Meeting Date
January 27, 2015

AGENDA	
Section	CONSENT
Item No.	III.C.2

AGENDA REPORT

BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

SUBJECT:	Permission to Advertise Request for Qualifications, Appoint Selection/Negotiating Committee, and Award Contracts RE: Construction Management at-Risk Delivery System Continuing Contract for projects up to $2,000,000 in value
DEPT/OFFICE:	Central Services/Facilities

Requested Action:

It is requested that the Board of County Commissioners grant permission to advertise a Request for Qualifications (RFQ); establish a Selection/Negotiating Committee to choose up to three (3) firms to perform construction projects utilizing Construction Management at-Risk (CM at-Risk) Delivery System Continuing Contracts for projects up to $2,000,000 in value; authorize permission to award; authorize the Chairman to execute contracts for projects approved in the Annual Budget; and authorize the County Manager to approve annual renewal options.

Summary Explanation & Background:

Facilities has utilized CM at-Risk Services under continuing contracts since first approved by the Board in 2000. The **CM at-Risk method is an open-book management system** with a negotiated fee agreement based on the overall cost of the work; there are no hidden costs. **Utilizing the CM at-Risk method, savings resulting from the difference between a contract's guaranteed maximum price and the actual cost of construction are returned to the Owner, including the cost of unused general conditions.** Conversely, under conventional construction contracts that are bid and awarded based on lowest price, a general contractor is paid the total bid price, and retains project savings as profit.

On July 14, 2015 the maximum contract term will be reached with the three (3) firms currently under contract. Staff requests permission to advertise an RFQ and select up to three (3) top-ranked firms for Continuing CM at-Risk Services. Contract term will be one (1) year with the option to renew three (3) times in one-year increments. Staff further requests that the Chairman of the Board be authorized to execute all associated contracts for projects approved in the annual Budget; and the County Manager be authorized to approve annual option renewals.

Award of these contracts will be based on criteria set forth in Brevard County's Pre-Qualification Procedure, Florida Statute 287.055(4)(b), and the following qualification-based selection criteria:

1. Ability of the firm's professional staff, given the project's specific characteristics;
2. Willingness of the firm to meet time and budget constraints;
3. Physical location of the firm;
4. Recent, current, and projected workload of the firm;
5. Volume of work previously awarded to the firm by the Board of County Commissioners, provided distribution does not violate the principle of selection of the most qualified firm for the project;
6. References from public entities including previous Board of County Commissioners project experience, including but not limited to staff evaluations on file with Central Services.

Contact: Teresa Camarata, 637-5492; Teresa.camarata@brevardcounty.us

(continued on Page 2)

Clerk to the Board Instructions:

Exhibits Attached: N/A

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

County Manager	Assistant County Manager, Mel Scott	Department Director / Extension Teresa Camarata, Central Services Director
Stockton Whitten	Assistant County Manager, Venetta Valdengo	

BCC-149 (Rev.4-30-14) / Electronic Form

Permission to Advertise Request for Qualifications, Appoint Selection/Negotiating Committee, and Award Contracts RE: Construction Management at-Risk Delivery System Continuing Contract for projects up to $2,000,000 in value

Staff requests that the Board of County Commissioners approve a Selection & Negotiating Committee staffed by Facilities Construction Manager Joan Van Sickle or designee; Parks & Recreation Department Director Jack Masson or designee; and Interim Fire Chief Mark Schollmeyer or designee. The committee will rank, shortlist and select the most qualified Construction Management firms with whom to negotiate a contract. Should negotiations with any of the selected firms fail to produce a contract, negotiations will begin with competing firms in order of ranking in an effort to enter into up to three (3) continuing contracts.

FISCAL IMPACT: Costs associated with the construction projects utilizing CM at-Risk Service will be charged against the appropriate department's budgeted project Business Area/Cost Centers.

BREVARD County
BOARD OF COUNTY COMMISSIONERS

FLORIDA'S SPACE COAST

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

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

January 28, 2015

M E M O R A N D U M

TO: Teresa Camarata, Central Services Director

RE: Item II.C.2., Permission to Advertise Request for Qualifications, Appoint Selection/Negotiating Committee, and Award Contracts for Construction Management At-Risk Delivery System Continuing Contract for Projects up to $2,000,000 in Value

The Board of County Commissioners, in regular session on January 27, 2015, granted permission to advertise a Request for Qualifications (RFQ); approved establishing a Selection/Negotiating Committee consisting of Facilities Construction Manager Joan Van Sickle or designee, Parks and Recreation Department Director Jack Masson or designee, and Interim Fire Chief Mark Schollmeyer or designee, to choose up to three (3) firms to perform construction projects utilizing Construction Management at-Risk (CM at-Risk) Delivery System Continuing Contracts for projects up to $2,000,000 in value; authorized permission to award; authorized the Chairman to execute contracts for projects approved in the Annual Budget; and authorized the County Manager to approve annual renewal options.

Your continued cooperation is greatly appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Etheridge

Tammy Etheridge, Deputy Clerk

cc: Committee Members

File

Brevard COUNTY
Central Services

Florida's Space Coast

Facilities Department
2725 Judge Fran Jamieson Way, Suite A207
Viera, FL 32940-6605

(321) 633-2050
FAX: (321) 633-2051
www.brevardcounty.us/centralservices/facilities

TO: Commissioner Jim Barfield, District 2

FROM: Mary Bowers, Support Services Manager, Facilities MBowers

DATE: April 26, 2016

SUBJECT: Veterans Memorial Park – Ivey's Construction Contracts

Enclosed please three (3) each original contracts with Ivey's Construction for the Veterans Memorial Park Expansion..

Please sign all three (3) originals **and forward to the Clerk to the Board for attesting, Mail Stop #27.**

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

Thank you.

/mb

Enclosures

Note: **Clerk to the Board** – please return two (2) originals to Mary Bowers, Facilities, Mail Stop #81; retain one (1) original each for your records.

BREVARD County
BOARD OF COUNTY COMMISSIONERS

FLORIDA'S SPACE COAST

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

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

January 28, 2015

MEMORANDUM

TO: Teresa Camarata, Central Services Director

RE: Item II.C.2., Permission to Advertise Request for Qualifications, Appoint Selection/Negotiating Committee, and Award Contracts for Construction Management At-Risk Delivery System Continuing Contract for Projects up to $2,000,000 in Value

The Board of County Commissioners, in regular session on January 27, 2015, granted permission to advertise a Request for Qualifications (RFQ); approved establishing a Selection/Negotiating Committee consisting of Facilities Construction Manager Joan Van Sickle or designee, Parks and Recreation Department Director Jack Masson or designee, and Interim Fire Chief Mark Schollmeyer or designee, to choose up to three (3) firms to perform construction projects utilizing Construction Management at-Risk (CM at-Risk) Delivery System Continuing Contracts for projects up to $2,000,000 in value; authorized permission to award; authorized the Chairman to execute contracts for projects approved in the Annual Budget; and authorized the County Manager to approve annual renewal options.

Your continued cooperation is greatly appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Etheridge

Tammy Etheridge, Deputy Clerk

cc: Committee Members

FEB - 3 2015
KR
FACILITIES

CONTINUING
CONSTRUCTION MANAGER (AT RISK)
SERVICES AGREEMENT
AMENDED
(Federally Funded Projects)

THIS AGREEMENT, entered into this 2nd day of April, 2018 by and between **BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS**, a political subdivision of the State of Florida, hereinafter referred to as COUNTY, and **IVEY'S CONSTRUCTION** whose address is 4060 N. Courtenay Parkway, Merritt Island, FL 32953, a corporation under the laws of the State of Florida, hereinafter referred to as CONSTRUCTION MANAGER.

Whereas, since the execution of the original Continuing Construction Manager Services Agreement, certain monetary purchasing amounts/limits of the federal requirements have changed necessitating amending the Agreement in order to comply federal requirements of the federally funded projects under this Agreement.

For and in consideration of the mutual agreement hereinafter contained, the COUNTY hereby retains the CONSTRUCTION MANAGER and the CONSTRUCTION MANAGER hereby covenants to provide Continuing Construction Manager (At Risk) services for Federally Funded County Projects ($1 - $2,000,000 each).

ARTICLE 1

1.1 The CONSTRUCTION MANAGER agrees to furnish its best skill and judgement and to cooperate with the Architect/Engineer, where applicable, in furthering the interest of the COUNTY. The CONSTRUCTION MANAGER agrees to furnish efficient business administration and supervision and to use its best efforts to complete the Project(s) in an expeditious and economical manner consistent with the interests of the COUNTY.

1.2 The Construction Team: The CONSTRUCTION MANAGER, the COUNTY and the Architect/Engineer (the "Construction Team") will work as a team through construction completion. The CONSTRUCTION MANAGER shall provide leadership to the Construction Team on all matters relating to construction. The Architect/Engineer will provide leadership to the Construction Team on all matters relating to design.

ARTICLE 2

2.1 The CONSTRUCTION MANAGER'S basic services under this Agreement include construction management services for federally funded projects ($1-$2,000,000). For each proposed Project, the COUNTY and the CONSTRUCTION MANAGER shall enter into a separate Agreement Between Owner and Construction Manager (**Attachment "A"**). The federal clauses and certifications included herein, or attached hereto, control over any conflicting clauses contained within the Agreements, covering the work, between the COUNTY and the CONSTRCUTION MANAGER.

2.2 Selection for each proposed Project will be per Florida Statute 287.055, and Qualification Based Selection Criteria as follows:

A. Ability of firms professional personnel given the project's special characteristics;
B. Willingness to meet time and budget requirements;
C. Physical Location of Firm;
D. Recent, current and projected workload of the firms available under the continuing contract;
E. Volume of work previously awarded to the firm by the Board of County Commissioners, provided distribution does not violate the principles of selection of the most qualified firm for the project;
F. Previous Board of County Commissioners experience, including staff evaluations on file with Brevard County Facilities and Brevard County Purchasing Services.

2.3 The Contract Time for performance of each proposed Project shall be established in the "Agreement Between Owner and Construction Manager" for each proposed Project, including the Notice to Proceed.

2.4 This Agreement shall remain in effect for a period of one (1) year, and may be renewed for an additional three (3) one-year increments at the COUNTY'S option, based upon satisfactory performance of the CONSTRUCTION MANAGER.

2.5 The Guaranteed Maximum Price (GMP) for each proposed Project shall include the Cost of the Work required by the Contract Documents, and the CONSTRUCTION MANAGER'S fee. The GMP will be negotiated based on Contract Documents, Plans & Specifications for each proposed Project provided by the COUNTY.

2.6 Payment & Performance Bonds will be provided to the COUNTY by the CONSTRUCTION MANAGER for each proposed Project which exceeds $100,000 in construction cost. Insurance must be provided to the COUNTY by the CONSTRUCTION MANAGER for each proposed Project.

ARTICLE 3

3.1 The COUNTY and CONSTRUCTION MANAGER respectively bind themselves, their partners, successors, assigns and legal representatives to this Agreement and to the partners, successors, assigns and legal representatives of other party with respect to all covenants of this Agreement. Neither the COUNTY nor the CONSTRUCTION MANAGER shall assign this Agreement without written consent of the other.

3.2 This Agreement shall be governed by the laws of the State of Florida.

ARTICLE 4

4.1 The CONSTRUCTION MANAGER shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement.

4.2 The CONSTRUCTION MANAGER is required to pay its subcontractors performing work related to this Agreement for satisfactory performance of that work no later than thirty (30) days after the CONSTRUCTION MANAGER'S receipt of payment for that work from COUNTY. In addition, the CONSTRUCTION MANAGER may not hold retainage from its subcontractors.

ARTICLE 5

FEDERAL CLAUSES

5.1 **Fly America Requirements**

Applicability – all contracts involving transportation of persons or property, by air between the U.S. and/or places outside the U.S. These requirements do not apply to micro-purchases ($3500 or less, except for construction contracts over $2,000).

Contractor shall comply with 49 USC 40118 (the "Fly America" Act) in accordance with General Services Administration regulations 41 CFR 301-10, stating that recipients and sub-recipients of Federal funds and their contractors are required to use US Flag air carriers for US Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a US flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. Contractor shall include the requirements of this section in all subcontracts that may involve international air transportation.

5.2 **Buy America Certification (Steel and Manufactured Products)**

Construction Contracts and Acquisition of Goods or Rolling Stock (valued at more than $150,000)

Contractor shall comply with 49 USC 5323(j) and 49 CFR 661, as amended by MAP-21 stating that Federal funds may not be obligated unless steel, iron and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and software, microcomputer equipment and small purchases (currently less than $150,000) made with capital, operating or planning funds. A bidder or offeror shall submit appropriate Buy America certification to the County with all bids on FTA-funded contracts, except those subject to a general waiver. Proposals not accompanied by a completed Buy America certification shall be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

5.3 **Cargo Preference**

Contracts involving equipment, materials or commodities which may be transported by ocean vessels. These requirements do not apply to micro-purchases ($3,500 or less, except for construction contracts over $2,000).

Contractor shall: a. use privately owned US-Flag commercial vessels to ship at least 50% of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners and tankers) involved, whenever shipping any equipment, material or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for US flag commercial vessels; b. furnish within 20 working days following the loading date of shipments originating within the US or within 30 working days following the loading date of shipments originating outside the US, a legible copy of a rated, "on-board" commercial bill-of-lading in English for each shipment of cargo described herein to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the recipient (through contractor in the case of a subcontractor's bill-of-lading.); c. include these requirements in all

subcontracts issued pursuant to this contract when the subcontract involves the transport of equipment, material or commodities by ocean vessel.

5.4 **Seismic Safety**

Construction of new buildings or additions to existing buildings. These requirements do not apply to micro- purchases ($3,500 or less, except for construction contracts over $2,000).

Contractor agrees that any new building or addition to an existing building shall be designed and constructed in accordance with the standards required in USDOT Seismic Safety Regulations 49 CFR 41 and shall certify compliance to the extent required by the regulation. Contractor shall also ensure that all work performed under this contract, including work performed by subcontractors, complies with the standards required by 49 CFR 41 and the certification of compliance issued on the project.

5.5 **Energy Conservation**

All Contracts except micro-purchases ($3,500 or less, except for construction contracts over $2,000).
Contractor shall comply with mandatory standards and policies relating to energy efficiency, stated in the state energy conservation plan issued in compliance with the Energy Policy & Conservation Act.

5.6 **Clean Water**

All Contracts and Subcontracts over $150,000

Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq. Contractor shall report each violation to the County and understands and agrees that the County shall, in turn, report each violation as required to FTA and the appropriate EPA Regional Office. Contractor shall include these requirements in each subcontract exceeding $100,000 financed in whole or in part with FTA assistance.

5.7 **Lobbying**

Construction/Architectural and Engineering/Acquisition of Rolling Stock/Professional Service Contract/Operational Service Contract/Turnkey contracts over $150,000.

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104- 65 [to be codified at 2 U.S.C. § 1601, et seq.] - Contractors who apply or bid for an award of $150,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non- Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the County.

5.8 **Access to Records and Reports**

Applicability – As shown below. These requirements do not apply to micro-purchases ($3,500 or less, except for construction contracts over $2,000)

The following access to records requirements apply to this Contract:

A. Where the purchaser is not a State but a local government and is an FTA recipient or a sub-grantee of FTA recipient in accordance with 49 CFR 18.36(i), contractor shall provide the purchaser, the FTA, the US Comptroller General or their authorized representatives access to any books, documents, papers and contractor records which are pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor shall also, pursuant to 49 CFR 633.17, provide authorized FTA representatives, including any PMO contractor, access to contractor's records and construction sites pertaining to a capital project, defined at 49 USC 5302(a)1, which is receiving FTA assistance through the programs described at 49 USC 5307, 5309 or 5311.

B. Where the purchaser is a State and is an FTA recipient or a sub-grantee of FTA recipient in accordance with 49 CFR 633.17, contractor shall provide the purchaser, authorized FTA representatives, including any PMO Contractor, access to contractor's records and construction sites pertaining to a capital project, defined at 49 USC 5302(a)1, which receives FTA assistance through the programs described at 49 USC 5307, 5309 or 5311. By definition, a capital project excludes contracts of less than the simplified acquisition threshold currently set at $150,000.

C. Where the purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is an FTA recipient or a sub-grantee of FTA recipient in accordance with 49 CFR 19.48, contractor shall provide the purchaser, the FTA, the US Comptroller General or their authorized representatives, access to any books, documents, papers and record of the contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.

D. Where a purchaser which is an FTA recipient or a sub-grantee of FTA recipient in accordance with 49 USC 5325(a) enters into a contract for a capital project or improvement (defined at 49 USC 5302(a)(1) through other than competitive bidding, contractor shall make available records related to the contract to the purchaser, the Secretary of USDOT and the US Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

E. Contractor shall permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

F. Contractor shall maintain all books, records, accounts and reports required under this contract for a period of not less than three (3) years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case contractor agrees to maintain same until the recipient, FTA Administrator, US Comptroller General, or any of their authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Re: 49 CFR 18.39(i)(11).

FTA does not require the inclusion of these requirements in subcontracts.

5.9 **Federal Changes**

All Contracts except micro-purchases ($3,500 or less, except for construction contracts over $2,000)

Contractor shall comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the purchaser and FTA, as they may be amended or promulgated from time to time during the term of the contract. Contractor's failure to comply shall constitute a material breach of the contract.

5.10 **Bonding Requirements**

Applicability – For those construction or facility improvement contracts or subcontracts exceeding $150,000, FTA may accept the bonding policy and requirements of the Recipient/County, provided that they meet the minimum requirements for construction contracts as follows:

A. A bid guarantee from each bidder equivalent to five (5) percent of the bid price. The "bid guarantees" shall consist of a firm commitment such as a bid bond, certifies check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

B. A performance bond on the part to the Contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

C. A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment, as required by law, of all persons supplying labor and material in the execution of the work provided for in the contract.

(i) Payment bond amounts required from the Contractors are as follows:

a. 50% of the contract price if the contract price is not more than $1 million;
b. 40% of the contract price if the contract price is more than $1 million but not more than $5 million;
c. Or $2.5 million if the contract price is more than $5 million

D. A cash deposit, certified check or other negotiable instrument may be accepted by a grantee in lieu of performance and payment bonds, provided the grantee has established a procedure to assure that the interest of FTA is adequately protected. An irrevocable letter of credit would also satisfy the requirement for a bond.

5.11 Bid Bond Requirements (Construction)

Bid Security - A Bid Bond must be issued by a fully qualified surety company acceptable to the County and listed as a company currently authorized under 31 CFR, Part 223 as possessing a Certificate of Authority as described thereunder.

Rights Reserved - In submitting this Bid, it is understood and agreed by bidder that the right is reserved by the County to reject any and all bids, or part of any bid, and it is agreed that the Bid may not be withdrawn for a period of [ninety (90)] days subsequent to the opening of bids, without the written consent of County.

It is also understood and agreed that if the undersigned bidder should withdraw any part or all of his bid within [ninety (90)] days after the bid opening without the written consent of County, shall refuse or be unable to enter into this Contract, as provided above, or refuse or be unable to furnish adequate and acceptable Performance Bonds and Labor and Material Payments Bonds, as provided above, or refuse or be unable to furnish adequate and acceptable insurance, as provided above, he shall forfeit his bid security to the extent of the County's damages occasioned by such withdrawal, or refusal, or inability to enter into an agreement, or provide adequate security therefor.

It is further understood and agreed that to the extent the defaulting bidder's Bid Bond, Certified Check, Cashier's Check, Treasurer's Check, and/or Official Bank Check (excluding any income generated thereby which has been retained by the County as provided in [Item x "Bid Security" of the Instructions to Bidders]) shall prove inadequate to fully recompense the County for the damages occasioned by default, then the undersigned bidder agrees to indemnify the County and pay over to the County the difference between the bid security and (Recipient's) total damages, so as to make the County whole.

The undersigned understands that any material alteration of any of the above or any of the material contained on this form, other than that requested will render the bid unresponsive.

5.12 **Performance and Payment Bonding Requirements (Construction)**
The Contractor shall be required to obtain performance and payment bonds as follows:

A. Performance Bonds
   i. The penal amount of performance bonds shall be 100 percent of the original contract price, unless the County determines that a lesser amount would be adequate for the protection of the County.

   ii. The County may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The County may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

B. Payment Bonds
   The penal amount of the payment bonds shall equal
   i. 50% of the contract price if the contract price is not more than $1 million;
   ii. 40% of the contract price if the contract price is more than $1 million but not more than $5 million;
   iii. Or $2.5 million if the contract price is more than $5 million.

C. If the original contract price is $5 million or less, the County may require additional protection as required by subparagraph 5.12.A.ii. above

5.13 Performance and Payment Bonding Requirements (Non-Construction)

A. The Contractor may be required to obtain performance and payment bonds when necessary to protect the (Recipient's) interest.

