should the Contractor fail to substantially complete the Work on or before the date stipulated for Substantial Completion (or such later date as may result from extension of time granted by Owner), the Contractor shall, upon staff's recommendation to and approval by the Board of County Commissioners, pay the Owner as liquidated damages the sum of \$500 for each consecutive calendar day that Substantial Completion remains unfulfilled beyond the date allowed by the Contract, which sum is agreed upon as a reasonable and proper measure of damages which the Owner will sustain per day by failure of the Contractor to complete work within time stipulated. It is recognized by the Owner and the Contractor that the injury to the Owner which could result from a failure of the Contractor to complete on schedule is uncertain and cannot be computed exactly. In no way shall costs for liquidated damages be construed as a penalty on the Contractor. The Owner may deduct any Liquidated Damages incurred under this paragraph from pending Payment Applications.

9.12.2 For each consecutive calendar day that the Work remains incomplete after the date established for Final Completion, the Owner shall, upon staff's recommendation to and approval by the Board of County Commissioners, retain from the compensation otherwise to be paid to the Contractor the sum of \$500. This amount is the minimum measure of damages the Owner will sustain by failure of the Contractor to complete all remedial work, correct deficient work, clean up the project and other miscellaneous tasks as required to complete all work specified. This amount is in addition to the liquidated damages prescribed above and shall be added to such damages for any period of time that the Contractor is late in achieving both Substantial and Final Completion.



CONTRACTOR INSTRUCTIONS FOR CONTRACT COMPLIANCE

**PROCEDURE FOR CHANGE ORDERS
OR
CONSTRUCTION CHANGE DIRECTIVES**

(**NO** changes are to be undertaken without **signed authorization**.)

A **CHANGE ORDER** is a written order to the Contractor signed by the Owner and/or Architect issued after the execution of the Contract, authorizing a change in the terms of the Contract, the project scope of work, the contract price, and/or the construction completion date.

A **CONSTRUCTION CHANGE DIRECTIVE** is a change directive signed by the Facilities Construction Division Director and the County Manager directing an addition, deletion or revision in the Scope of Work. The Construction Change Directive is necessary when no Agreement exists among the Architect/Engineer of Record, Brevard County and the Contractor on the dollar amount of a necessary change in the scope of work and/or 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 Contractor, 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 may identify the cost or method of determining the cost and the impact to the construction schedule, but does not change the contract price or the contract time. It is evidence that the parties expect that the change will be incorporated in a subsequently issued Change Order.

The Contractor's proposal substantiating a Change Order and/or Construction Change Directive shall be itemized and segregated by labor and materials for the various components of the change in work (no aggregate labor or material totals will be acceptable), and shall be accompanied by similarly detailed and signed proposals of any subcontractors and/or persons who will furnish materials or equipment for incorporation in the project. The proposal shall also include the Contractor's estimate of the time required to perform the change, the last date that Authorization to Proceed can be issued which will not impact the date of Substantial Completion or cause additional material or mobilization expenses, and its impact on the critical path.

PROCEDURE FOR MONTHLY PAY REQUEST

Processing of a **complete and correct** monthly pay requests is based on the following:

- Certification (signed and sealed) by the Project Architect or Engineer, if applicable.
- **Notarized, ORIGINAL** "Waivers of Rights Against Payment Bond" will be required from all subcontractors, material suppliers and vendors (whether the County was sent a "Notice to Owner" or not) with each monthly payment application which waives any claim the subcontractor, supplier or vendor might have against the payment bond through the previous month's pay request. Partial Releases must include a release date through the

prior pay period (NO "CONDITIONAL" WAIVERS WILL BE ACCEPTED). A Partial Release will be required with each Pay Application until a Final Waiver is received.

Waivers of Rights Against Payment Bond must be submitted for anyone that has delivered materials or performed a service during the prior months payment application period.

- I. If a supplier/subcontractor/materialman **did not** provide materials or services for the period covered by the prior months payment application period, the Contractor will be required to provide the following to the Owner:

a "certified", notarized list, including a statement that no deliverables have been received or services performed in the prior payment application period for the following:

anyone that has submitted a Notice to Owner during any prior months payment application period;

suppliers/subcontractors/materialmen that submitted a Partial Waiver in a prior months payment application period.

The Contractor shall provide such "certified", notarized list until a Final Waiver of Rights Against Payment Bond is received.

If a supplier/subcontractor/materialmen submits an affidavit which contradicts the Contractor's assertion that no deliverables or services were provided, a Waiver will be required.

The General Contractor shall inform subcontractors not to execute Affidavit of Payments unless the subcontractor has in fact been paid.

Notwithstanding the foregoing, pursuant to section 255.05(11), Florida Statutes, when the Contractor has furnished and recorded a payment and performance bond and provided the County with a written consent from the Surety regarding the Project or payment in question, no such waivers or releases shall be required. The Surety may, in a writing served on the County, revoke its consent or direct that the County withhold a specified amount from a payment, which shall be effective upon receipt.