B. The following situations may warrant a performance bond:

i. County property or funds are to be provided to the contractor for use in performing the contract or as partial compensation (as in retention of salvaged material).
ii. A contractor sells assets to or merges with another concern, and the County, after recognizing the latter concern as the successor in interest, desires assurance that it is financially capable.
iii. Substantial progress payments are made before delivery of end items starts.
iv. Contracts are for dismantling, demolition, or removal of improvements.
v. When it is determined that a performance bond is required, the Contractor shall be required to obtain performance bonds as follows:
vi. The penal amount of performance bonds shall be 100 percent of the original contract price, unless the
vii. County determines that a lesser amount would be adequate for the protection of the County.
viii. The County may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price.
ix. The County may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.
x. A payment bond is required only when a performance bond is required, and if the use of payment bond is in the County's interest

C. When it is determined that a payment bond is required, the Contractor shall be required to obtain payment bonds as follows:
i. The penal amount of payment bonds shall equal:
50% of the contract price if the contract price is not more than $1 million;
40% of the contract price if the contract price is more than $1 million but not more than $5 million; or
$2.5 million if the contract price is increased.

5.14 Advance Payment Bonding Requirements

The Contractor may be required to obtain an advance payment bond if the contract contains an advance payment provision and a performance bond is not furnished. The County shall determine the amount of the advance payment bond necessary to protect the County.

5.15 Patent Infringement Bonding Requirements (Patent Indemnity)

The Contractor may be required to obtain a patent indemnity bond if a performance bond is not furnished and the financial responsibility of the Contractor is unknown or doubtful. The County shall determine the amount of the patent indemnity to protect the County.

5.16 **Warranty of the Work and Maintenance Bonds**

A. The Contractor warrants to County, the Architect and/or Engineer that all materials and equipment furnished under this Contract will be of highest quality and new unless otherwise specified by County, free from faults and defects and in conformance with the Contract Documents. All work not so conforming to these standards shall be considered defective. If required by the [Project Manager], the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

B. The Work furnished must be of first quality and the workmanship must be the best obtainable in the various trades. The Work must be of safe, substantial and durable construction in all respects. The Contractor hereby guarantees the Work against defective materials or faulty workmanship for a minimum period of one (1) year after Final Payment by County and shall replace or repair any defective materials or equipment or faulty workmanship during the period of the guarantee at no cost to County. As additional security for these guarantees, the Contractor shall, prior to the release of Final Payment [as provided in Item X below], furnish separate Maintenance (or Guarantee) Bonds in form acceptable to County written by the same corporate surety that provides the Performance Bond and Labor and Material Payment Bond for this Contract. These bonds shall secure the Contractor's obligation to replace or repair defective materials and faulty workmanship for a minimum period of one (1) year after Final Payment and shall be written in an amount equal to ONE HUNDRED PERCENT (100%) of the CONTRACT SUM, as adjusted (if at all).

5.17 **Clean Air**

A. Applicability – All contracts over $150,000.

B. Contractor shall comply with all applicable standards, orders or regulations pursuant to the Clean Air Act, 42 USC 7401 et seq. Contractor shall report each violation to the County and understands and agrees that the County will, in turn, report each violation as required to FTA and the appropriate EPA Regional Office.

C. Contractor shall include these requirements in each subcontract exceeding $150,000financed in whole or in part with FTA assistance.

5.18 **Recycled Products**

All contracts for items designated by the EPA, when the purchaser or contractor procures $10,000 or more of one of these items during the current or previous fiscal year using Federal funds.

The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

5.19 **Davis-Bacon and Copeland Anti-Kickback Acts**

A. Applicability – Construction contracts and subcontracts, including actual construction, alteration and/or repair, including decorating and painting, over $2000.

B. **Minimum wages –**

(i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

1. Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and
2. The classification is utilized in the area by the construction industry; and
3. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and
4. With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the

classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(v)(A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

1. The work to be performed by the classification requested is not performed by a classification in the wage determination; and

2. The classification is utilized in the area by the construction industry; and

3. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where

appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination with 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(v) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(2) **Withholding** - The County shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the County may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) **Payrolls and basic records** –

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in

providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the County for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

1. That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete;
2. That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;
3. That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) **Apprentices and trainees** –

(i) *Apprentices* - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor,

Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) *Trainees* - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination.

Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices.

Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no

longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) *Equal employment opportunity* - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) **Compliance with Copeland Act requirements** - The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) **Subcontracts** - The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) **Contract termination: debarment** - A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) **Compliance with Davis-Bacon and Related Act requirements** - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) **Disputes concerning labor standards** - Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) **Certification of eligibility** –

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

5.20 **Contract Work Hours & Safety Standards Act**

Applicability – Contracts over $150,000

1. Overtime requirements - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less

than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

2. Violation; liability for unpaid wages; liquidated damages - In the event of any violation of the clause set forth in para. (1) of this section, contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in para. (1) of this section, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in para. (1) of this section.

3. Withholding for unpaid wages and liquidated damages - the County shall upon its own action or upon written request of USDOL withhold or cause to be withheld, from any moneys payable on account of work performed by contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours & Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in para. (2) of this section.

4. Subcontracts - Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. Prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.

5.21 **No Government Obligation to Third Parties**

Applicability – All contracts except micro-purchases ($3,500 or less, except for construction contracts over $2,000)

A. The Recipient/County and contractor acknowledge and agree that, notwithstanding any concurrence by the US Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the US Government, the US Government is not a party to this contract and shall not be subject to any obligations or liabilities to the County, the contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

B. Contractor agrees to include the above clause in each subcontract financed in whole or in part with FTA assistance. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

5.22 **Program Fraud and False or Fraudulent Statements or Related Acts**

Applicability – All contracts except micro-purchases ($3,500 or less, except for construction contracts over $2,000).

A. Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC 3801 et seq. and USDOT regulations, "Program Fraud Civil Remedies," 49 CFR 31, apply to its actions pertaining to this project.

Upon execution of the underlying contract, contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification, the US Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act (1986) on contractor to the extent the US Government deems appropriate.

B. If contractor makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification to the US Government under a contract connected with a project that is financed in whole or in part with FTA assistance under the authority of 49 USC 5307, the Government reserves the right to impose the penalties of 18 USC 1001 and 49 USC 5307(n)(1) on contractor, to the extent the US Government deems appropriate.

C. Contractor shall include the above two clauses in each subcontract financed in whole or in part with FTA assistance. The clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

5.23 **Termination**

Applicability – All Contracts over $10,000, except contracts with nonprofit organizations and institutions of higher learning, where the threshold is $150,000

A. Termination for Convenience (General Provision). The County may terminate this contract, in whole or in part, at any time by written notice to contractor when it is in the County's best interest. Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. Contractor shall promptly submit its termination claim to the County. If contractor is in possession of any of the County's property, contractor shall account for same, and dispose of it as the County directs.

B. Termination for Default [Breach or Cause] (General Provision). If contractor does not deliver items in accordance with the contract delivery schedule, or, if the contract is for services, and contractor fails to perform in the manner called for in the contract, or if contractor fails to comply with any other provisions of the contract, the County may terminate this contract for default. Termination shall be effected by serving a notice of termination to contractor setting forth the manner in which contractor is in default. Contractor shall only be paid the contract price for supplies delivered and accepted, or for services performed in accordance with the manner of performance set forth in the contract. If it is later determined by the County that contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of contractor, the County, after setting up a new delivery or performance schedule, may allow contractor to continue work, or treat the termination as a termination for convenience.

C. Opportunity to Cure (General Provision). The County in its sole discretion may, in the case of a termination for breach or default, allow contractor an appropriately short period of time in which to cure the defect. In such case, the notice of termination shall state the time period in which cure is permitted and other appropriate conditions. If contractor fails to remedy to the County's satisfaction the breach or default or any of the terms, covenants, or conditions of this Contract within ten (10)

days after receipt by contractor or written notice from the County setting forth the nature of said breach or default, the County shall have the right to terminate the Contract without any further obligation to contractor. Any such termination for default shall not in any way operate to preclude the County from also pursuing all available remedies against contractor and its sureties for said breach or default.

D. Waiver of Remedies for any Breach. In the event that the County elects to waive its remedies for any breach by contractor of any covenant, term or condition of this Contract, such waiver by the County shall not limit its remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

E. Termination for Convenience (Professional or Transit Service Contracts). The County, by written notice, may terminate this contract, in whole or in part, when it is in the County's interest. If the contract is terminated, the County shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

F. Termination for Default (Supplies and Service). If contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the contractor fails to comply with any other provisions of this contract, the County may terminate this contract for default. The County shall terminate by delivering to contractor a notice of termination specifying the nature of default. Contractor shall only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract. If, after termination for failure to fulfill contract obligations, it is determined that contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the County's convenience.

G. Termination for Default (Transportation Services). If the contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if contractor fails to comply with any other provisions of this contract, the County may terminate this contract for default. The County shall terminate by delivering to contractor a notice of termination specifying the nature of default. Contractor shall only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

H. If this contract is terminated while contractor has possession of the County goods, contractor shall, as directed by the County, protect and preserve the goods until surrendered to the County or its agent. Contractor and the County shall agree on payment for the preservation and protection of goods. Failure to agree on an amount shall be resolved under the Dispute clause. If, after termination for failure to fulfill contract obligations, it is determined that contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the County's convenience.

I. Termination for Default (Construction). If contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified, or any extension, or fails to complete the work within this time, or if contractor fails to comply with any other provisions of this contract, the County may terminate this contract for default. The County shall terminate by delivering to contractor a notice of termination specifying the nature of default. In this event, the County may take over the work and compete it by contract or otherwise, and may

take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. Contractor and its sureties shall be liable for any damage to the County resulting from contractor's refusal or failure to complete the work within specified time, whether or not contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the County in completing the work.

J. Contractor's right to proceed shall not be terminated nor shall contractor be charged with damages under this clause if:

i. Delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of contractor. Examples of such causes include: acts of God, acts of the County, acts of another contractor in the performance of a contract with the County, epidemics, quarantine restrictions, strikes, freight embargoes; and

ii. Contractor, within 10 days from the beginning of any delay, notifies the County in writing of the causes of delay. If in the County's judgment, delay is excusable, the time for completing the work shall be extended. The County's judgment shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

iii. If, after termination of contractor's right to proceed, it is determined that contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if termination had been issued for the County's convenience.

J. Termination for Convenience or Default (Architect & Engineering). The County may terminate this contract in whole or in part, for the County's convenience or because of contractor's failure to fulfill contract obligations. The County shall terminate by delivering to contractor a notice of termination specifying the nature, extent, and effective date of termination. Upon receipt of the notice, contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the County all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process. If termination is for the County's convenience, it shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services. If termination is for contractor's failure to fulfill contract obligations, the County may complete the work by contact or otherwise and contractor shall be liable for any additional cost incurred by the County. If, after termination for failure to fulfill contract obligations, it is determined that contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the County's convenience.

K. Termination for Convenience or Default (Cost-Type Contracts). The County may terminate this contract, or any portion of it, by serving a notice or termination on contractor. The notice shall state whether termination is for convenience of the County or for default of contractor. If termination is for default, the notice shall state the manner in which contractor has failed to perform the requirements of the contract. Contractor shall account for any property in its possession paid for from funds received from the County, or property supplied to contractor by the County. If termination is for default, the County may fix the fee, if the contract provides for a fee, to be paid to contractor in proportion to the value, if any, of work performed up to the time of termination. Contractor shall promptly submit its termination claim to the

County and the parties shall negotiate the termination settlement to be paid to contractor. If termination is for the County's convenience, contractor shall be paid its contract close- out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.

If, after serving a notice of termination for default, the County determines that contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of contractor, the County, after setting up a new work schedule, may allow contractor to continue work, or treat the termination as a termination for convenience.

5.24 **Government Wide Debarment and Suspension (Non Procurement)**

The Recipient/County agrees to the following: (1) It will comply with the requirements of 2 C.F.R. part 180, subpart C, as adopted and supplemented by U.S. DOT regulations at 2 C.F.R. part 1200, which include the following: (a) It will not enter into any arrangement to participate in the development or implementation of the Project with any Third Party Participant that is debarred or suspended except as authorized by: 1 U.S. DOT regulations, "Non-procurement Suspension and Debarment," 2 C.F.R. part 1200, 2 U.S. OMB, "Guidelines to Agencies on Governmentwide Debarment and Suspension (Non procurement)," 2 C.F.R. part 180, including any amendments thereto, and 3 Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101 note, (b) It will review the U.S. GSA "System for Award Management," http://https.www.sam.gov,.proxy1.semalt.design, if required by U.S. DOT regulations, 2 C.F.R. part 1200, and (c) It will include, and require each of its Third Party Participants to include, a similar provision in each lower tier covered transaction, ensuring that each lower tier Third Party Participant: 1 Will comply with Federal debarment and suspension requirements, and 2 Reviews the "System for Award Management" at http://https.www.sam.gov,.proxy1.semalt.design, if necessary to comply with U.S. DOT regulations, 2 C.F.R. part 1200, and (2) If the County suspends, debars, or takes any similar action against a Third Party Participant or individual, the County will provide immediate written notice to the: (a) FTA Regional Counsel for the Region in which the County is located or implements the Project, (b) FTA Project Manager if the Project is administered by an FTA Headquarters Office, or (c) FTA Chief Counsel.

5.25 **Contracts Involving Federal Privacy Act Requirements**

When a grantee maintains files on drug and alcohol enforcement activities for FTA, and those files are organized so that information could be retrieved by personal identifier, the Privacy Act requirements apply to all contracts except micro-purchases ($3,500 or less, except for construction contracts over $2,000)

The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

A. The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

B. The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

5.26 **Civil Rights Requirements**

Applicability – All contracts except micro-purchases ($3,500 or less, except for construction contracts over $2,000)

The following requirements apply to the underlying contract:

(A) The Recipient/County understands and agrees that it must comply with applicable Federal civil rights laws and regulations, and follow applicable Federal guidance, except as the Federal Government determines otherwise in writing. Therefore, unless a Recipient or Program, including an Indian Tribe or the Tribal Transit Program, is specifically exempted from a civil rights statute, FTA requires compliance with that civil rights statute, including compliance with equity in service.

(B) Nondiscrimination in Federal Public Transportation Programs. The Recipient/County agrees to, and assures that each Third Party Participant will, comply with Federal transit law, 49 U.S.C. § 5332 (FTA's "Nondiscrimination" statute):

1. FTA's "Nondiscrimination" statute prohibits discrimination on the basis of: (a) Race, (b) Color, (c) Religion, (d) National origin, (e) Sex, (f) Disability, or (g) Age, (h) or Gender Identity and
2. The FTA "Nondiscrimination" statute's prohibition against discrimination includes: (a) Exclusion from participation, (b) Denial of program benefits, or (c) Discrimination, including discrimination in employment or business opportunity,
3. Except as FTA determines otherwise in writing: (a) General. Follow: 1 The most recent edition of FTA Circular 4702.1, "Title VI Requirements and Guidelines for Federal Transit Administration Recipients," to the extent consistent with applicable Federal laws, regulations, and guidance, and 2 Other applicable Federal guidance that may be issued, but (b) Exception for the Tribal Transit Program. FTA does not require an Indian Tribe to comply with FTA program-specific guidelines for Title VI when administering its projects funded under the Tribal Transit Program:

(C) Nondiscrimination – Title VI of the Civil Rights Act. The County agrees to, and assures that each Third Party Participant will: (1) Prohibit discrimination based on: (a) Race, (b) Color, or (c) National origin, (2) Comply with: (a) Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d et seq., (b) U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964," 49 C.F.R. part 21, and (c) Federal transit law, specifically 49 U.S.C. § 5332, as stated in the preceding section a, and (3) Except as FTA determines otherwise in writing, follow: (a) The most recent edition of FTA Circular 4702.1, "Title VI and Title VI-Dependent Guidelines for Federal Transit Administration Recipients," to the extent consistent with applicable Federal laws, regulations, and guidance. (b) U.S. DOJ, "Guidelines for the enforcement of Title VI, Civil Rights Act of 1964," 28 C.F.R. § 50.3, and (c) Other applicable Federal guidance that may be issued,

(D). Equal Employment Opportunity. (1) Federal Requirements and Guidance. The County agrees to, and assures that each Third Party Participant will, prohibit discrimination on the basis of race, color, religion, sex, or national origin, and: (a) Comply with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq., (b) Facilitate compliance with Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order No. 11246, Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note, (c) Comply with Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a, and (d) Comply with other applicable EEO laws and regulations, as provided in Federal guidance, including laws and regulations prohibiting discrimination on the basis of disability, except as the Federal Government determines otherwise in writing, (2) General. The County agrees to: (a) Ensure that applicants for employment are employed and employees are treated during employment without discrimination on the basis of their: 1 Race, 2 Color, 3 Religion, 4 Sex, 5 Disability, 6 Age, or 7 National origin, (b) Take affirmative action that includes, but is not limited to: 1 Recruitment advertising, 2 Recruitment, 3 Employment, 4 Rates of pay, 5 Other forms of compensation, 6 Selection for training, including apprenticeship, 7 Upgrading, 8 Transfers, 9 Demotions, 10 Layoffs, and 11 Terminations, but (b) Indian Tribe. Title VII of the Civil Rights Act of 1964, as amended, exempts Indian Tribes under the definition of "Employer".

(E). Equal Employment Opportunity Requirements for Construction Activities. In addition to the foregoing, when undertaking "construction" as recognized by the U.S. Department of Labor (U.S. DOL), the County agrees to comply, and assures the compliance of each Third Party Participant, with: (a) U.S. DOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and (b) Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order No. 11246, Relating to Equal Employment Opportunity," 42 U.S.C.§ 2000e note,

5.27. **Disadvantaged Business Enterprise**. To the extent authorized by applicable Federal law, the County agrees to facilitate, and assures that each Third Party Participant will facilitate, participation by small business concerns owned and controlled by socially and economically disadvantaged individuals, also referred to as "Disadvantaged Business Enterprises" (DBEs), in the Project as follows:

(A) Requirements. The Recipient/County agrees to comply with:

(i) Section 1101(b) of MAP-21, 23 U.S.C. § 101 note,
(ii) U.S. DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 C.F.R. part 26, and
(iii) Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a, (2) Assurance. As required by 49 C.F.R. § 26.13(a), (b) DBE Program Requirements. Recipients receiving planning, capital and/or operating assistance that will award prime third party contracts exceeding $250,000 in a Federal fiscal year must: 1 Have a DBE program meeting the requirements of 49 C.F.R. part 26, 2 Implement a DBE program approved by FTA, and 3 Establish an annual DBE participation goal, (c) Special Requirements for a Transit Vehicle Manufacturer. The County understands and agrees that each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, must certify that it has complied with the requirements of 49 C.F.R. part 26,

(iv) the Recipent/County provides assurance that: The County shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 C.F.R. part 26. The Recipient/County shall take all necessary and reasonable steps under 49 C.F.R. part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The Recipient/County's DBE program, as required by 49 C.F.R. part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Recipient/County of its failure to carry out its approved program, the Department may impose sanctions as provided for under 49 C.F.R. part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. § 1001 and/or the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. § 3801 et seq.,

(B) Exception for the Tribal Transit Program. FTA exempts Indian tribes from the Disadvantaged Business Enterprise regulations at 49 C.F.R. part 26 under MAP-21 and previous legislation,

5.28 **Nondiscrimination on the Basis of Sex.** The Recipient/County agrees to comply with Federal prohibitions against discrimination on the basis of sex, including: (1) Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 et seq., (2) U.S. DOT regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. part 25, and (3) Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a,

5.29 **Nondiscrimination on the Basis of Age.** The Recipient/County agrees to comply with Federal prohibitions against discrimination on the basis of age, including: (1) The Age Discrimination in Employment Act (ADEA), 29 U.S.C. §§ 621 – 634, which prohibits discrimination on the basis of age, (2) U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, which implements the ADEA, (3) The Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., which prohibits discrimination against individuals on the basis of age in the administration of programs or activities receiving Federal funds, (4) U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, which implements the Age Discrimination Act of 1975, and (5) Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a,

5.30 **Nondiscrimination on the Basis of Disability.** The Recipient/County agrees to comply with the following Federal prohibitions pertaining to discrimination against seniors or individuals with disabilities: (1) Federal laws, including: (a) Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of disability in the administration of federally funded programs or activities, (b) The Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. § 12101 et seq., which requires that accessible facilities and services be made available to individuals with disabilities, 1 General. Titles I, II, and III of the ADA apply to FTA Recipients, but 2 Indian Tribes. While Titles II and III of the ADA apply to Indian Tribes, Title I of the ADA exempts Indian Tribes from the definition of "employer," (c) The Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., which requires that buildings and public accommodations be accessible to individuals with disabilities, (d) Federal transit law, specifically 49 U.S.C. § 5332, which now includes disability as a prohibited basis for discrimination, and (e) Other applicable laws and amendments pertaining to access for elderly individuals or individuals with disabilities, (2) Federal

regulations, including: (a) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. part 37, (b) U.S. DOT regulations, "Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. part 27, (c) U.S. DOT regulations, "Transportation for Individuals with Disabilities: Passenger Vessels," 49 C.F.R. part 39, (d) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB) and U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. part 1192 and 49 C.F.R. part 38, (e) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. part 35, (f) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. part 36, (g) U.S. EEOC, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. part 1630, (h) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities," 47 C.F.R. part 64, Subpart F, (i) U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. part 1194, and (j) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. part 609, and (3) Other applicable Federal civil rights and nondiscrimination guidance.