- Executed Change Orders, updated CPM Schedule, Daily Work Logs, Submittal Log from General Contractor and Subcontractors for the application period.
- Any other documentation that may be required by the Owner or Architect to substantiate the Contractor's Application for Payment, as outlined in Contract & Bidding Documents.

The Pay Application **will not** be processed until **ALL** items are satisfactorily submitted to the Owner. After a **complete and properly submitted** Pay Application has been submitted, the Owner shall make payment in a manner consistent with the Florida Prompt Payment Act (Florida Statute 218.735). Pay Application may be affected by Holidays.

PROCEDURES AND FORMS FOR FINAL PAY

You need to have all required forms and original, notarized waivers submitted to Facilities Construction, with copies submitted to the Architect. As a minimum, the following documents are needed to receive **FINAL PAY** on a project:

- AIA DOCUMENT G-701 CHANGE ORDERS - ALL FOR PROJECT
- AIA DOCUMENT G-702 APPLICATION & CERTIFICATE FOR PAYMENT
- AIA DOCUMENT G-703 CONTINUATION SHEET
- AIA DOCUMENT G-704 CERTIFICATE OF SUBSTANTIAL COMPLETION
- AIA DOCUMENT G-707 CONSENT OF SURETY TO FINAL PAY W/ NO EXCEPTIONS

Note: If exceptions are listed on the Consent of Surety, a letter will be required from the Surety acknowledging ALL exceptions.

- FACILITIES CONSTRUCTION CERTIFICATE OF FINAL COMPLETION
- AIA DOCUMENT G706 CONTRACTOR'S AFFIDAVIT OF PAYMENT OF DEBTS & CLAIMS
- AIA DOCUMENT G706A CONTRACTOR'S AFFIDAVIT OF RELEASE OF LIENS
- Three (3) sets of Warranties, Guarantees and O&M Manuals required by Contract, including a **complete** list of all such items under warranty, length of warranty/guarantee, contact name for service with phone number and address.
- "As-Built" drawings (AutoCad format acceptable to the County) from job, including red-lined site plan.
- Survey Drawing showing the finished floor elevation of all buildings and walkways, the location of all buildings, walks, paving, walls, catch basins, and manholes. The survey work shall also include all retention/detention structures, parking structures and related work. A permanent bench mark shall be established at the direction of the Architect. The survey shall be performed by a registered land surveyor with a Florida license. The survey will not be made until all improvements have been completed and shall be marked "**As-Built Survey**".
- Notarized, ORIGINAL** Waivers of Rights Against Payment Bond from all subcontractors and/or material and equipment suppliers. NO "CONDITIONAL" WAIVERS WILL BE ACCEPTED. When the Contractor has furnished and recorded a payment and performance bond and provided the County with a written consent from the Surety regarding the Project or payment in question, no such waivers shall be required.
- Certification that all Utility bills (ie; FP&L, local water) have been paid.
- A complete list of subcontractors with addresses, phone numbers and contact person.
- Any other documentation required by the Contract Documents.

It is the Contractor's responsibility to ensure the completeness of the **FINAL PAY PACKAGE**. An incomplete package will result in delay of **FINAL PAY**. **FINAL PAY REQUESTS** will not be processed until ALL Substantial Completion punchlist work is complete and the required documents are received by Facilities Construction. **FINAL PAY REQUEST** must be submitted no later than **30 DAYS** after Substantial Completion.

Mary Bowers

Brevard County Board of County Commissioners
 Support Services Manager
 Brevard County Facilities Department

Contractor's Signature

Date

ARTICLE 10

PROTECTION OF PERSONS AND PROPERTY

10.1 SAFETY PRECAUTIONS AND PROGRAMS

10.1.1 Neither the Owner, the Design Consultant, nor their agents, employees or representatives are responsible for the means, methods, techniques, sequences or procedures utilized by the Contractor, or for safety precautions and programs in connection with the Work. Contractor shall be solely responsible for initiating, maintaining and supervising means, methods, techniques, sequences, procedures and all safety precautions and programs in connection with the Work. This requirement applies continuously throughout Contract performance, until Final Payment is made, and is not limited to regular working hours.

Contractor shall comply with the standards issued by the Secretary of Labor at 29 CFR Part 1926 (OSHA Code of Federal Regulations), April 2001 Edition or later. Failure to comply with said standards will result in the following:

1. Owner will issue a "verbal" warning to Contractor of non-compliance;
2. Owner will issue a "written" warning to Contractor of non-compliance;
3. Owner will contact OSHA and send notice to the Contractor's insurance carrier.