5.31 **Drug or Alcohol Abuse** - Confidentiality and Other Civil Rights Protections. The Recipient/County agrees to comply with the confidentiality and civil rights protections of: (1) The Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. § 1101 et seq., (2) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. § 4541 et seq., and (3) The Public Health Service Act, as amended, 42 U.S.C. §§ 290dd – 290dd-2,

5.32 **Access to Services for People with Limited English Proficiency**. Except as the Federal Government determines otherwise in writing, the Recipient/County agrees to promote accessibility of public transportation services to people whose understanding of English is limited by following: 1) Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," August 11, 2000, 42 U.S.C. § 2000d-1 note, and (2) U.S. DOT Notice, "DOT Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficiency (LEP) Persons," 70 Fed. Reg. 74087, December 14, 2005.

5.33 **Other Nondiscrimination Laws**. Except as the Federal Government determines otherwise in writing, the Recipient/County agrees to: (1) Comply with other applicable Federal nondiscrimination laws and regulations, and (2) Follow Federal guidance prohibiting discrimination.

5.34 **Remedies**. Remedies for failure to comply with applicable Federal Civil Rights laws and Federal regulations may be enforced as provided in those Federal laws or Federal regulations.

5.35 **Breaches and Dispute Resolution**
All contracts over $150,000

(A) Disputes arising in the performance of this contract which are not resolved by agreement of the parties shall be decided in writing by the Recipient/County's authorized representative. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, contractor mails or otherwise furnishes a written appeal to the Recipient/County's CEO. In connection with such appeal, contractor shall

be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Recipient/County's CEO shall be binding upon contractor and contractor shall abide by the decision. FTA has a vested interest in the settlement of any violation of Federal law including the False Claims Act, 31 U.S.C. § 3729.

(B) **Performance During Dispute** - Unless otherwise directed by the Recipient/County, contractor shall continue performance under this contract while matters in dispute are being resolved.

(C) **Claims for Damages** - Should either party to the contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within ten days after the first observance of such injury or damage.

(D) **Remedies** - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the Recipient/County and contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the residing State.

(F) **Rights and Remedies** - Duties and obligations imposed by the contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the Recipient/County or contractor shall constitute a waiver of any right or duty afforded any of them under the contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

5.36 **Disadvantaged Business Enterprise**

Contracts over $3500 awarded on the basis of a bid or proposal offering to use DBEs

(A) This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10 ~~7~~%. The County's overall goal for DBE participation is listed elsewhere. If a separate contract goal for DBE has been established for this procurement, it is listed elsewhere.

(B) The contractor shall not discriminate on the basis of race, color, religion, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Recipient/County deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

(C) If a separate contract goal has been established, Bidders/offerors are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53.

(D) If no separate contract goal has been established, the successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

(E) The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from the Recipient/County. In addition, the contractor may not hold retainage from its subcontractors or must return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed or must return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor's work by the Recipient/County and contractor's receipt of the partial retainage payment related to the subcontractor's work.

(F) The contractor must promptly notify the Recipient/County whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the Recipient/County.

5.37 **Prompt payment**

Applicability – All contracts except micro-purchases ($3,500 or less, except for construction contracts over $2,000)

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contract receives from the Recipient/County. The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractors work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Recipient/County. This clause applies to both DBE and non-DBE subcontracts.

5.38 **Incorporation of Federal Transit Administration (FTA) Terms**

All contracts except micro-purchases ($3,500 or less, except for construction contracts over $2,000)

The preceding provisions include, in part, certain Standard Terms & Conditions required by USDOT, whether or not expressly stated in the preceding contract provisions. All USDOT-required contractual provisions, as stated in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The contractor shall not perform any act, fail to perform any act, or refuse to comply with any request that would cause the Recipient/County to be in violation of FTA terms and conditions.

5.39 **Other Federal Requirements**

The following requirements are not federal clauses.

1. **Full and Open Competition**
   In accordance with 49 U.S.C. § 5325(a) all procurement transactions shall be conducted in a manner that provides full and open competition.

2. **Prohibition Against Exclusionary or Discriminatory Specifications**
Apart from inconsistent requirements imposed by Federal statute or regulations, the contractor shall comply with the requirements of 49 USC 5323(h)(2) by refraining from using any FTA assistance to support procurements using exclusionary or discriminatory specifications.

5.40 **Conformance with ITS National Architecture**
Contractor shall conform, to the extent applicable, to the National Intelligent Transportation Standards architecture as required by SAFETEA-LU Section 5307(c), 23 U.S.C. Section 512 and as amended by MAP-21 23 U.S.C. § 517(d), note and follow the provisions of FTA Notice, "FTA National Architecture Policy on Transit Projects," 66 Fed. Reg.1455 et seq., January 8, 2001, and any other implementing directives FTA may issue at a later date, except to the extent FTA determines otherwise in writing.

5.41 **Access Requirements for Persons with Disabilities**
Contractor shall comply with 49 USC 5301(d), stating Federal policy that the elderly and persons with disabilities have the same rights as other persons to use mass transportation services and facilities and that special efforts shall be made in planning and designing those services and facilities to implement that policy. Contractor shall also comply with all applicable requirements of Sec. 504 of the Rehabilitation Act (1973), as amended, 29 USC 794, which prohibits discrimination on the basis of handicaps, and the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments thereto.

5.42 **Notification of Federal Participation**
To the extent required by law, in the announcement of any third party contract award for goods and services (including construction services) having an aggregate value of $500,000 or more, contractor shall specify the amount of Federal assistance to be used in financing that acquisition of goods and services and to express that amount of Federal assistance as a percentage of the total cost of the third party contract.

5.43 **Interest of Members or Delegates to Congress**
No members of, or delegates to, the US Congress shall be admitted to any share or part of this contract nor to any benefit arising therefrom.

5.44 **Ineligible Contractors and Subcontractors**
Any name appearing upon the Comptroller General's list of ineligible contractors for federally-assisted contracts shall be ineligible to act as a subcontractor for contractor pursuant to this contract. If contractor is on the Comptroller General's list of ineligible contractors for federally financed or assisted construction, the Recipient/County shall cancel, terminate or suspend this contract.

5.45 **Other Contract Requirements**
To the extent not inconsistent with the foregoing Federal requirements, this contract shall also include those provisions attached hereto, and shall comply with the County's Procurement Guidelines, available upon request from the Recipient/County.

5.46 **Compliance with Federal Regulations**
Any contract entered pursuant to this solicitation shall contain the following provisions: All USDOT-required contractual provisions, as set forth in FTA Circular 4220.1F, are incorporated by reference. Anything to the contrary herein notwithstanding, FTA

mandated terms shall control in the event of a conflict with other provisions contained in this Agreement. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any grantee request that would cause the Recipient/County to be in violation of FTA terms and conditions. Contractor shall comply with all applicable FTA regulations, policies, procedures and directives, including, without limitation, those listed directly or incorporated by reference in the Master Agreement between the Recipient/County and FTA, as may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

5.47 **Real Property**

Any contract entered into shall contain the following provisions: Contractor shall at all times comply with all applicable statutes and USDOT regulations, policies, procedures and directives governing the acquisition, use and disposal of real property, including, but not limited to, 49 CFR 18.31-18.34, 49 CFR 19.30-19.37, 49 CFR Part 24, 49 CFR 5326 as amended by MAP-21, 49 CFR part 18 or 19, 49 USC 5334, applicable FTA Circular 5010, and FTA Master Agreement, as they may be amended or promulgated during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

5.48 **Access to Services for Persons with Limited English Proficiency**

To the extent applicable and except to the extent that FTA determines otherwise in writing, the Recipient/County agrees to comply with the policies of Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," 42 U.S.C. § 2000d 1 note, and with the provisions of U.S. DOT Notice, "DOT Guidance to Recipients on Special Language Services to Limited English Proficient (LEP) Beneficiaries," 70 Fed. Reg. 74087, December 14, 2005.

5.49 **Environmental Justice**

Except as the Federal Government determines otherwise in writing, the Recipient/County agrees to promote environmental justice by following: (1) Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low- Income Populations," February 11, 1994, 42 U.S.C. § 4321 note, as well as facilitating compliance with that Executive Order, and (2) DOT Order 5610.2, "Department of Transportation Actions To Address Environmental Justice in Minority Populations and Low-Income Populations," 62 Fed. Reg. 18377, April 15, 1997, and (3) The most recent and applicable edition of FTA Circular 4703.1, "Environmental Justice Policy Guidance for Federal Transit Administration Recipients," August 15, 2012, to the extent consistent with applicable Federal laws, regulations, and guidance,

5.50 **Environmental Protections**

Compliance is required with any applicable Federal laws imposing environmental and resource conservation requirements for the project. Some, but not all, of the major Federal laws that may affect the project include: the National Environmental Policy Act of 1969; the Clean Air Act; the Resource Conservation and Recovery Act; the Comprehensive Environmental Response, Compensation and Liability Act; as well as environmental provisions with Title 23 U.S.C., and 49 U.C. chapter 53. The U.S. EPA, FHWA and other federal agencies may issue other federal regulations and directives that may affect the project. Compliance is required with any applicable Federal laws and regulations in effect now or that become effective in the future.

5.51 **Geographic Information and Related Spatial Data**

Any project activities involving spatial data or geographic information systems activities financed with Federal assistance are required to be consistent with the National Spatial Data Infrastructure promulgated by the Federal Geographic Data Committee, except to the extent that FTA determines otherwise in writing.

5.52 **Geographic Preference**

All project activities must be advertised without geographic preference (except in A/E under certain circumstances, preference for hiring veterans on transit construction projects and geographic-based hiring preferences as is proposed to be amended in 2 CFR Part 1201).

5.53 **Organizational Conflicts of Interest**

The Recipient/County agrees that it will not enter into a procurement that involves a real or apparent organizational conflict of interest described as follows: (1) When It Occurs. An organizational conflict of interest occurs when the Project work, without appropriate restrictions on certain future activities, results in an unfair competitive advantage: (a) To that Third Party Participant or another Third Party Participant performing the Project work, and (b) That impairs that Third Party Participant's objectivity in performing the Project work, or (2) Other. An organizational conflict of interest may involve other situations resulting in fundamentally unfair competitive conditions, (3) Disclosure Requirements. Consistent with FTA policies, the Recipient/ County must disclose to FTA, and each of its Sub-recipients must disclose to the Recipient: (a) Any instances of organizational conflict of interest, or (b) Violations of federal criminal law, involving fraud, bribery, or gratuity violations potentially affecting the federal award, and (4) Failure to Disclose. Failure to make required disclosures can result in remedies for noncompliance, including debarment or suspension.

5.54 **Veterans Preference**

As provided by 49 U.S.C. Sec. 5325(k), to the extent practicable, the Recipient/County agrees and assures that each of its subrecipients:

(1) Will give a hiring preference to veterans, as defined in 5 U.S.C. Sec. 2108, who have the skills and abilities required to perform construction work required under a third party contract in connection with a Capital Project supported with federal assistance appropriated or made available for 49 U.S.C. chapter 53, and

(2) Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or former employee.

5.55 **Safe Operation of Motor Vehicles**

The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company leased/rented vehicles, or personally operated vehicles. The terms "company-owned" and "company leased/rented" refer to vehicles owned or leased/rented by either the Contractor or AGENCY.

The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle the Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with work performed under this agreement.

5.56 **Catalog of Federal Domestic Assistance (CFDA) Identification Number**
The municipal project sponsor is required to identify in its accounts all Federal awards received and expended, and the Federal programs under which they were received. Federal program and award identification shall include, as applicable, the CFDA title and number, award number and year, name of the Federal agency, and name of the pass through entity.

5.57 **CFDA number for the Federal Transportation Administration**
Nonurbanized Area Formula (Section 5311) is 20.509. A Recipient covered by the Single Audit Act Amendments of 1996 and OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations," (replaced with 2 CFR Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" effective December 26, 2014 as applicable) agrees to separately identify the expenditures for Federal awards under the Recovery Act on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by OMB Circular A-133. The Recipient/County agrees to accomplish this by identifying expenditures for Federal awards made under Recovery Act separately on the SEFA, and as separate rows under Item 9 of Part III on the SF-SAC by CFDA number, and inclusion of the prefix "ARRA" in identifying the name of the Federal program on the SEFA and as the first characters in Item 9d of Part III on the SF-SAC.

RAD PDF Developer License Active
CERTIFICATION AND RESTRICTIONS ON LOBBYING

I,_____, hereby certify (Name and title of official)

On behalf of _____that:
(Name of Bidder/Company Name)

☐ No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

☐ If any funds other than federal appropriated funds have been paid or will be paid to any person influencing or attempting to influence an officer or employee of any agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with the federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form – LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

☐ The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-contracts, sub- grants and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

The undersigned certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification and understands that the provisions of 31 U.S.C. Section 3801, et seq., are applicable thereto.

Name of Bidder/Company Name _____

Type or print name_____

Signature of authorized representative_____Date / /_____

Signature of notary and SEAL_____

RAD PDF DEMO License Active

GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NON-PROCUREMENT)

Instructions for Certification: By signing and submitting this bid or proposal, the prospective lower tier participant is providing the signed certification set out below.

(1) It will comply and facilitate compliance with U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 CFR part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 CFR part 180,

(2) To the best of its knowledge and belief, that its Principals and Subrecipients at the first tier:

a. Are eligible to participate in covered transactions of any Federal department or agency and are not presently:

   (1) Debarred,
   (2) Suspended,
   (3) Proposed for debarment,
   (4) Declared ineligible,
   (5) Voluntarily excluded, or
   (6) Disqualified,

b. Its management has not within a three-year period preceding its latest application or proposal been convicted of or had a civil judgment rendered against any of them for:

   (1) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction, or contract under a public transaction,
   (2) Violation of any Federal or State antitrust statute, or
   (3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making any false statement, or receiving stolen property,

c. It is not presently indicted for, or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses listed in the preceding subsection 2.b of this Certification,

d. It has not had one or more public transactions (Federal, State, or local) terminated for cause or default within a three-year period preceding this Certification,

e. If, at a later time, it receives any information that contradicts the statements of subsections 2.a – 2.d above, it will promptly provide that information to FTA,

RAD PDF DEMO License Active

GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NON-PROCUREMENT)
(Cont'd)

f. It will treat each lower tier contract or lower tier subcontract under its Project as a covered lower tier contract for purposes of 2 CFR part 1200 and 2 CFR part 180 if it:

(1) Equals or exceeds $25,000,
(2) Is for audit services, or
(3) Requires the consent of a Federal official, and

g. It will require that each covered lower tier contractor and subcontractor:

(1) Comply and facilitate compliance with the Federal requirements of 2 CFR parts 180 and 1200, and
(2) Assure that each lower tier participant in its Project is not presently declared by any Federal department or agency to be:

a. Debarred from participation in its federally funded Project,
b. Suspended from participation in its federally funded Project,
c. Proposed for debarment from participation in its federally funded Project,
d. Declared ineligible to participate in its federally funded Project,
e. Voluntarily excluded from participation in its federally funded Project, or
f. Disqualified from participation in its federally funded Project, and

(3). It will provide a written explanation as indicated on a page attached in FTA's TEAM-Web or the Signature Page if it or any of its principals, including any of its first tier Subrecipients or its Third Party Participants at a lower tier, is unable to certify compliance with the preceding statements in this Certification Group.

Certification

Contractor_____

Signature of Authorized Official_____Date / /_____

Name and Title of Contractor's Authorized Official _____

BUY AMERICA CERTIFICATION
(STEEL OR MANUFACTURED PRODUCTS)
[61 FR 6302, Feb. 16, 1996, as amended at 74 FR 30239, June 25, 2009]

General Requirement (as stated in 49 CFR661.5)

Except as provided in 49 CFR 661.7 and 49 CFR 661.11, no funds may be obligated by FTA for a grantee project unless all iron, steel, and manufactured products used in the project are produced in the United States.

All steel and iron manufacturing processes must take place in the United States, except metallurgical processes involving refinement of steel additives.

The steel and iron requirements apply to all construction materials made primarily of steel or iron and used in infrastructure projects such as, transit or maintenance facilities, rail lines, and bridges. These items include, but are not limited to, structural steel or iron, steel or iron beams and columns, running rail and contact rail. These requirements do not apply to steel or iron used as components or subcomponents of other manufactured products or rolling stock, or to bimetallic power rail incorporating steel or iron components.

For a manufactured product to be considered produced in the United States:

(1) All of the manufacturing processes for the product must take place in the United States; and

(2) All of the components of the product must be of U.S. origin. A component is considered of U.S. origin if it is manufactured in the United States, regardless of the origin of its subcomponents.

If steel, iron, or manufactured products (as defined in 49 CFR 661.3 and 661.5) are being procured, the appropriate certificate as set forth below shall be completed and submitted by each bidder or offeror in accordance with the requirement contained in 49 CFR 661.13(b).

☐ **Certificate of Non-Compliance with Buy America Steel or Manufactured Products Requirements** The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j), but it may qualify for an exception to the requirement pursuant to 49 U.S.C. 5323(j)(2), as amended, and the applicable regulations in 49 C.F.R. 661.7.

☐ **Certificate of Compliance with Buy America Requirements.**
The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(1), and the applicable regulations in 49 CFR part 661.

Signature _____ Date_____

Company _____

IN WITNESS WHEREOF, the parties have affixed their signatures, effective on the date first above written.

ATTEST:

Scott Ellis, Clerk

BREVARD COUNTY

BOARD OF COUNTY COMMISSIONERS

By: _____
Rita Pritchett, Chairman

As approved by the Board on: _____

ATTEST:

Liana, Foster, Proj. Coor.

IVEY'S CONSTRUCTION (Seal)

By: Kevin W. Ivey President
Printed Name & Title

II.C.2

CONSTRUCTION MANAGER CONTRACT

Parks and Recreation Department

THIS CONTRACT made the ____ day of _____ 2019 between the **BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS**, a political subdivision of the State of Florida whose address is 2725 Judge Fran Jamieson Way, Viera, Florida 32940 (hereinafter referred to as "County"), and **Canaveral Construction Co., Inc., 3475 N US#1, Mims, FL 32754** (hereinafter referred to as "Contractor"), a company licensed to do business in the State of Florida.

WHEREAS, the Board of County Commissioners approved the repair of damages to Parks and Recreation facilities at the April 24, 2018 Board meeting; and

WHEREAS, such repairs include work to be done at the Port St. John Boat Ramp (hereinafter referred to as the "Project").

ARTICLE 1

THE CONSTRUCTION TEAM AND EXTENT OF CONTRACT

The Contractor accepts the relationship of trust and confidence established between him and the County by this Contract. The Contractor covenants with the County to furnish the best skill and judgment and to cooperate with Coastal Technology Corporation (hereinafter referred to as the "Architect/Engineer") in furthering the interests of the County. The Contractor agrees to furnish efficient business administration and superintendence and use its best efforts to complete the Project in the best and soundest way, and in the most expeditious and economical manner consistent with the interest of the County.

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

The specific representatives of the Construction Team are shown in **Attachment "A"** attached.

1.2 Scope of Work – A general description of the Work/Project to be built/constructed/installed under this Contract is shown in **Attachment "B"** and may include projects that may be funded or submitted for reimbursement through the Federal Emergency Management Agency (one to two million dollars).

1.3 Definitions:

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

County - Brevard County Board of County Commissioners, (through the Brevard County Parks and Recreation Department), 2725 Judge Fran Jamieson Way, Building B, 2nd Floor, Viera, Florida 32940, (321) 633-2046; facsimile (321) 633-2198. For the purposes of this Contract, the County may also include the County Manager or the Project Director, or their designee(s), with

regard to the performance of designated functions and duties specified for each under the terms and provisions of this Contract.

Contract Documents - Consist of this Contract with attachments, including, but not limited to, Scope of Work, the drawings, the specifications, the Guaranteed Maximum Price, any Conditions of the Contract between the County and the Contractor (General, Special, Supplementary and other conditions), permit conditions, if any, grant specifications, any addenda to the foregoing listed documents and all change orders, amendments or modifications as provided in Article 10, whether or not any of the

foregoing listed documents have been attached hereto.

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

Contractor/Construction Manager – Canaveral Construction Co., Inc., 3475 N US#1, Mims, FL 32754.

Architect/Engineer – Coastal Technology Corporation, 3625 20th Street, Vero Beach, FL 32960.