10.2 SAFETY OF PERSONS AND PROPERTY

10.2.1 The Contractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to:

- .1 all employees on the Work and all other persons who may be affected thereby;
- .2 all the Work and all materials and equipment to be incorporated therein, whether in storage on or off the site, under the care, custody or control of the Contractor or any of his Subcontractors or Sub-subcontractors, machinery, equipment and all hazards shall be guarded or eliminated in accordance with all applicable safety regulations; and
- .3 other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

10.2.2 The Contractor shall give all notices and comply with all applicable laws, ordinances, permits, rules, regulations and lawful orders of any public authority bearing on the safety of persons or property or their protection from damage, injury or loss. Contractors shall comply with the requirements of the Trench Safety Act, Chapter 553, Florida Statutes. Each specific subcontract within the scope of such act shall be in compliance with the Act and Contractor hereby acknowledges the Bid complies with and was prepared in accordance with the Act.

10.2.2.1 The Contractor shall at all times safely guard the Owner's property from injury or losses in connection with the Contract. Contractor shall at all times safely guard and protect work and adjacent property from damage as provided by law and the Contract Documents. All passageways, guard fences, lights and other facilities

required for protection by applicable safety regulations must be provided and maintained by the Contractor.

- 10.2.3 The Contractor shall erect and maintain, as required by existing conditions and progress of the Work, all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent utilities.
- 10.2.4 When the use or storage of explosives or other hazardous materials or equipment is necessary for the execution of the Work, the Contractor shall exercise the utmost care and shall carry on such activities under the supervision of properly qualified personnel.
- 10.2.5 The Contractor shall promptly remedy, at the Contractor's own cost and expense, all damage or loss to any property caused in whole or in part by the Contractor, any Subcontractor, any Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable and for which the Contractor is responsible. The foregoing obligations of the Contractor are in addition to obligations under Paragraph 4.22 and 6.2. In case of failure on the part of the Contractor to make good such damage, the Owner may, upon two (2) calendar days written notice, proceed to repair, rebuild or otherwise restore such property as may be necessary, and the cost thereof will be deducted from any monies due or to become due the Contractor.
- 10.2.6 The Contractor is responsible for the proper packing, shipping, handling and storage (including but not limited to shipment or storage at the proper temperature and humidity) of materials to be incorporated in the Work, so as to insure the preservation of the quality and fitness of the material for proper installation and incorporation in the Work. For example, but not by way of limitation, Contractor shall, when necessary, place material on wooden platforms or other hard and clean surfaces and not on the ground, and place material under cover in any appropriate shelter or facility. Stored materials or equipment shall be located so as to facilitate proper inspection. Material and equipment which is delivered crated shall remain crated until ready for installation. Lawns, grass plots or other private property shall not be used for storage purposes without written permission of owner or lessee unless otherwise within terms of the easements obtained by the Owner.
- 10.2.7 The Contractor shall give notice in writing at least 48 hours before breaking ground, to all persons, Public Utility Companies, owners of property having structures or improvements in proximity to site of the Work, superintendents, inspectors, or those otherwise in charge of property, streets, water pipes, gas pipes, sewer pipes, telephone cables, electric cables, railroads or otherwise, who may be affected by the Contractor's operation, in order that they may remove any obstruction for which they are responsible and have representative on site to see that their property is properly protected.
- 10.2.8 Contractor shall field locate all utilities and acknowledges that all utilities are not necessarily shown in the Contract Documents, or may be incorrectly located thereon. The Contractor shall protect all utilities encountered while performing its work, whether indicated on the Contract Drawings or not. The Contractor shall maintain utilities in service until moved or abandoned. The Contractor shall exercise due care when excavating around utilities and shall restore any damaged utilities to the same condition or better as existed prior to starting the Work, at no cost to the Owner. The Contractor shall maintain operating utilities or other services, even if they are shown to be abandoned on the Contract

Drawings, in service until new facilities are provided, tested and ready for use .

10.2.9 The Contractor shall return all improvements on or about the site and adjacent property which are not shown to be altered, removed or otherwise changed to conditions which existed prior to starting work.

10.2.10 The Contractor shall protect the Work, including but not limited to, the site, stored materials and equipment, excavations, and excavated or stockpiled soil or other material, intended for use in the Work, and shall take all necessary precautions to prevent or minimize damage to same or detrimental effect upon performance caused by or due to rain, snow, ice, run-off, floods, temperature, wind, dust, sand and flying debris.

10.2.11 The Contractor's superintendent shall take all steps reasonably necessary to prevent accidents and protect workers, material, equipment and property.