Project Director - The person designated by the County to provide direct interface with the Contractor with respect to the County's responsibilities. Mike Butcher is the designated Project Director.

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

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

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

Site - Port St. John Boat Ramp.

Substantial Completion - The point in the construction where all essential elements of the Project are sufficiently complete in conformance with the Contract, that the County has both the occupancy of the Project, as evidenced by a Certificate of Occupancy issued by the governmental authority with jurisdiction, and the beneficial use of the Project for its intended purpose where only minor "punch list" items, or a written list of unfinished Work and defective work, are required for final completion. Substantial Completion shall not be deemed to have occurred where 1) latent defects are revealed subsequent to use and occupation of the Project by the County; or 2) the scope of substantial defects in workmanship or materials are not readily observable or discoverable when use and occupancy of the Project commenced; or 3) there is a failure to meet grant specifications, if any.

1.4 Extent of Contract - This Contract for Construction Management Services – to provide labor, materials, and equipment for replacing the docks and related work at the Port St. John Boat Ramp between the County and the Contractor – supersedes any prior negotiations, representations or agreements, whether oral or written. The drawings, specifications and other

descriptive documents defining the work to be included under this construction contract are identified in **Attachment "D"**. The Contractor shall: (i) obtain from the County three sets of signed, sealed and dated drawings, specifications and other documents upon which the Guaranteed Maximum Price is based; (ii) acknowledge on the face of each document of each set that it is the set upon which it based its Guaranteed Maximum Price; and shall send one set of the documents to the Project Director along with its Guaranteed Maximum Price proposal, while keeping one set for itself and returning one set to the Architect/Engineer.

This Contract shall not be superseded by any provisions of the documents for construction and may be amended only by written instrument signed by both the County and Contract

ARTICLE 2

CONSTRUCTION MANAGER'S RESPONSIBILITIES

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

2.1 PRE-CONSTRUCTION PHASE

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

2.1.2 Consultation - Contractor will provide Design Disciplines Construction Documents Plans and Specifications review at all design milestones and a final constructability review. The review at each milestone will identify areas of omission, overlap, and identify documents to be modified in order to clarify the construction details. The review will also include the coordination and interface of the Contract document's General Conditions, Special Conditions, trade contractor bid packages, and site utilization planning during construction. Reviews shall be completed and comments provided within five business days. As part of the design review, Contractor will provide Value Engineering and construction alternatives for consideration by the County and Architect/Engineer, identifying options for systems and components that are cost effective, more easily maintained, and otherwise more efficient.

Contractor has scheduled and attended, and will continue to jointly schedule and attend, **weekly** progress meetings (*or as otherwise mutually agreed to by the Project Director or Contractor's Project Manager*) with County and Architect/Engineer. Contractor has and will continue to consult with County and Architect/Engineer regarding site use and improvements, and the selection of materials, building systems and equipment. Contractor has provided and will continue to provide recommendations on construction feasibility; actions designated to minimize adverse effects of labor or material shortages; time requirements for procurement, installation and construction completion; and factors related to construction cost, including, but not limited to, estimates of alternative designs or materials, preliminary budgets and possible economies.

2.1.3 Preliminary Project Schedule - Contractor has prepared a Preliminary Project Schedule, a copy of which is attached as **Attachment "E"**. Contractor shall coordinate and integrate the Preliminary Project Schedule with the services and activities of the County, Architect/Engineer, and Contractor. The Contractor shall provide current scheduling information and provide direction and

coordination regarding milestones, beginning and finishing dates, responsibilities for performance and the relationships of the Contractor's work to the work of its subcontractors and suppliers to enable them to perform their respective tasks so that the development of construction progresses in a smooth, workmanlike, and efficient manner in conformance with the overall Total Project Schedule. The schedule shall include all phases of construction work, material supplies, long lead procurement, approval of shop drawings, change orders in progress, schedules for change orders, and performance of testing requirements. The Contractor shall advise the County, its representatives, and the Architect/Engineer of their required participation in any meeting or inspection giving each at least one week notice in writing unless such notice is made impossible by conditions beyond the Contractor's control. The Contractor shall hold jobsite meetings at least once each week with the Construction Team, and at least once each week, or more frequently as required by work progress, with the subcontractors, the Architect/Engineer's field representative(s), and the County to review progress, discuss problems and solutions, and coordinate future work with all subcontractors.

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

2.1.5 Long Lead and County Direct Procurement - The Contractor shall review the design for the purpose of identifying long lead and the County direct procurement items (machinery, equipment, materials and supplies). When each item is identified the Contractor shall notify the subcontractors and the County of the required procurement and schedule. Such information shall be included in the bid documents and made a part of all affected subcontracts. As soon as the Architect/Engineer has completed drawings and technical specifications and the Contractor has obtained permitting approval, the Contractor shall prepare Invitation for Bids. The Contractor shall keep informed of the progress of the respective subcontractors and/or suppliers, manufacturing or fabricating such items and notify the County and Architect/Engineer of any problems or prospective delay in delivery.

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

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

2.1.8 Separate Contracts Planning - The Contractor shall review the design with the Architect/Engineer and make recommendations to the County and to the Architect/Engineer with respect to dividing the work in such manner as will permit the Contractor to take bids and award separate construction subcontracts on the current schedule while the design is being completed. The Contractor shall take into consideration such factors as natural and practical lines of severability,

sequencing, effectiveness, access and availability constraints, total time for completion, construction market conditions, availability of labor and materials, community relations and any other factors pertinent to saving time and costs by overlapping design and construction that are authorized by the County.

2.2 CONSTRUCTION PHASE

2.2.1 Interfacing -

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

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

2.2.2 Solicitation of Bids

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

(2) As part of such preparation, the Contractor shall review the specifications and drawings prepared by the Architect/Engineer. Ambiguities, conflicts or lack of clarity of language, use of illegally restrictive requirements, and any other defects in the specifications or in the drawings noted by the Contractor shall be brought to the attention of the Project Director and Architect/Engineer in written form.

(3) For each separate subcontractor or construction trade contract used in this Project, the Contractor shall, unless waived by the County, conduct a pre-bid conference with prospective bidders, the Architect/Engineer and Project Director. In the event questions are raised which require an interpretation of the bidding documents or otherwise indicate a

need for clarification or correction of the invitation, the Contractor shall transmit these to the Architect/Engineer and, upon receiving clarification or correction in writing, shall prepare an addendum to the bidding document, and issue same to all of the prospective bidders.

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

2.2.3 Bonds - For those projects where the cost will exceed one hundred thousand dollars, in accordance with the provisions of Section 255.05, Florida Statutes, the Contractor shall provide to the County, on forms furnished by the County (**Attachment "G" and "H"**), certified copies of the recorded one-hundred percent Public Construction Performance Bond and one-hundred percent Public Construction Payment Bond each in an amount not less than the total construction cost Guaranteed Maximum Price as defined in Article 9 herein and inclusive of the construction fee. *Payment and Performance Bonds shall be recorded (by the Contractor) in the official record of the County in which the Project is located.* The Contractor must provide a copy of the bond(s) to all subcontractors and notify them of deadlines to make claims under the bonds.

2.2.4 Quality Control - The Contractor shall develop and maintain a program, acceptable to the County and Architect/Engineer, to assure quality control of the construction (*this may include personnel if approved by the County*). The Contractor shall have a qualified and competent superintendent to supervise the work of all Subcontractors providing instructions to each when their work does not conform to the requirements of the plans and specifications and shall continue to exert influence and control over each Subcontractor to ensure that corrections are made in a timely manner so as to not affect the efficient progress of the Project. Should disagreement occur between the Contractor and Architect/Engineer over acceptability of work and conformance with the requirements of the specifications and plans, the County shall be the final judge of performance and acceptability.

2.3 Guaranteed Maximum Price and Contract Time

2.3.1 Contractor acknowledges and agrees the Drawings and Specifications are sufficiently complete for Contractor to propose a Guaranteed Maximum Price, which is the total not to exceed the sum of the Contractor's Fee and the Cost of the Project. Accordingly, the Guaranteed Maximum Price is hereby established at **Seven Hundred One Thousand, Four Hundred Two Dollars ($701,402.00).** *The final approved Guaranteed Maximum Price spread sheet is hereby attached as* **Attachment "I"** *to and shall become a part of this Contract between the County and Contractor.*

2.3.2 The Cost of the Project shall include Contractor's contingency, a sum agreed to by all parties for the Contractor's use to cover costs arising from unforeseen conditions in the project. Contractor's contingency is hereby established as a separate line item of **Thirty-Three Thousand Sixty-Eight Dollars ($33,068.00)** within the Guaranteed Maximum Price.

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

.1 The list of the Drawings and Specifications, including all addenda thereto, and the

Conditions of the Contract, which are identified in the Attachments to this Contract.

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

.3 The Preliminary Construction Schedule (**Attachment "E"**). As reflected in said Schedule, Contractor is to achieve Substantial Completion of the Work within **One Hundred Twenty (120) Calendar Days** from issuance of Notice to Proceed. Final Completion shall be achieved within an additional **Thirty (30) Calendar Days**.

2.3.4 Included within the Guaranteed Maximum Price is the Contractor's fee. The Contractor's Fee is hereby established as **Seventy-Six Thousand Eighty-Seven Dollars ($76,086.00)** for services provided in this Contract. The sum of the Cost of the Project and the Contractor's Fee shall not exceed the Guaranteed Maximum Price. The Contractor's Fee shall constitute Contractor's total compensation for profit. All costs in excess of the final approved Guaranteed Maximum Price (as reduced by County direct purchases, if any, in accordance with **Attachment "C"**) are the responsibility of the Contractor. Any savings between the Guaranteed Maximum Price (as reduced by County direct purchases) and the sum of the actual cost of the Project plus the Contractor's fee will be returned to the County.

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

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

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

2.4 Construction Phase

2.4.1 General

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

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

2.4.1.3 Contractor's Staff - The Contractor shall maintain sufficient off-site support staff, and competent full time staff at the Project site authorized to act on behalf of the Contractor and to coordinate, inspect and provide general direction of the work and progress of the subcontractors, and the Contractor shall provide no less than those personnel during the respective phases of construction. The Contractor shall not change any of those designated persons unless mutually agreed to by the County and Contractor. In such case, the County shall have the right of approval of the qualifications of replacement personnel. Such approval will not be unreasonably withheld.

2.4.1.3.1 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.

2.4.1.3.2 The Contractor's superintendent shall be in attendance at the Project site not less than eight hours per day, five 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 County and the Architect/Engineer, and shall be the one who will continue in that capacity for the duration of the Project, unless the County 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.

2.4.1.4 Lines of Authority - The Contractor shall establish and maintain lines of authority for its personnel, and shall provide this description/definition to the County and all other affected parties such as the code inspectors of the permitting authorities, the subcontractors, the Architect/Engineer and the County's representatives, to provide general direction of the work and progress of the various phases and subcontractors. The County and the Architect/Engineer may attend meetings between the Contractor and subcontractors, however, such attendance shall not diminish either the authority or responsibility of the Contractor to administer the subcontractor.

2.4.2 Administration

2.4.2.1 Those portions of the Project that Contractor does not customarily perform with Contractor's own personnel shall be performed under subcontracts or by other appropriate written contracts with Contractor. Contractor shall obtain bids from subcontractors and from suppliers of materials or equipment fabricated to a special design for the Project from the list previously reviewed and, after analyzing such bids, shall deliver such bids to the County and Architect/Engineer for review and comment. Based upon that review and comment, Contractor shall then determine, subject to the reasonable objection of the Architect/Engineer or County, which bids will be accepted. Contractor shall not be required to contract with anyone to whom Contractor has reasonable objection. Notwithstanding anything herein to the contrary, Contractor covenants and agrees that it shall competitively bid all subcontracts. Further, with respect to all such subcontracts, Contractor covenants and agrees that it shall select and contract with the lowest, responsive and qualified bidder, unless otherwise consented to in writing by the County.

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

2.4.2.3 Contractor shall schedule and conduct weekly meetings, at a minimum, at which County, Architect/Engineer, Contractor and appropriate Subcontractors can discuss the status of the Project. Contractor shall prepare and promptly distribute meeting minutes within two business days after any such meeting is held.

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

2.4.2.5 Contractor shall provide Monthly Written Reports to the County on the progress of the entire Project. Contractor shall maintain a daily log containing a record of weather, subcontractors working on the site, number of workers, Work accomplished, problems

encountered and other similar relevant data as the County may require. The log shall be available to the County at all times.

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

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

In accordance with Section 255.40, Florida Statutes, the County will require that the Contractor certify, upon Project Completion, that to the best of its knowledge and ability no asbestos-containing materials and/or supplies have been purchased and/or installed on this Project.

2.7 Weather Protection - The Contractor will be responsible to ascertain what temporary enclosures, if any, of building areas should be provided for and may be provided as a practical matter, in order to assure orderly progress of the work in periods when extreme weather conditions are likely to be experienced. All costs associated with this shall be the responsibility of the Contractor.

2.8 Job Site Requirements

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

a. Maintain a log of daily activities, including, but not limited to, manpower records, weather, delays, and major decisions, and require the same of subcontractors.
b. Maintain a directory of companies on the Project with names, addresses, telephone numbers, emergency telephone numbers and fax numbers of key personnel.
c. Establish and enforce job rules governing parking, clean-up, use of facilities and worker discipline.
d. Provide labor relations management for a harmonious, productive Project.
e. Provide a safety program for the Project to meet safety standards, including, but not limited to, Occupational Safety and Health Administration requirements.
f. Monitor for subcontractor compliance without relieving them of responsibilities to perform work in accordance with the best acceptable practice.
g. Provide a quality control program.
h. Miscellaneous office supplies that support the construction efforts which are consumed by its own forces.

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

(1) Job Meetings - Hold weekly progress and coordination meetings to provide for an easy flowing Project. Implement procedures and assure timely submittals, expedite processing approvals and return of shop drawings, samples, etc. Coordinate and expedite critical ordering and delivery of materials, work sequences, inspection and testing, labor allocations, etc. Review and coordinate each Subcontractor's work. Review and implement revisions to the Schedule. Monitor and promote safety requirements.

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

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

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

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

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

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

(6) Reports and Project Site Documents - Record the progress of the Project. Submit written progress reports to the County and the Architect/Engineer including information on the Subcontractor's work, and the percentage of completion. Keep a daily log available to the County, the Architect/Engineer and the Permitting Authority inspectors.

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

At the County's option a specific area or segment of the Project may be inspected and/or

determined substantially complete.

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

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

The Contractor shall secure and transmit to the Architect/Engineer all required guarantees, affidavits, releases, bonds and waivers, manuals, record drawings, and maintenance books as part of final completion (in triplicate) unless stated otherwise in the Project specifications.

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

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

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

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

The Project records shall be available at all times to the County and Architect/Engineer for reference or review.

(12) County Occupancy:
The Contractor shall provide services during the Construction Phase which will provide a smooth and successful County occupancy of the Project. The Contractor shall provide consultation and project management to facilitate County occupancy and provide transitional services to get the work, as completed by the contractors "on line" in such conditions as will satisfy County operational requirements.

The Contractor shall conduct the Contractor's preliminary punch list inspection and coordinate the completion of all punch list work to be done with County occupancy requirements in mind.

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

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

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

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

ARTICLE 3

COUNTY'S RESPONSIBILITIES

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

3.2 County's Representative/Project Director - The County shall designate a representative who shall be fully acquainted with the Project and shall define the lines of County authority to approve Project Construction Budgets, and changes in Project. The County's representative shall render decisions promptly and furnish information expeditiously.

3.3 Architect and Engineer's Agreement - The County shall retain an Architect/Engineer for design and to prepare construction documents for the Project. The Architect/Engineer's services, duties and responsibilities are described in the Contract between the County and the Architect/Engineer, a copy of which will be furnished to the Contractor upon request.

3.4 Approvals and Easements - The County shall pay for necessary approvals, easements, assessments and charges required for the construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

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

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

3.7 Cost of Surveys & Reports - The services, information, surveys and reports required by the above paragraphs shall be furnished with reasonable promptness in accordance with the approved schedule at the County's expense, and the Contractor shall be entitled to rely upon the accuracy and completeness thereof.

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

3.9 Funding - The County shall furnish, in accordance with the established schedule, reasonable evidence satisfactory to the Contractor that sufficient funds will be available and committed for the cost of each part of the Project.

3.10 Lines of Communication - The County and Architect/Engineer shall communicate with the Subcontractors or Suppliers only through the Contractor while such method of communication is effective in maintaining Project schedules and quality.

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

3.12 Permitting & Code Inspections - The County recognizes and coordinates with the Permitting Authority and expects the Contractor to do the same.

ARTICLE 4

PERMITTING AND INSPECTION

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

4.2 The Contractor shall comply with, and give notices required by, any law, ordinance, rule or

regulation and lawful orders of public authorities bearing on performance of the work required for the Project.

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

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

ARTICLE 5

SUBCONTRACTS

5.1 Definition - A subcontractor is a person or organization who has a direct contract with the Contractor to perform any of the work. Nothing contained in the Contract Documents shall create any contractual relation between the County or Architect/Engineer and any Subcontractor.

5.2 Bids/Proposals - The Contractor shall request and make every attempt to receive, at a minimum, three bids/proposals from subcontractors and suppliers and will award those contracts to the most qualified and responsive low bidder after the Contractor and County have reviewed each bid/proposal and agree that the subcontractor is qualified to perform the work.

5.3 Required Subcontractor and Subcontract Conditions.

5.3.1 Subcontractual Relations - By an appropriate written agreement, the 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 the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities which the Contractor by this Contract, assumes toward the County and the Architect/Engineer. Said agreements shall preserve and protect the rights of the County and Architect/Engineer under the Contract Documents with respect to the work to be performed by the subcontractor so that the subcontracting thereof will not prejudice such rights. Where appropriate, the Contractor shall require each subcontractor to enter into similar agreements with its subcontractor's subcontractor.

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 its sub-subcontractor.

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

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

(3) All subcontracts shall provide:

a. LIMITATION OF REMEDY - NO DAMAGES FOR DELAY
That the subcontractor's exclusive remedy for delays in the performance of the contract caused by events beyond its control, including delays claimed to be caused by the County or Architect/Engineer or attributable to the County or Architect/Engineer, and including claims based on breach of contract or negligence, shall be an extension of its contract time.

In the event of a change in the work the subcontractor's claim for adjustments in the contract sum are limited exclusively to its actual cost for such change, plus, no more than five percent for profit, and five percent for overhead.

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

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

5.4 Responsibilities for Acts and Omissions - The Contractor shall be responsible to the County for the acts and omissions of its employees and agents and its subcontractors, agents and employees, and all other persons performing any of the work or supplying materials under this contract to the Contractor.

ARTICLE 6

SCHEDULE, TIME OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

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

It is specifically agreed by and between the parties that the County may deduct a sum in the amount scheduled below from the amount of compensation to be paid to the Contractor, Sundays and Holidays included, that the Project remains uncompleted. This amount as scheduled and agreed upon as a proper measure of liquidated damages, which the County will sustain per day by failure of the Contractor to complete the Project by the time stipulated in this Contract, is not to be construed in any sense as a penalty provision nor as the County's sole remedy.

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

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

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

ARTICLE 7

GUARANTEED MAXIMUM PRICE FOR CONSTRUCTION

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

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

7.3 At the time of execution of this Contract, the Contractor will verify the time schedule for activities and work which is adopted by the Construction Team and used to determine the Contractor's cost of work. Surplus funds from bids received below the applicable line items, including line items within the General Conditions, in the Guaranteed Maximum Price will be set aside for contingency. Construction contingency funds will be used for the purpose of defraying the expenses due to unforeseen circumstances relating to construction. The Contractor will be required to furnish documentation evidencing expenditures charged to this contingency prior to the release of funds by the County. Documentation for use of the Contingency shall be determined by the Construction Team. The Architect/Engineer and County shall verify and approve the actual costs.

If bids are received above the applicable line item in the Guaranteed Maximum Price the deficiency will be taken from the contingency via an approved Authorization to Initiate Work/Guaranteed Maximum Price Realignment form; however, such events shall not be cause to increase the Guaranteed Maximum Price. If bids are not received for a portion of the work at or below the applicable line item amount in the Guaranteed Maximum Price, the Contractor reserves the right to perform that portion of the work or negotiate for its performance for the specified line item lump sum amount or less.

ARTICLE 8

CONSTRUCTION MANAGER'S FEE

8.1 In consideration of the performance of the Contract, the County agrees to pay the Contractor, as compensation for its services, fees as set forth in Subparagraphs 8.1.2 and 8.1.3. subject to the retainage provisions specified in the Contract.

8.1.2 Construction Phase Fee - Prior to commencement of the Construction Phase, the County will direct the Contractor in writing to proceed into the Construction Phase. The County retains the right to review the need and effectiveness of any employee or employees assigned by the Contractor, should the Project Director question the need for the employee or employees. A percentage of the agreed upon Construction Phase Fee shall be paid monthly based on percentage of work completed, less retainage, in accordance with Paragraph 12.1 below. The Contractor's first monthly Certificate for Payment shall be submitted no earlier than thirty days following the issuance of the Notice to Proceed, and the final monthly payment shall be paid only when construction of the Project is finally completed, all original, final release of liens are received, closeout documentation has been submitted and occupancy of the Project accepted by the County. If construction is authorized only for a part of the Project, the fee paid shall be proportionate to the amount of work authorized by the County.

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

(a) The Contractor shall be paid an additional fee subject to negotiation if the Contractor is placed in charge of reconstruction of an insured or uninsured loss excluding any condition that may have been caused from negligent acts by the Contractor, subcontractors or others for whose acts the Contractor is responsible.

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

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

expressly included in Article 9.

(f) Relocation expenses for Contractor's personnel.

(g) Costs of all project estimating, safety, scheduling and accounting staff.

8.1.3 The Contractor will establish and submit in writing to the County for its approval a Guaranteed Maximum Price, guaranteeing the maximum price to the County, for the construction cost of the Project or designated part thereof, based on a review of the contract drawings and specifications. Such Guaranteed Maximum Price will be subject to modification for changes in the Project as provide in Article 10. However, the actual price paid for the Work by the County shall be (1) the Cost of the Project as defined in Article 9, plus the Contractor's fees, or (2) the Guaranteed Maximum Price, whichever is less, when the Work is complete. All costs in excess of the final approved Guaranteed Maximum Price are the responsibility of the Contractor.

ARTICLE 9

COST OF THE PROJECT

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

The County agrees to pay the Contractor for the Cost of the Project subject to the limits set forth in Paragraphs 9.2 and 9.3 plus the Contractor's fees stipulated in Article 8, provided the total does not to exceed the Guaranteed Maximum Price.

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

(1) Labor wages paid for the on-site Project superintendent directly responsible for the operation and supervision of the project, clerical and quality control personnel (as opposed to wages paid to management or supervisory personnel who are not part of the on-site project management) in the direct employ of the Contractor in the performance of the Contractor's work under this Contract, acceptable salary or wage schedules and such fringe benefits, if any, as may be payable with respect thereto (labor burden not to exceed forty percent for payroll and fifteen percent for per diem).

(2) Payments due to subcontractors from the Contractor or made by the Contractor to subcontractors for their work performed pursuant to contract under this Contract.

(3) Cost of the premiums for insurance above and beyond the minimum required by Brevard County (One million dollars) and cost of premiums for bonds which the Contractor is required to procure by this Contract specifically for the construction of this Project.

(4) Sales, use, gross receipts or similar taxes related to allowable direct costs of the Project imposed by a governmental authority, and for which the Contractor is liable. No costs shall be paid by the County to the Contractor for any expenses made necessary to correct defective workmanship or to correct any work not in conformance with the Plans and Specifications or to correct any deficiency or damage caused by negligent acts by the Contractor.

(5) If approved by the County, the Contractor, when qualified, may self- perform all or a portion of the work for any item listed on the estimate or Guaranteed Maximum Price breakdown where it is deemed advantageous due to schedule or economic benefit for the direct cost of the work.

(6) Legal costs reasonably and properly resulting from prosecution of the Project for the County, including handling claims for changes by subcontractors and vendors, subject to the following limitations:

(a) The County approved incurring such costs in advance, which approval shall not be unreasonably denied; and

(b) The legal costs were not incurred as result of the Contractor's own negligence or default.

(7) Costs for such temporary facilities during construction, as approved by the County, including temporary water, heat, power, sanitary facilities, telephones, radios and computers with software.

9.3 Allowances

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

9.4 Public Records Law and Audit Requirements

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

All records or documents created by Contractor or provided to Contractor by the County in connection with the activities or services provided by Contractor under the terms of this Contract, are public records and Contractor agrees to comply with any request for such public records or documents made in accordance with Chapter 119, Florida Statutes.

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

The Contractor shall provide the public with access to public records on the same terms and conditions that the public agency provides the records and at a cost that does not exceed the

cost provided for in Chapter 119, Florida Statutes, or as otherwise provided by law (see also County Administrative Order, AO-47).

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

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

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

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

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (321) 633-2046 OR 2725 JUDGE FRAN JAMIESON WAY, BLDG. B, SUITE 203, VIERA, FL 32940

ARTICLE 10

CHANGES IN THE PROJECT

10.1 Change Orders - The County, without invalidating this Contract, may order changes in the Project within the general scope of this Contract consisting of additions, deletions or other revisions which may cause an increase or decrease in the Guaranteed Maximum Price and/or the Construction Completion Date. All changes in the Project Guaranteed Maximum Price or Construction Completion Date not covered by an authorized contingency, as described in Paragraph 7.3, must be authorized by a written Change Order or Construction Change Directive, and signed by the County, Architect/Engineer and Contractor before the change is implemented. It shall be the County's discretion as to whether each change order requires the Architect/Engineer's signature. **Maximum allowable mark-up on any change order is five percent Profit, five percent Overhead, and a two percent Bond.**

10.1.1 A Construction Change Directive is a change directive signed by the Project Director and the County Manager directing an addition, deletion, or revision in the scope of work and/or

schedule. The Construction Change Directive is necessary when no Contract exists among the Architect/Engineer of record, the County, and the Contractor on the dollar amount of a necessary change in the scope of work and/or an extension of time to the construction contract. The Construction Change Directive is used (1) when an unsafe, hazardous or other similar condition exists, (2) when failure to achieve prompt resolution of the change will result in a demobilization of the 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 does not change the contract price or the contract time, but is evidence that the parties expect that the change will be incorporated in a subsequently issued Change Order or be covered by an authorized contingency.

10.1.2 A Change Order is a written order to the Contractor signed by the County, Architect/Engineer, and Contractor, issued after the execution of this Contract, authorizing a change in the Project and/or an adjustment in the construction authorization, the Contractor's fee, or the Construction Completion Date. Each adjustment in the Guaranteed Maximum Price resulting from a change order shall be documented clearly to separate the amount attributable to the cost of the change in the Project from the original cost of the Project.

10.1.3 The increase or decrease in the Guaranteed Maximum Price resulting from Change Orders in the Project shall be determined by one of the following ways:

(1) by mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation by the Architect/Engineer and County;
(2) by unit prices stated in the Contract or subsequently agreed upon;
(3) by cost as defined in Article 9 plus a mutually acceptable fixed or percentage fee; or
(4) by the method provided in Subparagraph 10.1.4.

10.1.4 If none of the methods set forth in Subparagraph 10.1.3 above can be agreed upon, the Contractor, provided it receives a written order signed by the County, shall promptly proceed with the work required by the Construction Change Directive involved. The cost of such work shall then be determined on the basis of the reasonable expenditures and savings of those performing the work attributed to the change. However, in the event a Change Order is issued under these conditions, the Architect/Engineer will establish an estimated cost of the work and the Contractor shall not perform any work whose cost exceeds that estimate without prior written approval by the County. In such case, and also under Subparagraph 10.1.3 above, the Contractor shall keep and present, in such forms as the County may prescribe, an itemized accounting together with appropriate supporting data of the increase in the Cost of the Project as outlined in Article 9. The amount of decrease in the Guaranteed Maximum Price to be allowed by the Contractor to the County for any deletion or change which results in a net decrease in cost will be the amount of the actual net decrease in the Cost of the Project and the Contractor's fee subject to the limits set forth in Article 7.

10.1.5 If unit prices are stated in the Contract or subsequently agreed upon and if the quantities originally contemplated are so changed in a proposed Change Order that application of the agreed unit prices to the quantities of Work proposed will cause substantial inequity to the County or the Contractor, the applicable unit prices and Guaranteed Maximum Price shall be equitably adjusted.

10.1.6 Should the Contractor or its contracted subcontractors encounter:

(1) concealed conditions in the performance of the Work below the surface of the ground; or
(2) concealed or unknown conditions in an existing structure be at variance with the conditions indicated by the Drawings, Specifications, or County furnished information; or
(3) unknown physical conditions below the surface of the ground; or
(4) concealed or unknown conditions in an existing structure of an unusual nature;
(5) differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Contract, then the Guaranteed Maximum Price and the Construction Completion date shall be equitably adjusted by Change Order upon a request for Change Order in accordance with Paragraph 10.2. and Article 11.

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

Within ten calendar days of submitting its Notice, the Contractor shall submit to the County its Request for Change Order, which shall include a written statement of all details of the claim, including a description of the work affected. Within thirty days from Notice, the Contractor shall submit detailed schedule impact and detailed cost analysis indicating quantities, unit prices, etc.

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

The County and Architect/Engineer shall review the Contractor's proposal and respond to the Contractor within seven calendar days of receipt. If a change to the Contract price and time for performance are agreed upon, both parties shall sign the Change Order. Changes to the Contract time and/or price shall be effective when signed by both parties. It shall be the County's discretion as to whether each change order requires the Architect/Engineer's signature.

10.2 Claims for Additional Cost or Time

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

10.2.1 If the Contractor is delayed at any time in the progress of the work by any act or neglect of the County or the Architect/Engineer or of any employee of either or by any separate Contractor employed by the County or by any changes ordered in the work by labor disputes, fire, or unusual delay in transportation, unavoidable casualties or any causes beyond the Contractor's control or by delay authorized by the County pending resolution

or disputes, and such delay extends the completion date, the Substantial Completion shall be extended by Change Order for such reasonable time as the Construction Team may determine.

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

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

10.3 Minor Changes in the Project (Realignment of Work)
The County and/or Architect/Engineer will have authority to order minor changes in the Project not involving an adjustment in the Guaranteed Maximum Price or an extension of the Construction Completion Date and not inconsistent with the intent of the Drawings and Specifications. Such changes shall be affected by written order. Documentation of changes shall be determined by the Construction Team, and included in the Project Manual. Changes shall be approved by the Project Director or Architect/Engineer. It shall be the County's discretion as to whether a Realignment of Work requires the Architect/Engineer's signature. All changes or realignments of work performed within the Guaranteed Maximum Price will not include overhead, profit or General Condition additional costs, since costs are absorbed within the Guaranteed Maximum Price. In any emergency affecting the safety of persons or property, the Contractor shall act at his discretion, to prevent threatened damage, injury or loss. Any increase in the Guaranteed Maximum Price or extension of time claimed by the Contractor on account of emergency work shall be determined as provided in Article 10.

ARTICLE 11

DISCOUNTS

11.1 All discounts for prompt payment shall accrue to the County to the extent the Cost of the Project is

paid directly by the County or from a fund made available by the County to the Contractor for such payments.

To the extent the Cost of the Project is paid with funds of the Contractor, all cash discounts shall accrue to the Contractor. All trade discounts, rebates and refunds, and all returns from sale of surplus materials and equipment, shall be credited to the Cost of the Project.

ARTICLE 12

PAYMENTS TO THE CONSTRUCTION MANAGER

12.1 Monthly Statements - The Contractor shall submit to the County a sworn statement along with the Certificate for Payment, showing in detail all monies paid out, cost accumulated or costs incurred on account of the Cost of the Project during the previous period and the amount of the Contractor's fees due as provided in Article 8. This data shall be attached to the Certificate for Payment Form shown in **Attachment "N"**, and shall include, but not be limited, to the following:

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

Payment by the County to the Contractor of the statement amount shall be made in accordance with Section 218.735, Florida Statutes.

> *Ten percent of each payment shall be held by the COUNTY as retainage until fifty percent completion of such Project, which shall be deemed to have occurred when fifty percent of the Guaranteed Maximum Price, as increased or decreased from time to time, has been expended. At that time, the retainage shall be reduced to five percent and the Contractor shall be entitled to request payment or release of up to fifty percent of the previously withheld retainage amounts, provided the retainage is not the subject of a good faith dispute, the subject of a claim brought pursuant to s. 255.05, Florida Statutes or otherwise the subject of a claim or demand by the COUNTY.*

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

(1) defective work not remedied;
(2) third party claims filed or reasonable evidence indicating the probable filing of such claims;

(3) failure of Contractor to make payments properly to subcontractors, consultants, or for labor, materials or equipment;

(4) evidence that the Project cannot be completed for the unpaid balance of the Guaranteed Maximum Price, as adjusted;

(5) evidence that the Work will not be completed by the Scheduled Completion Date, as adjusted, and that the unpaid balance would not be adequate to cover the liquidated damages for the anticipated delay;

(6) failure to carry out the Work of the Project in accordance with the Contract Documents; or

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

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

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

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

ARTICLE 13

INSURANCE, INDEMNITY WAIVER OF SUBROGATION

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

(2) The County shall cause any other Contractor who may have a contract with the County to

perform construction or installation work in the area where work will be performed under this Contract, to agree to indemnify the County and the Contractor and hold them harmless from all claims for bodily injury and property damage (other than property insured under Paragraph 13.2(3)) that may arise from the Contractor's operations.
Loss Deductible Clause - the County shall be exempt from, and in no way liable for, any sums of money which may represent a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of the Contractor and/or Subcontractor providing such insurance.

13.2 Insurance

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

a. Worker's Compensation - Workers Compensation insurance providing statutory benefits as required in the State of Florida. The Contractor shall require any Subcontractor to provide evidence of this coverage. Additionally, if the contract requires working on or around a navigable waterway, the Contractor and all Subcontractors shall provide evidence of United States Longshoremen's and Harbor Workers (USL&H) coverage and contingent coverage of Jones Act (Marine Employers Liability) in compliance with Federal statutes or proof of exemption. The Contractor shall be responsible for compliance with these requirements by each Subcontractor, vendor or supplier.

In the event that the contract involves professional or consulting services, in addition to the aforementioned insurance requirements, the vendor shall also be protected by a Professional Liability Insurance Policy in the amount of $1,000,000 per claim.

In the event the contract involves services related to construction projects, the vendor shall also procure and maintain a Builders Risk Insurance Policy or Installation Floater with loss limits equal to the value of the construction project.

In addition to the above, Specialty Insurance policies covering specific risks of loss (including but not limited to, for example; Longshore coverage, Crane and Rigging, Inland Marine, etc.) may be required by Brevard County Insurance and Risk Management. Any additional specialty insurance coverage requirement will be dictated by the specific goods, products or services provided under the subject contract and insurance underwriting standards, practices, procedures or products available in the commercial insurance market at the time of the contract inception. The Vendor is required to procure and maintain all such specialty coverage in accordance with prudent business practices within the Vendors industry.

b. Commercial General Liability - Including but not limited to bodily injury, property damage and personal injury with limits of not less than $2,000,000.00 combined single limit per occurrence, including products and completed operations, to include:

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

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

3. Contractual Liability Work Contracts - The Contractor's Liability Policy shall include Contractual Liability Coverage designed to protect the Contractor for contractual liabilities assumed by the Contractor in the performance of this Contract.

c. Automobile Liability - Including bodily injury, property damage liability for all vehicles owned, hired, leased and non-owned with limits of not less than $2,000,000.00 combined single limit, per accident.

d. Performance and Payment Bonds - With limits of not less than one hundred percent of the total construction cost of this project. Payment and Performance Bond shall be recorded in the official record of the County in which the project is located. These bonds shall remain in effect at least until one year after the date when the final payment is approved. Any bonding company submitting a Bid Bond, Performance Bond or Payment Bond to Brevard County must be licensed to transact a fidelity and surety business in the State of Florida, and hold a Certificate of Authority from the Secretary of the Treasury under Act of Congress, approved by July 30, 1947 (United States Code 613), and approved by Brevard County. Acceptable surety companies shall be licensed to do business in Florida and shall have an A.M. Best Rating of "A-" and financial size V or higher.

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

The Contractor shall require each of its subcontractors to procure and maintain insurance during the life of the respective subcontracts.

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

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

(1) The name of the insured Contractor, the specific job by name and job number, the name of the insurer, the number of the policy, its effective date, and its termination date.

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

notice to the County.

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

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

13.3 Waiver of Subrogation

13.3.1 The County and the Contractor waive all rights against each other, for damages caused by perils covered by insurance provided under Paragraph 13.2 to the extent covered by such insurance except such rights as they may have to the proceeds of such insurance held by the County and Contractor as trustees. The Contractor shall require similar waivers from all subcontractors and its sub-subcontractors.

13.3.2 The County and Contractor waive all rights against each other for loss or damage to any equipment used in connection with the Project and covered by any property insurance. The Contractor shall require similar waivers from all subcontractors and their sub- subcontractors.

13.3.3 The County waives subrogation against the Contractor on all property and consequential loss policies carried by the County on adjacent properties and under property and consequential loss policies purchased for the Project after its completion.

13.3.4 If the policies of insurance referred to in this Article require an endorsement to provide for continued coverage where there is a waiver of subrogation, the County of such policies will cause them to be so endorsed. Failure to obtain proper endorsement nullifies the waiver of subrogation.

ARTICLE 14

TERMINATION OF THE CONTRACT AND COUNTY'S RIGHT TO PERFORM CONSTRUCTION MANAGER'S OBLIGATION

14.1 Termination by the Contractor - If the Project is stopped for a period of thirty 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 if the Project should be stopped for a period of thirty days by the County, then the Contractor may, upon written notice to the County within seven days of such act, request undisputed payment for all work executed, the Contractor's fee earned to date, and for any proven loss sustained upon any materials, equipment, tools, construction equipment, and machinery, including reasonable profit, damages and terminal expenses incurred by the Contractor.

14.2 County's Right to Perform Contractor's Obligations and Termination by County for Cause -

(1) If the Contractor fails to perform any of its obligations under this Contract, the County may, after seven days written notice during which period the Contractor fails to perform such obligations, make good such deficiencies. The Guaranteed Maximum Price, or the actual cost of the Project, whichever is less, shall be reduced by the cost to the County to

making good such deficiencies and the Contractor's Construction Phase Fee shall be reduced by an amount required to manage the making good of such deficiencies.

(2) If the Contractor is adjudged bankrupt, or if it makes a general assignment for the benefit of its creditors, or if a receiver is appointed on account of its insolvency, or if it persistently or repeatedly refuses or fails, except in case for which extension of time is provided, to supply enough properly skilled workmen or proper materials and fails to maintain an established schedule (failure to maintain schedule shall be defined as any activity on the critical path that falls forty-five days or more behind schedule) which has been adopted by the Construction Team, or if it fails to make prompt payment to subcontractors for materials or labor, or persistently disregards laws, rules, ordinances, regulations, or orders of any public authority having jurisdiction, or otherwise is guilty of a substantial violation of a provision of the Contract, then the County may, without prejudice to any right or remedy and after giving the Contractor and its surety, if any, seven days written notice, during which period Contractor fails to cure the violation, terminate the employment of the Contractor and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor, and may finish the Project by whatever method he may deem expedient. In such case, the Contractor shall not be entitled to receive any further payment until the Project is finished nor shall he be relieved from his obligations assumed under Article 7. Reasonable termination expenses incurred by the County may be deducted from any payments left owed to the Contractor (excluding monies owed the Contractor for subcontract work).

14.3 Termination by County for Convenience

(1) If the County terminates this Contract other than pursuant to Article 14.2(2) or Article 14.3(2), the County shall reimburse the Contractor for any unpaid cost of the Project due it under Article 9, plus that part of the unpaid balance of the Construction Phase Fee in an amount as will increase the payment on account of its fee to a sum which bears the same ratio to the Construction Phase Fee as the Cost of the Project at the time of termination bears to the Guaranteed Maximum Price, if established, otherwise to the County's Construction Budget. The County shall also pay to the Contractor fair compensation, either by purchase or rental at the election of the County, for any equipment retained. In case of such termination of the Contract, the County shall reimburse the Contractor for obligations and commitments made before notice of termination was received by the Contractor.

(2) After the establishment of the Guaranteed Maximum Price or at the completion of the Construction Phase, if the final cost estimates or lack of legislative funding make the Project no longer feasible from the standpoint of the County, the County may terminate this Contract and pay the Contractor its proportionate fee due in accordance with Article 8.1, plus any costs incurred pursuant to Articles 9 and 10.

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

14.4 Termination for Prohibition Against Contracting With Scrutinized Companies

The Contractor certifies that it and its subcontractors are not on the Scrutinized Companies that Boycott Israel List. Pursuant to Section 287.135, Florida Statutes, the County may immediately terminate this Contract at its sole option if the Contractor or its subcontractors are found to have submitted a false certification; or if the Contractor, or its subcontractors are

placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of the Contract.

If this Contract is for more than one million dollars, the Contractor certifies that it and its subcontractors are also not on the Scrutinized Companies with Activities in Sudan, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria as identified in Section 287.135, Florida Statutes. Pursuant to Section 287.135, Florida Statutes, the County may immediately terminate this Contract at its sole option if the Contractor, its affiliates, or its subcontractors are found to have submitted a false certification; or if the Contractor, its affiliates, or its subcontractors are placed on the Scrutinized Companies that Boycott the Scrutinized Companies with Activities in Sudan List, or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria during the term of the Contract.