10.2.12 The Contractor shall not load or permit any part of the Work to be loaded so as to endanger its safety.

10.3 **EMERGENCIES**

In any emergency affecting the safety of persons or property, the Contractor shall act to prevent threatened damage, injury or loss. The Contractor shall notify the Owner of the situation and all actions taken immediately thereafter. If, in the opinion of the Contractor, immediate action is not required, the Contractor shall notify the Owner of the emergency situation and proceed in accordance with the Owner's instructions. Any additional compensation or extension of time claimed by the Contractor on account of emergency work shall be determined as provided in Article 12 for Changes in the Work.

ARTICLE 11

INSURANCE

11.1 **CONTRACTOR'S LIABILITY INSURANCE**

11.1.1 The Contractor shall purchase and maintain in companies properly licensed and qualified to do business in the State of Florida, and acceptable to the Owner, such insurance as will protect the Contractor, the Owner, the Design Consultant and their agents, representatives, and employees from claims which may arise out of or result from the Contractor's operations under the Contract, whether such operations be by the Contractor or by any Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable.

11.1.2 The insurance required by Subparagraph 11.1.1 shall be primary and non-contributing to any insurance possessed or procured by the Owner, and limits of liability shall be not less than those set forth in the General Conditions of this Contract or required by law, whichever is greater.

11.1.3 The insurance required by Subparagraph 11.1.1 shall include contractual liability insurance applicable to the Contractor's obligations.

11.1.4 All certificates of Insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work. These Certificates shall contain a provision that coverages afforded under the policies will not be canceled until at least thirty

(30) days' prior written notice has been given to the Owner.

11.2 EFFECT OF SUBMISSION OF CERTIFICATES

11.2.1 The Owner shall be under no obligation to review any Certificates of Insurance provided by the Contractor or to check or verify the Contractor's compliance with any and all requirements regarding insurance imposed by the Contract Documents. The Contractor is *fully liable* for the amounts and types of insurance required herein and is not excused should any policy or certificate of insurance provided by the Contractor not comply with any and all requirements regarding insurance imposed by the Contract Documents.

11.3 FAILURE OF COMPLIANCE

11.3.1 Should the Contractor fail to provide and maintain in force any and all insurance, or insurance coverage required by the Contract Documents or by law, the Owner shall be entitled to recover from the Contractor all amounts payable, as a matter of law, to Owner or any other parties, including but not limited to the Construction Program Manager and the Design Consultant, had the required insurance or insurance coverage been in force. Said recovery shall include, but is not limited to interest for the loss of use of such amounts of money, plus all attorney's fees, costs and expenses incurred in securing such determination and any other consequential damages arising out of the failure of the Contractor or insurance company to comply with the provisions of the Contract Documents, or any policy required hereby, or any other requirements regarding insurance imposed by law. Nothing herein shall limit any damages for which Contractor is responsible as a matter of law.

11.4 LICENSED INSURANCE COMPANIES

11.4.1 All insurance companies providing the above insurance shall be licensed in compliance with the laws of the State of Florida and shall be general lines of insurance.

ARTICLE 12

CHANGES IN THE WORK

12.1 CHANGES IN THE WORK

12.1.1 Changes in the Work may be accomplished after execution of the Contract and without invalidating the Contract, by Change order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 12 and elsewhere in the Contract Documents.

12.1.2 A Change Order shall be based upon agreement among the Owner, Contractor and Design Consultant; a Construction Change Directive requires agreement by the Owner and Design Consultant and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Design Consultant only.

12.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

12.1.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are so changed in a proposed Change Order or Construction Change Directive that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

12.2 **CHANGE ORDERS**

12.2.1 A Change Order is a written instrument prepared by Design Consultant and signed by Owner, Contractor and Design Consultant, stating their agreement upon all of the following:

- .1 a change in the Work;
- .2 the amount of the adjustment in the Contract Sum, if any; and
- .3 the extent of the adjustment in the Contract Time, if any.

12.3 **CONSTRUCTION CHANGE DIRECTIVES**

12.3.1 A Construction Change Directive is a written order prepared by the Design Consultant and signed by the Owner and Design Consultant, directing a change in the Work and stating a proposed basis for adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

12.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

12.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one (1) of the following methods:

- .1 mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 cost to be determined in a manner agreed upon by the parties and mutually acceptable fixed or percentage fee; or
- .4 as provided in Subparagraph 12.3.6.

12.3.4 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Design Consultant of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

12.3.5 A Construction Change Directive signed by the Contractor indicates the agreement of the Contractor therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

12.3.6 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall be determined by the Design Consultant on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, a reasonable allowance for overhead

and profit. In such case, and also under Clause 12.3.3, the Contractor shall keep and present, in such form as the Design Consultant shall prescribe, an itemized accounting together with appropriate supporting data (including receipts, invoices, and records including but not limited to payroll, equipment, ownership or rental records). Unless otherwise provided in the Contract Documents, costs for the purposes of this Subparagraph 12.3.6 shall be limited to the following:

- .1 costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and worker's or workmen's compensation insurance;
- .2 costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .3 rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 costs of premiums for all bonds and insurance, permit fees and sales, use or similar taxes related to the Work; and
- .5 additional costs of supervision and field office personnel directly attributable to the change.

12.3.7 **ON ALL CHANGE ORDERS, THE MAXIMUM ALLOWABLE CHARGE FOR OVERHEAD SHALL BE FIVE PERCENT (5%), THE MAXIMUM PROFIT SHALL BE FIVE PERCENT (5%) AND THE MAXIMUM BOND CHARGE SHALL BE TWO PERCENT (2%) OF THE NET INCREASE IN ANY ONE CHANGE ORDER.**

12.3.8 Pending final determination of cost to Owner, amounts NOT IN DISPUTE may be included in Applications for payment. The amount of credit to be allowed by Contractor to Owner for a deletion or change which results in a net decrease in Contract Sum shall be actual net cost as confirmed by Design Consultant. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

12.3.9 If the Owner and Contractor do not agree with the adjustment in Contract Time or the method for determining it, the adjustment or the method shall be referred to the Design Consultant for determination.

12.3.10 When the Owner and the Contractor agree with the determination made by the Design Consultant concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

12.3.11 Allowable costs for net changes in the work may include labor, material, sales tax, the rental of power tools and equipment actually used or a reasonable price for the use of power tools and equipment owned by the Contractor, based upon their life expectancy and purchase price, utilities, pro rata charges for forepersons, and payroll charges such as employer's FICA contribution, Public Liability and Worker's Compensation Insurance, but only if all such costs are incurred as the direct result of the changes in the Work. Items considered as overhead, which are included in the percentage markup allowed by this Article, and which cannot therefore be allowed as cost items, shall include such things as insurance other than that mentioned above, superintendent, timekeeper, clerks, security, use of small tools, incidental job costs, home office expenses, charges for estimating change proposals, and all other expenses of whatever type. The

change in cost for labor and material bonds and for performance bond relative to the value of the change order shall be allowable costs, but no overhead or profit shall be applied. Percentages for overhead and profit shall be applied only to the **net cost** of the changed Work (difference in cost between original and revised Work).

12.4 **CONTRACTOR NOTICE OF CHANGE**

12.4.1 If the Contractor asserts that any instructions, information, event or occurrence has caused a change in or addition to the Work which change causes an increase or decrease in the Contractor's cost or time required for the performance of any part of the Work under the Contract, the Contractor shall give the Owner written notice before conditions are disturbed and before proceeding to execute the Work. Contractor's notice shall be given promptly enough to avoid delaying the Work and in no instance later than ten (10) working days after such instructions, information, event or occurrence has caused a change. If the Owner agrees that the Work involved is extra Work, a Change Order shall be issued as provided in this Article. No claims for extra Work shall be allowed unless the notice required by this Article is given by the Contractor within the time allowed, unless the Work is performed pursuant to the written order of the Owner as provided in this Article. Contractor's notice shall include the instructions or circumstances that are the basis of the claim and the Contractor's best estimate of the cost and time involved.

12.5 **GENERAL PROVISIONS RELATED TO CHANGES**

12.5.1 The Contractor shall not be entitled to any amount for indirect costs, damages or expenses of any nature, including, but not limited to, so-called "impact" costs, labor inefficiency, wage, material or other escalations beyond the prices upon which the proposal is based and to which the parties have agreed pursuant to the provisions of Article 12, and which the Contractor, its Subcontractors or Sub-subcontractors or any other person may incur as a result of delays, interferences, suspensions, accelerations, changes in sequence or the like, for whatever cause, whether reasonable or unreasonable, foreseeable or unforeseeable, or avoidable or unavoidable, arising from the performance of any and all changes in the Work performed pursuant to this Article 12. It is understood and agreed that the Contractor's sole and exclusive remedy in such event shall be recovery of the Contractor's direct costs as compensable hereunder and an extension of the Contract Time, but only in accordance with the provisions of the Contract Documents.

12.5.2 **CHANGES REQUIRING A DECREASE IN CONTRACT SUM.** If a Change in the Work will result in a decrease in the Contract Sum, the Owner may request a quotation by the Contractor of the amount of such decrease for use in preparing a Change Order. The Contractor's quotation shall be forwarded to the Owner within five (5) days of the Owner's request and, if acceptable to the Owner, shall be incorporated in the Change Order. If not acceptable, the parties shall make every reasonable effort to agree as to the amount of such decrease, which may be based on a lump sum properly itemized, on unit prices stated in the Contract Documents, and/or on such other basis as the parties may mutually determine. If the parties are unable to so agree, the amount of such decrease shall be the total of the estimated reduction in actual cost of the Work, as determined by the Owner, plus ten percent (10%) thereof as overhead and profit.