The Contractor agrees to observe the above requirements for applicable subcontracts entered into for the performance of work under this Contract.

(2) As required by Section 287.135(5), Florida Statutes, prior to entering into a contract in excess of one million dollars to provide goods or services to Brevard County, an individual with authority to execute this Contract for the Contractor shall file a sworn statement with the contracting officer or Purchasing Director, as applicable verifying that none of the three conditions above exist. If the Contractor is found to have falsified the affidavit attached as **Attachment "O"**, the County may terminate the contract.

(3) If subsequent to the submittal of the attached affidavit, the Contractor: (1) has been placed on the Scrutinized Companies that Boycott Israel List, or is engaged in a boycott of Israel; (2) is on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List; or (3) is engaged in business operations in Cuba or Syria, the County may terminate this Contract.

(4) Contractor agrees to observe the above requirements for applicable subcontracts entered into for the performance of work under this Contract. As provided in Section 287.135(8), Florida Statutes, if Federal law ceases to authorize these contracting prohibitions, this Paragraph shall become inoperative and unenforceable.

ARTICLE 15

ASSIGNMENT; GOVERNING LAW; VENUE; SEVERABILITY

15.1 Neither the County nor the Contractor shall assign his interest in this Contract without the written consent of the other except as to the assignment of proceeds.

15.2 This Contract shall be governed by the Laws of the State of Florida.

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

15.4 Severability: If any provision of this Contract is held by a Court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force

without being impaired.

ARTICLE 16

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

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

(a) All claims must be submitted as a Request for Change Order in the manner as provided herein.

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

(c) The Contractor must submit a Notice of Claim to the County and to the Architect/Engineer within twenty days of when the Contractor was or should have been aware of the occurrence of the event giving rise to the claim.

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

(e) The Contractor agrees that the County shall not be liable for any claim that the Contractor fails to submit as a Request for Change Order as provided in this section.

16.2 After receipt of a Request for Change Order, the County, in consultation with the Architect/Engineer, shall deliver to the Contractor its written determination of the claim. As to disputed matters subject to the determination by final County action (not actions for breach of contract or tort), the County's written decision following compliance with the dispute resolution procedure set forth in Paragraphs 16.4 through 16.6 below shall be final County action.

16.3 For work the Contractor performs with its own forces, and in addition to the adjustments provided for in Article 8, the Contractor's exclusive remedy for delays in performance of the construction caused by events beyond its control, including delays claimed to be caused by or attributable to the County or the Architect/Engineer, including claims based on breach of contract or negligence, shall be a claim submitted in compliance with Paragraph 16.1 above, for an extension of the scheduled construction time. In the event of a change in such work that will modify the Guaranteed Maximum Price, the Contractor's claim for adjustment in contract sum are limited exclusively to its actual costs for such changes, including costs involved in claim preparation, plus five percent overhead, five percent profit and a two percent bond in the General Conditions. The

Contractor expressly agrees that the foregoing constitute its sole and exclusive remedies for delays and changes in such work, and eliminate any other remedies for claim for increase in the contract price, delays, changes in the work, damages, losses or additional compensation.

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

(a) Within three days after denial of a Contractor's change order or contract modification request in an amount, individually or in total, less than the authorized purchasing level approved for the County Manager by the County Commission (currently at one hundred thousand dollars), the Contractor may submit to the County Manager, or his/her designee, documentation of the Contractor's position in the dispute or disagreement. The County Manager, or designee, within five days after the receipt of the Contractor's documentation, shall review the request and make a final determination as to whether denial was arbitrary and capricious based upon the sufficiency of the work under the terms of this Contract, applicable regulations, and/or relevant construction standards. Based upon the sufficiency and degree of completion, as well as any defects in the work and the amount reasonably required, if any, to correct or repair defective work, the County Manager, or designee, shall make the final determination as to whether a written change order or contract modification should be approved.

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

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

16.6 The deadlines for completing the dispute resolution process described in Paragraphs 16.4 and 16.5 may be extended by mutual agreement of the Contractor and the County.

ARTICLE 17

COUNTY'S RIGHT TO PERFORM ONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

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

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

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

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

17.5 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the County or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect/Engineer or County apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor to report shall constitute an acknowledgment that the County's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

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

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

ARTICLE 18

FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) REQUIREMENTS

During the performance of this Contract, the Contractor agrees as follows:

18.1. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to all employees and applicants for employment, notices to be provided setting forth the provisions of this non-discrimination clause.

18.2. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

18.3. The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or worker's representatives of the Contractor's commitments under this Article, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

18.4. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and the rules, regulations and relevant orders of the Secretary of Labor.

18.5. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

18.6. In the event of the Contractor's non-compliance with the non-discrimination clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

18.7. The Contractor will include the portion of the sentence immediately preceding Paragraph (18.1) and the provisions of Paragraphs (18.1) through (18.7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance, provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

18.8. **Clean Air Act and the Federal Water Pollution Control Act:** (For all contracts in excess of One hundred, fifty thousand dollars)

A. **Clean Air Act** –

i. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 United States Code § 7401, et seq.

ii. The Contractor agrees to report each violation to the County through its Parks and Recreation Department and understands that the Brevard County Parks and Recreation Department will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

iii. The Contractoragrees to include these requirements in each subcontract exceeding one hundred, fifty thousand dollars financed in whole or in part with Federal assistance provided by Federal Emergency Management Agency.

B. **Federal Water Pollution Control Act** -

i. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 United States Code 1251, et seq.

ii. The Contractor agrees to report each violation to the County through its Parks and Recreation Department and understands and agrees that the Brevard County Parks and Recreation Department will, in turn, report each violation to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

iii. The Contractor agrees to include these requirements in each subcontract exceeding one hundred, fifty thousand dollars financed in whole or in part with Federal assistance provided by Federal Emergency Management Agency.

18.9. **Suspension and Debarment**:

A. This Contract is a covered transaction for purposes of 2 Code of Federal Regulations pt. 180 and 2 Code of Federal Regulations pt. 3000. As such, the Contractor is required to verify that neither the Contractor , its principals (defined at 2 Code of Federal Regulations § 180.995), or its affiliates (defined at 2 Code of Federal Regulations § 180.905) are excluded (defined at 2 Code of Federal Regulations § 180.940) or disqualified (defined at 2 Code of Federal Regulations. § 180.935).

B. The Contractor must comply with 2 Code of Federal Regulations pt. 180, subpart C and 2 Code of Federal Regulations pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

C. This certification is a material representation of fact relied upon by the County. If it is later determined that the Contractor did not comply with 2 Code of Federal Regulations pt. 180, subpart C and 2 Code of Federal Regulations pt. 3000, subpart C, in addition to remedies available to the State of Florida (Division of Emergency Management) and the County, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

D. The Contractor agrees to comply with the requirements of 2 Code of Federal Regulations pt.180, subpart C, and 2 Code of Federal Regulations pt. 3000, subpart C, while this Contract is valid. The Contractor agrees to include a provision requiring such compliance in its lower tier covered transactions.

18.10. **Byrd Anti-Lobbying Amendment, 31 United States Code § 1352 (as amended):**

Contractors who apply or bid for an award of one hundred thousand dollars or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee or a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 United States Code § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier-to-tier up to the recipient.

18.11. **Procurement of Recovered Materials:**

In the performance of this Contract, the Contractor shall make maximum use of products containing recovered materials that are Environmental Protection Agency-designated items unless the product cannot be acquired:

A. Competitively within a timeframe providing for compliance with the Contract performance schedule;

B. Meeting Contract performance requirements; or

C. At a reasonable price.
Information about this requirement, along with the list of Environmental Protection Agency-designate items, is available at the Environmental Protection Agency's Comprehensive Procurement Guidelines website at https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program.

18.12. **Additional Federal Emergency Management Agency Requirements:**

A. **Access to Records**:

i. The Contractor agrees to provide the County, the Federal Emergency Management Agency Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts and transcriptions.

ii. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

iii. The Contractor agrees to provide the Federal Emergency Management Agency Administrator or his authorized representative access to construction or other work sites pertaining to the work being completed under the Contract.

B. **DHS (Department of Homeland Security) Seal, Logo and Flags**:

The Contractor shall not use Department of Homeland Security seal(s), logos, crests, or reproductions of flags or likenesses of Department of Homeland Security agency officials without specific Federal Emergency Management Agency pre- approval.

C. **Compliance with Federal Law, Regulations and Executive Orders**:

The Contractor acknowledges that FEMA financial assistance will be used to fund this Contract and resulting Contracts only. The Contractor will comply with all applicable federal law, regulations, executive orders, Federal Emergency Management Agency policies, procedures and directives.

D. **No Obligation by Federal Government**:

The Federal Government is not a party to this Contract and is not subject to any obligations or liabilities to the non-Federal entity, i.e., Contractor, or any other party pertaining to any matter resulting from the Contract.

E. **Fraud and False or Fraudulent or Related Acts**:

The Contractor acknowledges that 31 United States Code Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this Contract.

ARTICLE 19
MISCELLANEOUS

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

19.2 Harmony - Contractor is advised and hereby agrees to exert every reasonable and diligent effort to assure that all labor employed by Contractor and its subcontractors for work on the Project shall work in harmony with and be compatible with all other labor being used by building and Contractors now or hereafter on the site of the Project.

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

19.3 Apprentices - If the Contractor employs apprentices on the Project, the behavior of the Contractor and the County shall be governed by the provisions of Chapter 446, Florida Statutes, and by applicable standards and policies governing apprentice programs and agreements established by the Division of Labor of the State of Florida Department of Labor and Employment Security. The Contractor will include a provision similar to the foregoing sentence in each subcontract.

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

19.5 Minority Employment Information - The County requires construction contractors, who would

otherwise be required to file and Equal Employment Opportunity Form 1 Report under Federal Law (currently Federal law requires filing for employers with more than fifteen employees), to submit an Equal Employment Opportunity Form 1 Report with the submission of their Guaranteed Maximum Price. This requirement extends to any subcontractors who are required to submit the Equal Employment Opportunity Form 1 Report (over fifteen employees) under Federal law. Failure to submit an EEO Form 1 Report with the Guaranteed Maximum Price will be reason to declare the submission "non-responsive". However, the information will be used for statistical purposes only and will not be used in any way as a basis to award a contract. See **Attachment "P"**.

19.6 Public Entity Crime Affidavit attached as **Attachment "Q"**.

19.7 Non-Collusion Affidavit of Prime Bidder attached as **Attachment "Q"**.

19.8 Copyright Clause 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 Contractor in the United States or any other Country.

19.9 E-Verify The Contractor:
A. Shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by Contractor during the term of the Contract; and
B. Shall expressly require any contractor and subcontractors performing work or providing services pursuant to this Contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the contract term."

(remainder of page left intentionally blank)

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

ATTEST:

Scott Ellis, Clerk of Court

BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA

By: _____ 1/4/19
Kristine Isnardi, Chair Date

As approved by the Board 4/24/2018

Reviewed for legal form and content

By: _____ 1/4/19
Alex Esseesse, Assistant County Attorney

Canaveral Construction Co., Inc.

_____ 1/7/19
By: Davis Nash, President Date

Date:

STATE OF FLORIDA
COUNTY OF BREVARD

The foregoing instrument was acknowledged before me this 7th day of 2019 by whose position is President with the firm of Canaveral Construction a Florida Corporation, on behalf of the corporation. He/She is personally known to me or has produced _____ as identification.

_____
NOTARY PUBLIC

Jessica L. Bode
Typed/Printed Name

Notary Public State of Florida
Jessica L Bode
My Commission GG 204447
Expires 04/05/2022

ATTACHMENT "A"

CONSTRUCTION TEAM ASSIGNED REPRESENTATIVES

Owner
Brevard County Parks and Recreation Department

Mike Butcher	Project Director
	Construction Coordinator
Melissa Renninger	Contract Administrator
	Special Projects Coordinator II

Architect-Engineer Coastal Technology Corporation

Construction Manager

Davis Nash	President
Michael Harkcom	Vice President/Principal-In-Charge
Michael Harkcom	Project Manager
Dirk Neuerburg	Project Administrator
Justin Nash	Project Superintendent
Phil Siegel	Estimator/Cost Control
	Schedules

ATTACHMENT "B"

PROJECT SCOPE OF WORK

Provide all labor, materials, and equipment for Port St. John Boat Ramp Repair Project: replacing the docks and related work as per the plan set and technical specificatons:

Scope of Services:

1) Demolish, remove and dispose of existing piles and docks.
2) Furnish & Install new piles and docks.
3) Furnish & Install aluminum sheet pile wall.
4) Furnish & Install concrete plugs.
5) Furnish & Install rock revetment.
6) Repair of wood bulkhead.
7) Replacement of damaged concrete sidewalk.
8) Furnish & Install new concrete pedestrian ramp.
9) Backfill and grading of eroded areas.
10) Asphalt repairs.
11) Asphalt sealing.
12) Thermoplastic asphalt pavement striping.
13) Planting and establishment of Sand Cordgrass.
14) Restoration of site to preconstruction condition.
15) Brevard County Permits

General Qualifications and Exclusions:

1) Anticipated duration from commencement of work to substantial completion is 14 weeks.
2) There is no asbestos or hazardous materials contemplated on the project, therefore no costs have been included for testing or removal.
3) All boat ramps will be closed during the construction of this project.
4) Any work or repair to the boat ramps is excluded.
5) No costs are included for subsurface / unforeseen conditions.
6) No costs are included for utility & drainage work.
7) No costs are included for vibration monitoring.
8) No costs are included for test piles and load testing.
9) No costs are included for benthic surveys.
10) No costs are included for turbidity sampling.
11) No costs are included for blow counts for driven pile.
12) No costs are included for any work not listed above or on the guaranteed maximum price spreadsheet.
13) St John's Water Management District and United States Army Corps of Engineers permits have not been included.

ATTACHMENT "C"

DIRECT PURCHASING PROCEDURE
CONSTRUCTION MANAGEMENT AGREEMENT

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

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

a) Contract: Construction Management Agreement by and between Construction Manager and Brevard County Board of County Commissioners, Viera, Florida to provide labor, materials, and equipment for Port St. John Boat Ramp Repair Project.

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

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

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

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

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

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

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

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

j) Material Requisition: A request by the Construction Manager to the Owner that

the Owner directly purchase specific items described in sufficient detail, including quantity, grade, brand, etc., along with the vendor or material supplier and that vendor or material supplier's quoted price for the Materials.

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

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

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

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

ATTACHMENT "A"

CONSTRUCTION TEAM ASSIGNED REPRESENTATIVES

Owner
Brevard County Parks and Recreation Department

Mary Ellen Donner	Project Director
Mike Butcher	Construction Coordinator
Melissa Renninger	Contract Administrator
_____	Special Projects Coordinator II

Architect-Engineer Morgan & Associates Consulting Engineers, Inc.

Construction Manager

Davis Nash	President
Michael Harkcom	Vice President/Principal-In-Charge
Michael Harkcom	Project Manager
Dirk Neuerburg	Project Administrator
Justin Nash	Project Superintendent
Phil Siegel	Estimator/Cost Control Schedules

ATTACHMENT "B"

PROJECT SCOPE OF WORK

Provide all labor, materials, and equipment for Port St. John Boat Ramp Repair Project: replacing the docks and related work as per the plan set and technical specificatons:

Scope of Services:

1) Demolish, remove and dispose of existing piles and docks.
2) Furnish & Install new piles and docks.
3) Furnish & Install aluminum sheet pile wall.
4) Furnish & Install concrete plugs.
5) Furnish & Install rock revetment.
6) Repair of wood bulkhead.
7) Replacement of damaged concrete sidewalk.
8) Furnish & Install new concrete pedestrian ramp.
9) Backfill and grading of eroded areas.
10) Asphalt repairs.
11) Asphalt sealing.
12) Thermoplastic asphalt pavement striping.
13) Planting and establishment of Sand Cordgrass.
14) Restoration of site to preconstruction condition.
15) Brevard County Permits

General Qualifications and Exclusions:

1) Anticipated duration from commencement of work to substantial completion is 14 weeks.
2) There is no asbestos or hazardous materials contemplated on the project, therefore no costs have been included for testing or removal.
3) All boat ramps will be closed during the construction of this project.
4) Any work or repair to the boat ramps is excluded.
5) No costs are included for subsurface / unforeseen conditions.
6) No costs are included for utility & drainage work.
7) No costs are included for vibration monitoring.
8) No costs are included for test piles and load testing.
9) No costs are included for benthic surveys.
10) No costs are included for turbidity sampling.
11) No costs are included for blow counts for driven pile.
12) No costs are included for any work not listed above or on the guaranteed maximum price spreadsheet.
13) St John's Water Management District and United States Army Corps of Engineers permits have not been included.

ATTACHMENT "C"

DIRECT PURCHASING PROCEDURE
CONSTRUCTION MANAGEMENT AGREEMENT

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

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

a) Contract: Construction Management Agreement by and between Construction Manager and Brevard County Board of County Commissioners, Viera, Florida to provide labor, materials, and equipment for Port St. John Boat Ramp Repair Project.

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

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

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

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

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

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

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

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

j) Material Requisition: A request by the Construction Manager to the Owner that

the Owner directly purchase specific items described in sufficient detail, including quantity, grade, brand, etc., along with the vendor or material supplier and that vendor or material supplier's quoted price for the Materials.

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

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

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

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

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

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

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

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

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

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

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

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

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

ATTACHMENT "D"

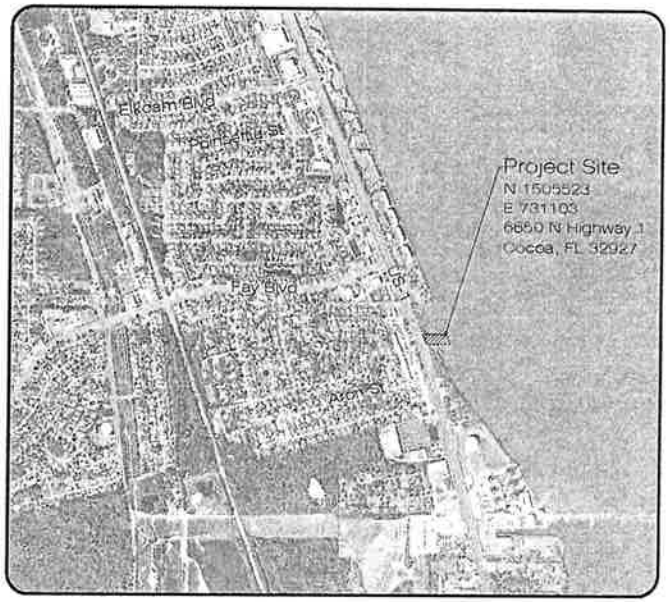
DRAWINGS AND SPECIFICATIONS

attached

Port St.John
Boat Ramp Repair Project
for
Brevard County, Florida

INDEX OF SHEETS

SHEET NO.	DESCRIPTION
1	Cover Sheet - Location Map
2	Plan View - Existing Conditions
3	Plan View - Site Plan
4	Plan View - Proposed Aluminum Bulkhead, Fill, & Rock Revetment
5	Cross-Sections & Profile - Seawall, Fill, Revetment, & Bulkhead
6	Details - Seawall
7	Plan View - Docks
8	Cross-Sections - Docks
9	Typical Details



LOCATION MAP
No Scale

GENERAL NOTES

1. The work consists of furnishing all labor, equipment, and materials and performing all operations for construction of repairs as shown on these Drawings. Repairs include (a) replacement of the three staging docks, (b) replacement of seawall on the northeast side and the southwest side of the site, (c) repair of the seawall on the north, east, and south sides of the site, (d) repair of wash-out areas, paving, and sidewalk.
2. All work shall conform to the required permits provided by the County. The Contractor who performs the work shall post on the job site all permit placards and the Contractor shall comply with all terms of the permits as pertaining to performance of the work.
3. Prior to construction, the Contractor shall meet on-site with the Engineer or the Engineer's designee (pre-construction meeting) verify construction access locations, design details, and methods of construction.
4. Existing features & contours from a survey by Morgan & Eklund dated 08/07/2018.
5. See the Technical Specifications for additional details of the work.
6. Aerial is from Florida Department of Transportation is dated February 14, 2015.
7. Safe Upland Line Elevation of -0.30 feet NAVD 88 was provided by Florida Department of Environmental Protection (FDEP) Division of State Lands Bureau of Survey and Mapping per request of Approximate Tidal Datum Elevations form Dated August 20, 2018.

COASTAL TECH | GEC
Certificate of Authorization Number: 00004195

COASTAL TECH - G.E.C., INC.