12.5.3 No claim by the Contractor for an increase in the contract sum or time hereunder shall be allowed if asserted after final payment under this Contract. No claim

relating to or flowing from a particular change shall be allowed after execution of the Change Order relating to that change.

12.5.4

ALL CHANGE ORDERS MUST BE AUTHORIZED AND/OR APPROVED BY THE BOARD OF COUNTY COMMISSIONERS. THE BOARD OF COUNTY COMMISSIONERS HAS ALSO DELEGATED THE AUTHORITY TO THE COUNTY MANAGER TO AUTHORIZE THE INITIATION OF WORK PRIOR TO BOARD APPROVAL WHEN IN COMPLIANCE WITH THE FOLLOWING CRITERIA DESCRIBED IN BREVARD COUNTY POLICY BCC-27:

- .1 Authorize work associated with Construction Contract Change Orders in an amount up to \$100,000.00, when within budgeted amount for the project.
- .2 Authorize work associated with Change Orders to construction contracts when an unsafe, hazardous condition exists and/or when failure to achieve prompt resolution of the change will result in a demobilization of the contractor, or a significant delay in completing the project, in an amount not to exceed \$100,000.00 and when within the budgeted amount of the project.
- .3 Authorize work associated with Construction Change Directives equal to \$100,000.00 when within the budgeted amount of the project.

The Construction Change Directive is used when an unsafe, hazardous or other similar condition exists, and/or when failure to achieve prompt non-resolution of the change will result in a demobilization of the contractor, 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 following negotiations by the parties.

12.6

ADMINISTRATIVE CHANGES IN THE WORK

12.6.1

The Design Consultant shall have authority to order administrative changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by the issuance of an Architectural Supplemental Instruction (ASI) and shall be binding on the Owner and the Contractor. The Contractor shall carry out such instructions promptly.

ARTICLE 13

UNCOVERING AND CORRECTION OF WORK

13.1

UNCOVERING OF WORK

13.1.1

If any portion of the Work should be covered contrary to the request of the Owner, or to requirements specifically expressed in the Contract Documents, or to requirements of applicable Construction Permits, it must, if required in writing by the Owner, be uncovered for the Owner's observation and replaced at the Contractor's expense.

13.1.2

If any other portion of the Work has been covered which the Owner has not specifically requested to observe prior to being covered, the Owner may request

to see such Work and it shall be uncovered by the Contractor. If such work is found in accordance with the Contract Documents, the cost of uncovering and replacement shall, by appropriate Change Order, be charged to the Owner. If such Work is found not in accordance with the Contract Documents, the Contractor shall pay costs of uncovering and replacement.

13.2 CORRECTION OF WORK

13.2.1 The Contractor shall promptly reconstruct, replace or correct all Work rejected by the Owner as defective, as failing to conform to the Contract Documents, or as not in accordance with the guarantees and warranties specified in the Contract Documents, whether observed before or after Substantial or Final Completion, and whether or not fabricated, installed or completed. The Contractor shall bear all costs of correcting such rejected Work, including compensation for the Design Consultant's additional services made necessary thereby.

13.2.2 If the Contractor does not proceed with the correction of rejected Work within a reasonable time fixed by written notice from the Owner, the Owner may elect to (1) replace or correct such Work and charge the Contractor the cost incurred by the Owner, or (2) terminate this Contract for default as provided in Paragraph 14.3. If the Contractor does not pay the cost of such replacement or correction and the removal and storage within ten (10) calendar days thereafter, the Owner may charge the Contractor by an appropriate Change Order. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.

13.2.3 Nothing contained in Article 13.2 shall be construed to establish a period of limitation with respect to any other obligation which the Contractor might have under the Contract Documents, including Paragraph 4.6 hereof. The establishment of the time period of one year after the Date of Final Completion or such longer period of time as may be prescribed by law or by the terms of any warranty required by the Contract Documents relates only to the specific obligation of the Contractor to correct the Work which became deficient within such period of time, and has no relationship to the time within which the Contractor's obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct Work.

13.3 ACCEPTANCE OF DEFECTIVE OR NON-CONFORMING WORK

13.3.1 If the Owner prefers to knowingly accept defective or non-conforming Work, the Owner may do so. In which case, a Change Order must be issued to reflect a reduction in the Contract sum. If the amount of a reduction is determined after final payment, it shall be paid to the Owner by the Contractor. The only method for the Owner to accept defective or non-conforming Work shall be by a written change order signed by the Brevard County Board of County Commissioners. Absent such a change order, no acceptance of defective or non-conforming Work is permitted.

ARTICLE 14

TERMINATION OF THE CONTRACT

14.1 TERMINATION BY THE CONTRACTOR

14.1.1 If the Work is stopped for a period of one hundred twenty (120) days under an order of any court or other public authority having jurisdiction, or as a result of an act of government, such as a declaration of a national emergency making materials unavailable, through no act or fault of the Contractor or a Subcontractor or their agents or employees, or any other persons performing any of the Work under a contract with the Contractor, then the Contractor may, upon seven (7) additional days' written notice to the Owner terminate the Contract and recover from the Owner payment on a quantum meruit basis, for all Work executed. The Contractor shall not be entitled to collect and hereby expressly waives and releases any claim to any profit on work not performed and any damages related to that portion of the Contract which has been terminated.

14.2 **TERMINATION FOR CONVENIENCE OF THE OWNER**

14.2.1 The Owner may, at any time upon ten (10) days' written notice to the Contractor and to the Contractor's surety, which notice shall specify that portion of the Work to be terminated and the date said termination is to take effect, terminate (without prejudice to any right or remedy of the Owner) the whole or any portion of the work for the convenience of the Owner. The Contractor's sole remedy, in the event of such termination, will be the allowable termination costs permitted by Article 14.4. Contractor shall include termination clauses identical to Article 14 in each of his Subcontracts.

14.3 **DEFAULT TERMINATION**

14.3.1 The Owner may, upon five (5) days' written notice to the Contractor and to the Contractor's surety, terminate (without prejudice to any right or remedy of the Owner or any subsequent buyer of any portion of the Work) this contract and may take possession of the Work and complete the Work by contract or otherwise in any one of the following circumstances:

- .1 if the Contractor refuses or fails to prosecute the Work or any separable part thereof with such diligence as will ensure the Substantial or Final Completion of the Work within the Contract Time, or fails to complete the Work within said periods;
- .2 if the Contractor is in material default in carrying out any provisions of the Contract;
- .3 if the Contractor fails to supply a sufficient number of properly skilled worker's or proper equipment or materials;
- .4 if the Contractor fails to make prompt payment to Subcontractors or material suppliers or for materials or labor;
- .5 if the Contractor disregards laws, permits, ordinances, rules, regulations or orders of any public authority having jurisdiction, or fails to follow the instructions of the Owner;
- .6 if the Contractor violates any provisions of the Contract Documents; or

14.3.2 If, after the Contractor has been terminated for default pursuant to Paragraph 14.3, it is determined that none of the circumstances set forth in Subparagraph 14.3.1 exist, then such termination shall be considered a termination for convenience pursuant to Paragraph 14.2. In such case, the Contractor's sole remedy will be costs permitted by Article 14.4.

14.3.3 If the Owner terminates the employment of the Contractor, pursuant to Article 14.3, the Contractor shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the compensation to be paid to the Contractor hereunder exceeds the expense of completing the Work (including compensation for additional managerial, design, administrative and inspection services and any damages for delay), such excess shall be paid to the Contractor.

14.3.4 If Owner's expenses to complete the Work shall exceed the unpaid balance, the Contractor and sureties shall be liable to the Owner for such excess. If the right of the Contractor to proceed with the Work is partially or fully terminated, the Owner may take possession of and use in completing the Work any materials, appliances, supplies, plant and equipment as may be on the site of the terminated portion of the Work and necessary for the completion of the Work. If the Owner does not fully terminate the right of the Contractor to proceed, the Contractor shall continue to perform the part of the work that is not terminated.

14.4 **ALLOWABLE TERMINATION COSTS**

14.4.1 If the Owner terminates the whole or any portion of the Work pursuant to Paragraph 14.2, then the Owner shall only be liable to the Contractor for those costs reimbursable to the Contractor in accordance with Subparagraph 14.4.2, plus a markup of ten percent for profit and overhead on the actual, fully accounted costs recovered under 14.4.2; provided however, that if there is evidence that the Contractor would have sustained a loss on the entire Contract had it been completed, no profit shall be included or allowed hereunder and an appropriate adjustment shall be made reducing the amount of the allowable termination payment to reflect the indicated amount of loss. Contractor shall submit any claim of reimbursable cost, as stated in this paragraph, within 10 days of receipt of Notice of Termination, or such claims are waived, released and forever barred.

14.4.2 If the Owner terminates the whole or any portion of the Work pursuant to Paragraph 14.2, the Owner shall pay the Contractor the amounts determined as follows:

- .1 an amount for supplies, services, or property accepted by the Owner pursuant to Clause 14.5.1.6, or acquired pursuant to Clause 14.5.1 and not heretofore paid for, and to the extent provided in the Contract, such amount shall be equivalent to the aggregate price for such supplies or services computed in accordance with the price or prices specified in the Contract, appropriately adjusted for any saving of freight or other charges; and
- .2 the total of:
 - (a) the cost incurred in the performance of the Work terminated, including initial costs and preparatory expense allocatable thereto, but exclusive of any costs attributable to supplies or services paid or to be paid for under Paragraph 14.4.2.1;
 - (b) the cost of settling and paying claims arising out of the termination of Work under Subcontracts or orders, pursuant to Paragraph 14.5.1.5, which are properly chargeable to the terminated portion of the Work (exclusive of amounts paid or payable on account of

completed items of equipment delivered or services furnished by Subcontractors or vendors prior to the effective date of the notice of termination), unless otherwise paid under Paragraph 14.2.1; and

- (c) the reasonable costs of settlement, including accounting, legal, clerical and all other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the Work and for the termination and settlement of Subcontracts thereunder, together with reasonable storage, transportation and other costs incurred in connection with the protection or disposition of property allocable to the Contract.