COASTAL, ENVIRONMENTAL, CIVIL ENGINEERING & PLANNING

3625 20th Street, Vero Beach, Florida 32960
(772) 562-8580

FINAL DESIGN

Date: 11/28/2018

CHARLES T. FONTAINE III, P.E. DATE
FLORIDA P.E. LICENSE NUMBER 73042

COMM. NO. 2018C.016



NOTES:

1. Safe Upland Line Elevation of -0.30 feet NAVD 88 was provided by Florida Department of Environmental Protection (FDEP) Division of State Lands Bureau of Survey and Mapping per request of Approximate Tidal Datum Elevations form Dated August 20, 2018.
2. Existing features & contours from a survey by Morgan & Eklund dated 08/07/2018.

LEGEND: Existing Conditions

- Property Line
- OHW Overhead Wires
- Power Pole with Guy Wire
- Light
- Benchmark
- Vegetation Line
- Contour & Elevation Feet (NAVD88)
- Elevation Feet (NAVD88)
- Safe Upland Line Elevation -0.3 Feet (NAVD88)
- Sign
- Palm Tree
- Oak Tree
- Exposed Wood Bulkhead
- Exposed Wood Bulkhead not located by Surveyor

0 20 40
Scale in feet

CHARLES T. FONTAINE III, P.E. DATE
FLORIDA P.E. LICENSE NUMBER 73042

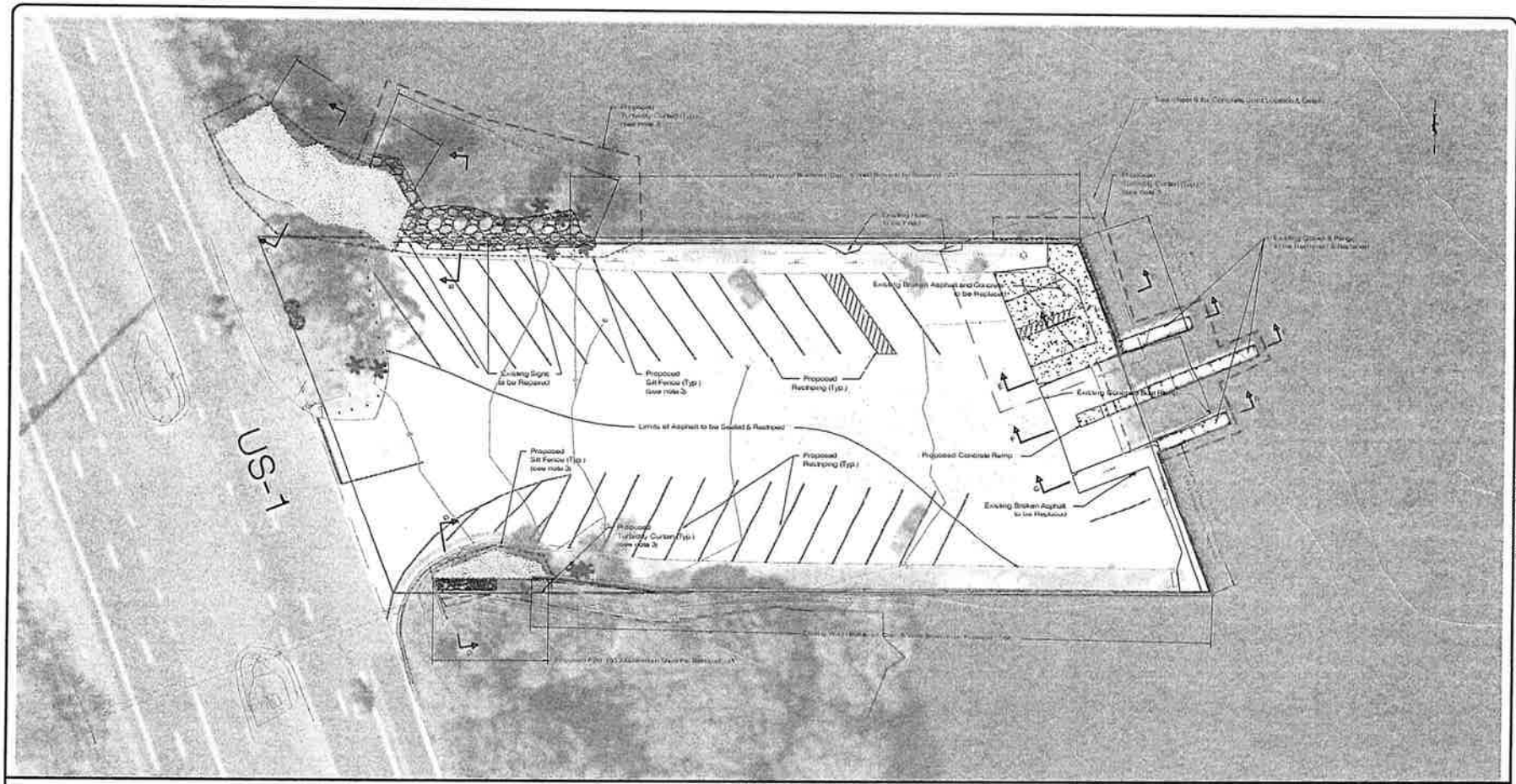
FINAL DESIGN

COASTAL TECH GEC
COASTAL ENVIRONMENTAL, CIVIL ENGINEERING AND PLANNING
3629 20th Street, Vero Beach, FL 32960 (772) 562-8583

Plan View - Existing Conditions

Port St. John Boat Ramp Repair
Brevard County, Florida

DRAWN BY	CTF
CHECKED	
APPROVED	MKW
DESIGNED	
DATE	11/26/2018
PROJECT NO	2018C 016
SHEET	2
OF	9



NOTES:

1. Safe Upland Line Elevation of -0.30 feet NAVD 88 was provided by Florida Department of Environmental Protection (FDEP) Division of State Lands Bureau of Survey and Mapping per request of Approximate Tidal Datum Elevations form Dated August 20, 2018
2. 1.5' Maximum clearance from existing bulkhead measured from waterward face of existing bulkhead to waterward face of proposed bulkhead.
3. Contractor to deploy and maintain a turbidity curtain surrounding the construction of the sand fill, revetment, docks, and bulkheads. Contractor to deploy and maintain silt fence surrounding the upland construction as shown on in these drawings
4. Existing features & contours from a survey by Morgan & Eklund dated 08/07/2018.

Existing Conditions

- Property Line
- OHW Overhead Wires
- Power Pole with Guy Wire
- Light
- Benchmark
- Vegetation Line
- Contour & Elevation Feet (NAVD88)
- Elevation Feet (NAVD88)
- Safe Upland Line Elevation -0.3 Feet (NAVD88)
- Sign
- Palm Tree
- Oak Tree
- Exposed Wood Bulkhead
- Exposed Wood Bulkhead not located by Surveyor

LEGEND: Proposed Construction

- New Replacement Bulkhead
- Repair on Existing Bulkhead
- Fill Area with Pavings
- Rock Revetment
- Concrete Sidewalk to be Replaced
- Asphalt to be Replaced
- Cut
- Revetment Sloping
- Replacement Dock
- Turbidity Curtain (See Note 3)
- Silt Fence (See Note 3)

0 20 40
Scale in feet

CHARLES T. FONTAINE III, P.E. DATE
FLORIDA P.E. LICENSE NUMBER 73042

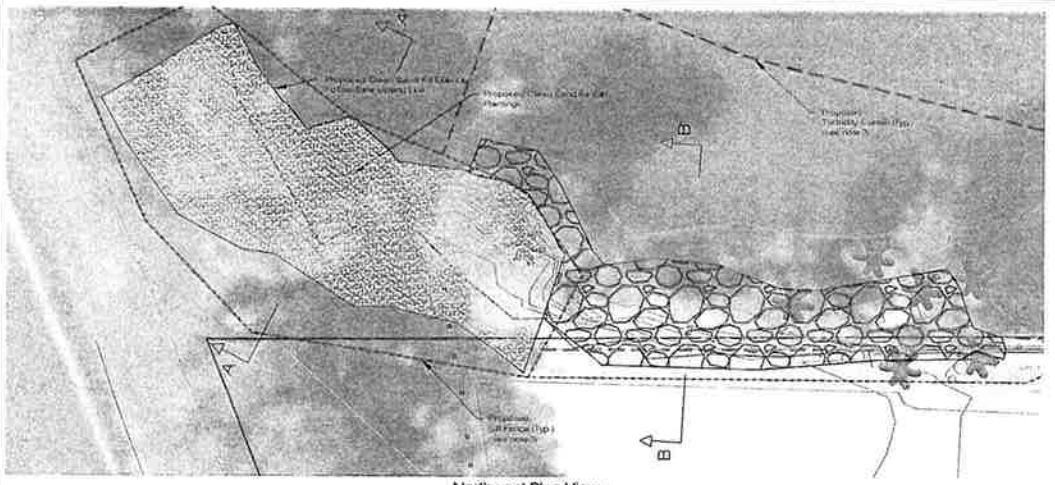
FINAL DESIGN

COASTAL TECH GEC
COASTAL ENVIRONMENTAL · CIVIL · ENGINEERING AND PLANNING
3425 20th Street Vero Beach, FL 32960 (772) 562-8580

Proposed Plan View - Site

Port St. John Boat Ramp Repair
Brevard County, Florida

CTF
MNW
ACD
11/28/2018
2018C 016
3
9



Northwest Plan View

Scale 1" = 10'

Existing Conditions

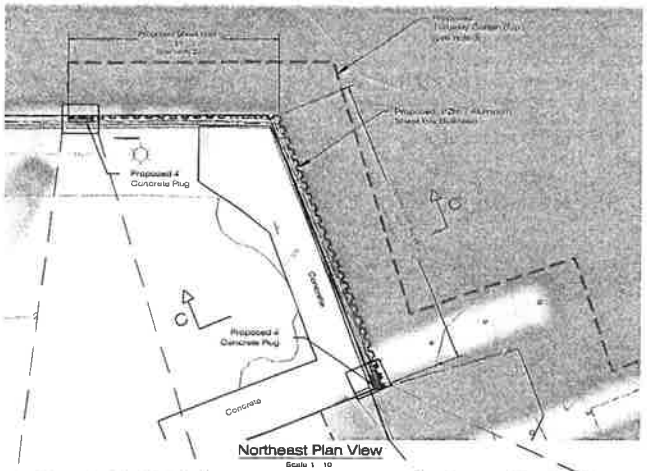
- Property Line
- OHW Overhead Wires
- Power Pole with Guy Wire
- Light
- Benchmark
- Vegetation Line
- Contour & Elevation Feet (NAVD88)
- Elevation Feet (NAVD88)
- Safe Upland Line Elevation -0.3 Feet (NAVD88)
- Sign
- Palm Tree
- Oak Tree
- Exposed Wood Bulkhead

LEGEND: Proposed Construction

- New Replacement Bulkhead
- Fill Area
- Rock Revetment
- Cut
- Turbidity Curtain (See Note 3)
- Silt Fence (See Note 3)

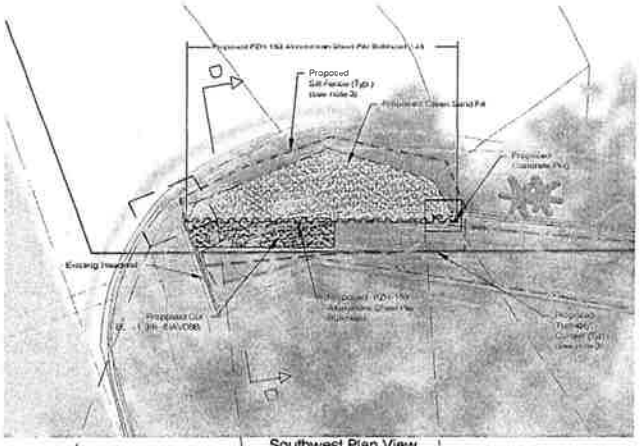
0 10 20

Scale in feet



Northeast Plan View

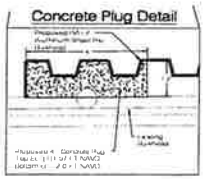
Scale 1" = 10'



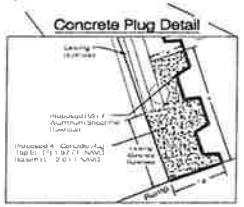
Southwest Plan View

Scale 1" = 10'

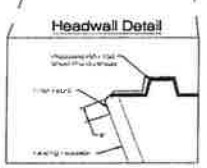
Concrete Plug Detail



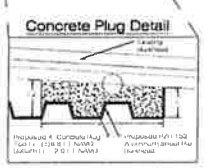
Concrete Plug Detail



Headwall Detail



Concrete Plug Detail



NOTES:

1. Safe Upland Line Elevation of -0.30 feet NAVD 88 was provided by Florida Department of Environmental Protection (FDEP) Division of State Lands Bureau of Survey and Mapping per request of Approximate Tidal Datum Elevations form Dated August 20, 2018
2. 1.5' Maximum clearance from existing bulkhead measured from waterward face of existing bulkhead to waterward face of proposed bulkhead.
3. Contractor to deploy and maintain a turbidity curtain surrounding the construction of the sand fill, revetment, docks, and bulkheads. Contractor to deploy and maintain silt fence surrounding the upland construction as shown on in these drawings.
4. Existing features & contours from a survey by Morgan & Eklund dated 08/07/2018.

CHARLES T. FONTAINE III, P.E. DATE
FLORIDA P.E. LICENSE NUMBER 73042

50

FINAL DESIGN

Plan View - Proposed Seawall; Fill; Rock Revetment; Wood Bulkhead

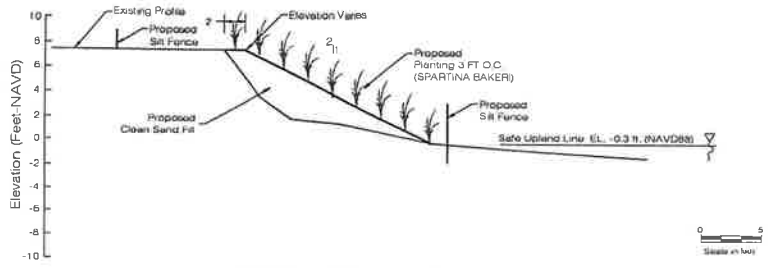
Port St. John Boat Ramp Repair
Brevard County, Florida

COASTAL TECH GEC
COASTAL ENVIRONMENTAL CIVIL ENGINEERING AND PLANNING
3625 20th Street, Vero Beach, FL 32960 (772) 562-8580

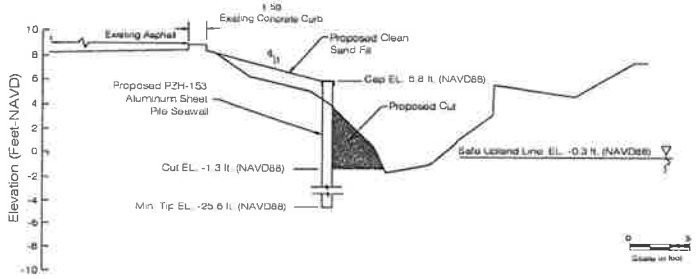
CTF
11/26/2018
20180 016

4

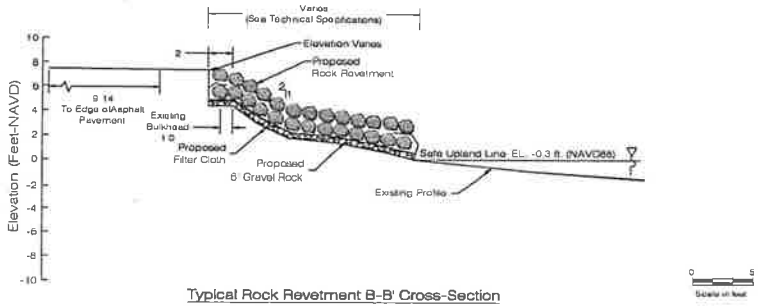
Proposed Property Improvement Cross-Sections



Typical Fill A-A' Cross-Section

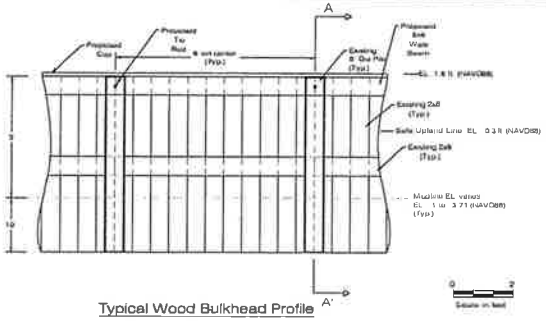


Typical Sheet Pile D-D' Cross-Section

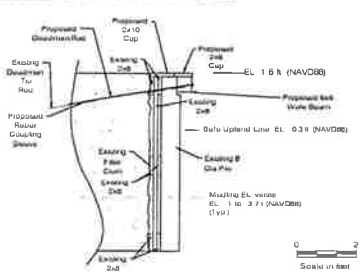


Typical Rock Revetment B-B' Cross-Section

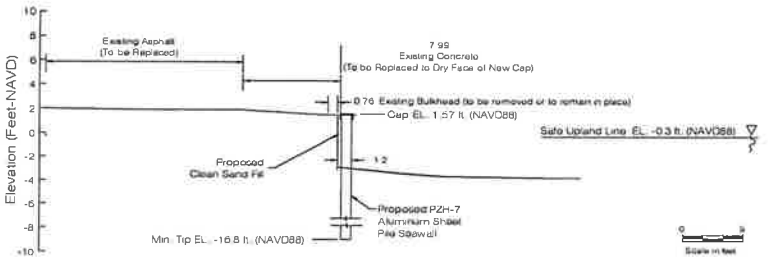
Proposed Wood Bulkhead Repairs Profile & Cross-Section



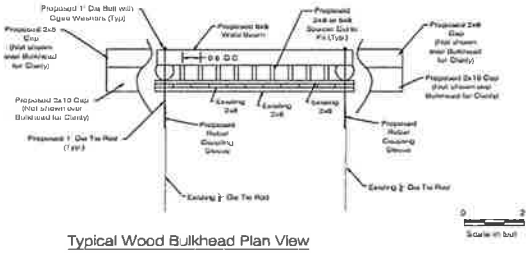
Typical Wood Bulkhead Profile



Typical Wood Bulkhead A-A' Cross-Section



Typical Sheet Pile C-C' Cross-Section



Typical Wood Bulkhead Plan View

NOTES:

1. 1.5' Maximum clearance from existing bulkhead measured from waterward face of existing bulkhead to waterward face of proposed bulkhead.

NOTES:

1. Safe Upland Line Elevation of -0.30 feet NAVD 88 was provided by Florida Department of Environmental Protection (FDEP) Division of State Lands Bureau of Survey and Mapping per request of Approximate Tidal Datum Elevations form Dated August 20, 2018.
2. Existing features & contours from a survey by Morgan & Eklund dated 08/07/2018.

CHARLES T. FONTAINE III, P.E. DATE
FLORIDA P.E. LICENSE NUMBER 73042

51

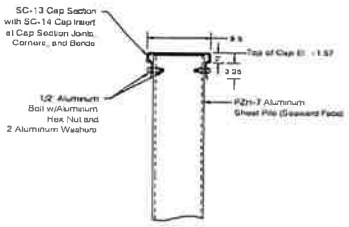
FINAL DESIGN

COASTAL TECH GEC
COASTAL ENVIRONMENTAL CIVIL ENGINEERING AND PLANNING
3825 20th Street, Vero Beach, FL 32960 (772) 562-8580

Cross-Sections & Profile - Seawall, Fill, Revetment, & Bulkhead

Port St. John Boat Ramp Repair
Brevard County, Florida

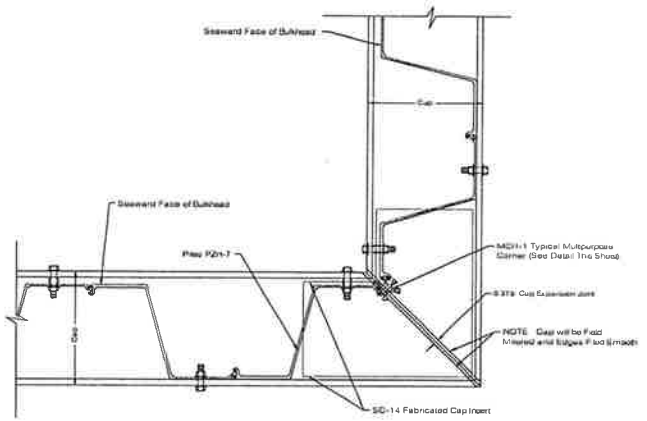
CTF
11/26/2019
2018C.018
5



NOTES:

1 Every other pile will receive a bolt on the front face
2 Every other pile will receive a bolt on the back face
3 Bolts should be spaced on either side of the cap insert to prevent movement of the insert
4 Cap inserts shall be placed at cap joints and bends

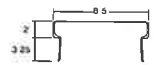
Typical Seawall Section
PZH Piling



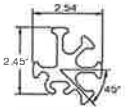
Cap and Corner Connection Detail
(Typical Plan View)

General Construction Notes

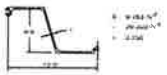
1. All elevations refer to North American Vertical Datum (NAVD88).
2. The aluminum sheet piles shall be PZH-7 and PZH-153 as manufactured by Gator Dock & Marine (1-800-256-8857) or equal as approved by the Engineer. All aluminum structural members, fabrication standards and tolerances shall conform to the specifications listed in the Aluminum Association's "Aluminum Standards and Data", latest edition; Allowable stresses will be as specified in the Aluminum Association's "Specifications for Aluminum Structures" latest edition, for building and similar type structures.
3. All material shall be made from 6061-T6 aluminum alloy and the chemical composition shall conform to ASTM designation B 221 alloy 6061. Any welding filler wire used on all welds required on the wall system shall be AWS-ASTM Classification ER 5356 with chemical composition conforming to ASTM Designation B285.
4. Sheet piles shall be furnished in standard sizes to permit assembly in uniform increments as shown on the plans. Sheet piles shall be driven to the minimum tip elevation as shown on the plans unless otherwise approved by the Engineer.
5. Bolts and nuts shall be 6061-T6 aluminum alloy and meet ASTM designation B 221 alloy 6061.