- .3 Provided, however, that the Owner will not be liable for payments to subcontractors pursuant to Article 14.4.2.2.

14.4.3 In arriving at any amount due the Contractor pursuant to Paragraph 14.4, there shall be deducted the following:

- .1 all unliquidated advance or other payments on account theretofore made to the Contractor applicable to the terminated portion of the Contract;
- .2 any claim which the Owner may have against the Contractor;
- .3 such amount as the Owner determines to be necessary to protect the Owner against loss because of outstanding or potential liens or claims; and

14.4.4 The total sum to be paid to the Contractor under Paragraph 14.4 shall not exceed the Contract Sum reduced by the amount of payments otherwise made or to be made for Work not terminated and as otherwise permitted by the Contract. Except for normal spoilage, and except to the extent that the Owner shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the Contractor, as provided in Subparagraph 14.4.2, the fair value, as determined by the Owner, of property which is destroyed, lost, stolen or damaged so as to become undeliverable to the Owner, or to a buyer pursuant to Clause 14.5.1.7.

14.4.5 If the Owner terminates the whole or any part of the Work pursuant to Paragraph 14.3, the Owner may procure, upon such terms and in such manner as the Owner and/or Construction Program Manager may deem appropriate, supplies or services similar to those so terminated, and the Contractor shall be liable to the Owner for any excess costs for such similar supplies or services. The Contractor shall continue the performance of the Contract to the extent not terminated hereunder.

14.5 **GENERAL TERMINATION PROVISIONS**

14.5.1 After receipt of a notice of termination from the Owner, pursuant to Paragraph 14.2 or 14.3, and except as otherwise directed by the Owner, the Contractor shall:

- .1 stop Work under the Contract on the date and to the extent specified in the notice of termination;

- .2 place no further orders or subcontracts for materials, services or facilities, except as may be necessary for completion of such portion of the work under the Contract as is not terminated;
- .3 terminate all orders and subcontracts to the extent that they relate to the performance of Work terminated by the notice of termination;
- .4 at the option of the Owner, assign to the Owner in the manner, at the times and to the extent directed by the Owner, all of the rights in the contracts so terminated, in which case the Owner shall have the right to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
- .5 settle all outstanding liabilities and all claims arising out of such termination or orders and subcontracts, with the approval or ratification of the Owner, to the extent required;
- .6 transfer title and deliver to the entity or entities designated by the Owner, in the manner, at the times and to the extent directed by the Owner, to the extent specifically produced or specifically acquired by the Contractor for the performance of the terminated Work, the following:
 - (a) the fabricated or unfabricated parts, Work in process, partially completed supplies and equipment, materials, parts, tools, dies, jigs and other fixtures, completed Work, supplies and other material produced as part of, or acquired in connection with the performance of the Work terminated by the notice of termination;
 - (b) the completed or partially completed plans, drawings, information, releases, manuals and other property related to the Work and which, if the Contract had been completed, would have been required to be furnished to the Owner:
- .7 complete performance of such part of the Work as shall not have been terminated by the notice of termination; and
- .8 take such action as may be necessary, or as the Owner may direct, for the protection and preservation of the property related to the Contract which is in the possession of the Contractor and in which the Owner has or may acquire an interest.

14.5.2 The Contractor shall, from the effective date of termination until the expiration of three (3) years after final settlement under the Contract, preserve and make available to the Owner, at all reasonable times at the office of the Contractor, but without direct charge to the Owner, all the Contractor's books, records, documents and other evidence bearing on the costs and expenses of the Contractor under the Contract and relating to the Work terminated hereunder, or, to the extent approved by the Owner, photographs, micro-photographs or other authentic reproductions thereof.

14.6 If award was made as a result of application of local preference criteria as defined in Brevard County Resolution No. 2009-146, and the Contractor either falsified or misrepresented information that lead to the award by application of local preference criteria, or fails to maintain the requirements of the vendor category stated on the Local Vendor Affidavit of Eligibility through completion of the Agreement, the County may terminate the Agreement immediately. Such

termination is effective upon the party's receipt of the Notice of Termination. Termination for nonperformance and/or failure to maintain the requirements of a local vendor category upon which the Contractor was awarded a contract may be used for consideration for future awards.