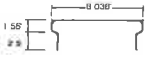
SC-13 Cap Detail



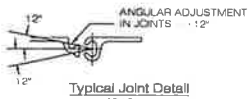
MCH-1 Detail
Multipurpose Corner



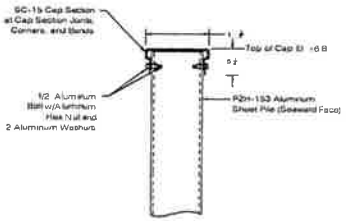
PZH-7 Section
Aluminum Sheet Pile



SC-14 Cap Insert Detail



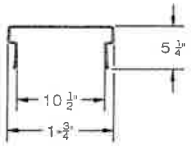
Typical Joint Detail
PZH Piling



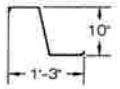
NOTES:

1 Every other pile will receive a bolt on the front face
2 Every other pile will receive a bolt on the back face
3 Bolts should be spaced on either side of the cap insert to prevent movement of the insert
4 Cap inserts shall be placed at cap joints and bends

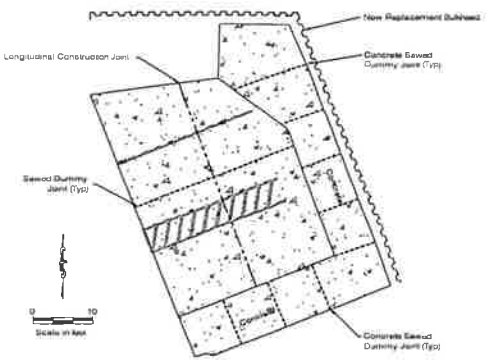
Typical Seawall Section
PZH-153 Piling



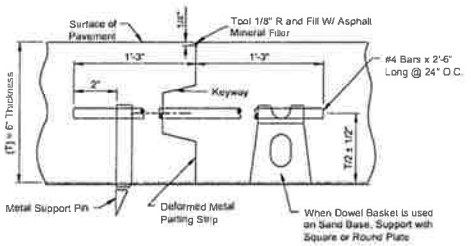
SC-15 Cap Detail



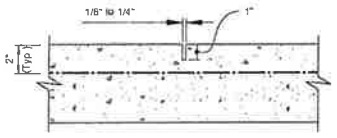
PZH-153 SECTION



Joint Location Detail
(Typical Plan View)



Longitudinal Construction Joint Parking Stall (L.C.J.)



Sawed Dummy Joint (DJ)

CHARLES T. FONTAINE III, P.E. DATE
FLORIDA P.E. LICENSE NUMBER 73042

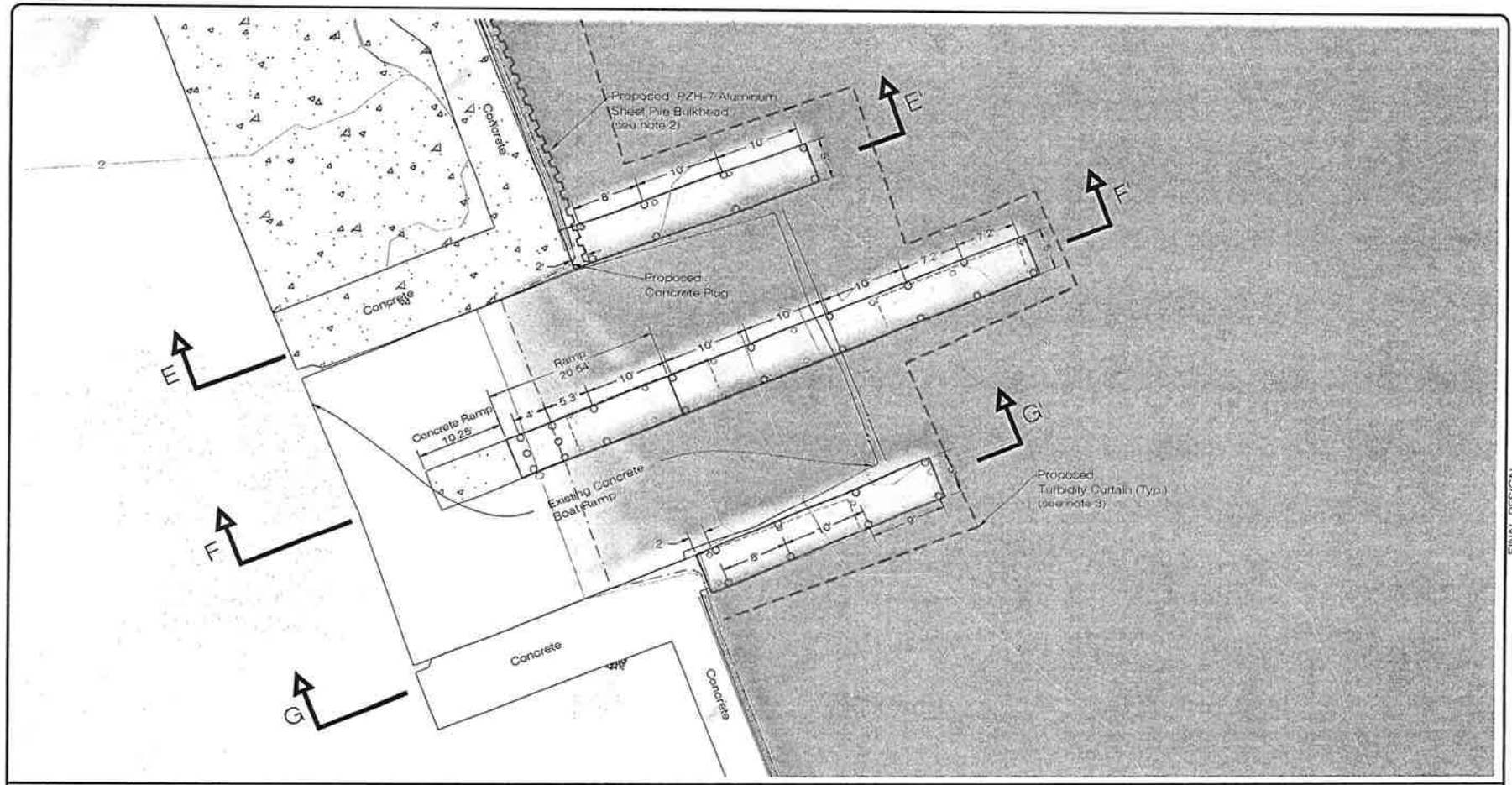
FINAL DESIGN

COASTAL TECH GEC
COASTAL ENVIRONMENTAL CIVIL ENGINEERING AND PLANNING
3825 20th Street Vero Beach, FL 32960 (772) 562-4545

Details - Seawall

Port St. John Boat Ramp Repair
Brevard County, Florida

CTF
11/09/2018
2018C 016



NOTES:

1. Safe Upland Line Elevation of -0.30 feet NAVD 88 was provided by Florida Department of Environmental Protection (FDEP) Division of State Lands Bureau of Survey and Mapping per request of Approximate Tidal Datum Elevations form Dated August 20, 2018.
2. 1.5' Maximum clearance from existing bulkhead measured from waterward face of existing bulkhead to waterward face of proposed bulkhead.
3. Contractor to deploy and maintain a turbidity curtain surrounding the construction of the sand fill, revetment, docks, and bulkheads. Contractor to deploy and maintain silt fence surrounding the upland construction as shown on in these drawings.
4. Existing features & contours from a survey by Morgan & Eklund dated 08/07/2018.

Existing Conditions

- Property Line
- OHW Overhead Wires
- Power Pole with Guy Wire
- Light
- Benchmark
- Vegetation Line
- Contour & Elevation Feet (NAVD88)
- Elevation Feet (NAVD88)
- Safe Upland Line Elevation -0.3 Feet (NAVD88)
- Sign
- Palm Tree
- Oak Tree
- Exposed Wood Bulkhead

LEGEND: Proposed Construction

- New Replacement Bulkhead
- Turbidity Curtain (See Note 3)
- Replacement Deck
- Concrete

0 20 40
Scale in feet

CHARLES T. FONTAINE II, P.E. DATE
FLORIDA P.E. LICENSE NUMBER 73042

53

FINAL DESIGN

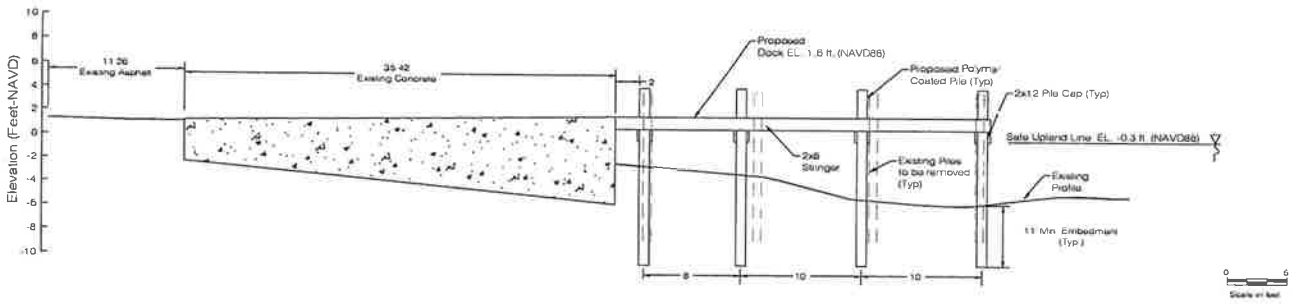
COASTAL TECH GEC
COASTAL ENVIRONMENTAL CIVIL ENGINEERING AND PLANNING
3675 20th Street Vero Beach, FL 32960 (772) 562-4580

Plan View - Docks

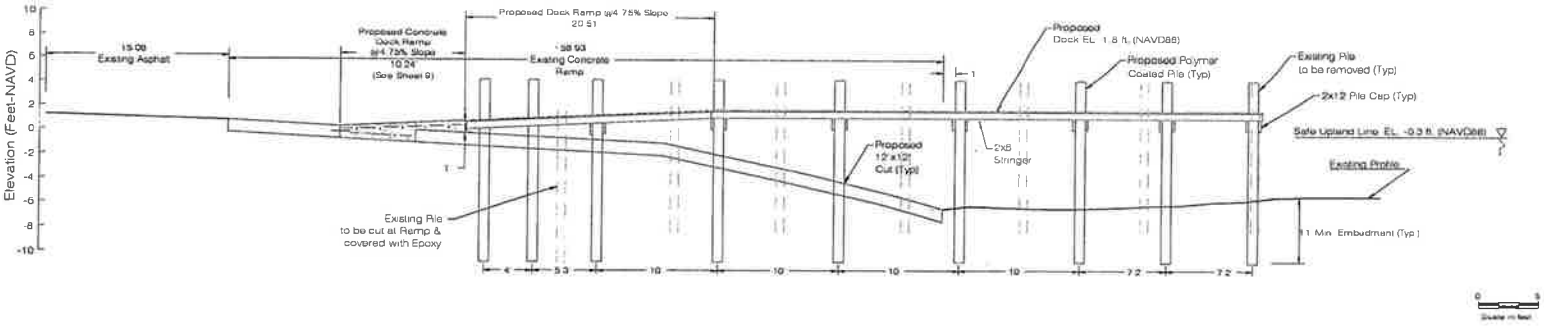
Port St. John Boat Ramp Repair
Brevard County, Florida

CTF
CHECKED
MRW
DRAWN
AGH
DATE
11/29/2018
PROJECT NO.
2018HD 019
SHEET
7

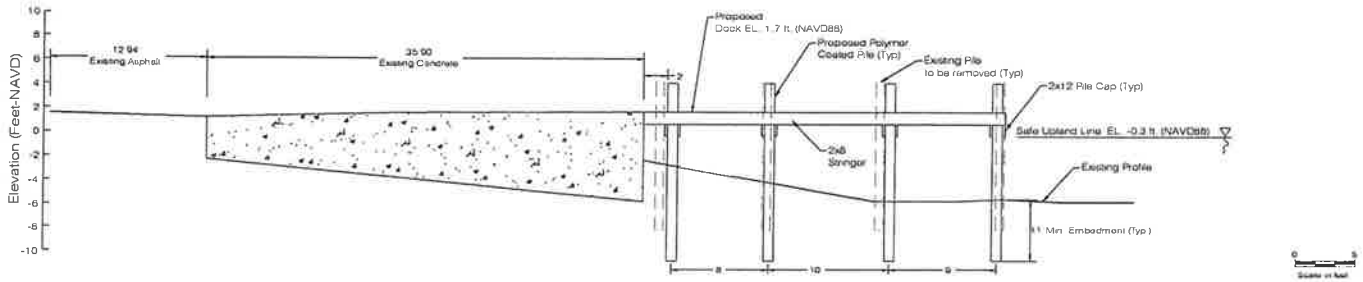
E-E'



F-F'



G-G'



CHARLES T. FONTAINE, P.E. DATE
FLORIDA P.E. LICENSE NUMBER 73042

FINAL DESIGN

COASTAL TECH GEC
COASTAL ENVIRONMENTAL CIVIL ENGINEERING AND PLANNING
3625 20th Street, Vero Beach, FL 32960 (772) 563-8383

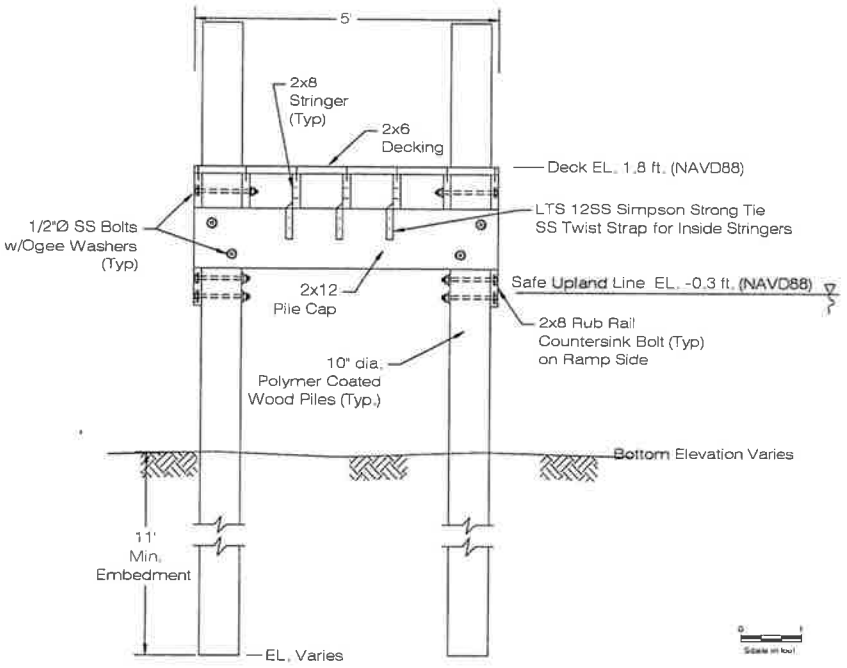
Cross-Sections - Docks

Port St. John Boat Ramp Repair
Brevard County, Florida

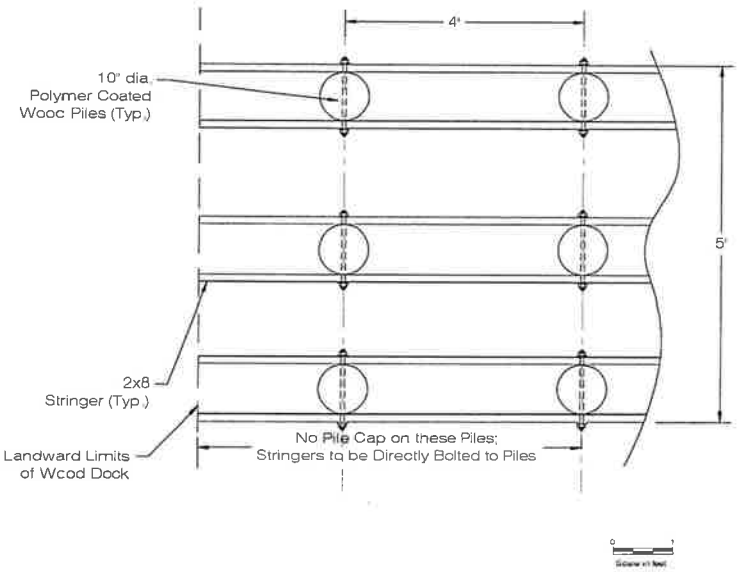
11/26/2018

8

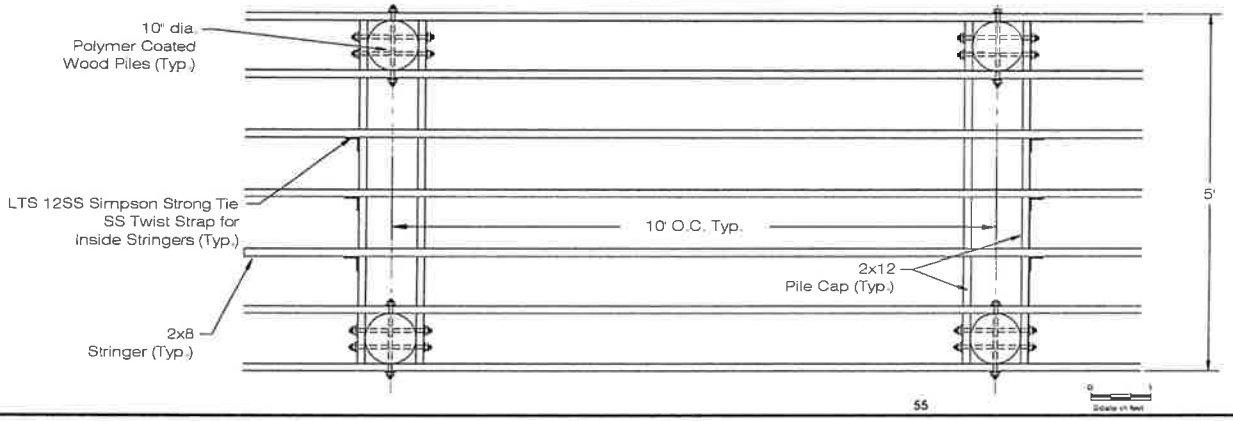
Typical Dock Cross-Section



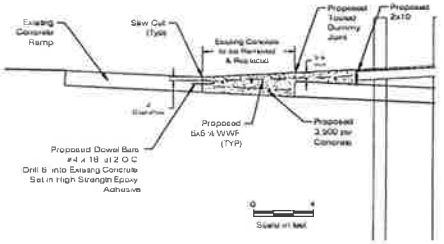
Dock Ramp Plan View



Typical Dock Plan View



Proposed Concrete Dock Ramp



CHARLES T. FONTAINE III, P.E. DATE
FLORIDA P.E. LICENSE NUMBER 73042

DESIGN FINAL

COASTAL TECH GEC
COASTAL ENVIRONMENTAL CIVIL ENGINEERING AND PLANNING

Typical Details

Port St. John Boat Ramp Repair
Brevard County, Florida

CTF
MPW
AQH
11/28/2018
25160.016
9

ATTACHMENT "E"

CONSTRUCTION MANAGER'S
PRELIMINARY CONSTRUCTION SCHEDULE

attached

Attachment "E"



CANAVERAL CONSTRUCTION COMPANY, INC

Port Saint John Boat Ramp Dock Replacement

Brevard County

Start
Finish

Duration: Days 120 | Weeks 14 | Months 4.00

BID SPREADSHEET Addendum:

	DESCRIPTION												BASE BID TOTAL
DIV 1	GENERAL CONDITIONS												
		Duration	Unit	Unit Rate	Labor	Material	Equipment	Other					
	PROJECT EXECUTIVE	32	hrs	83.00	2,656								
	PROJECT QUALITY CONTROL MANAGER	128	hrs	80.00	10,240								
	SUPERINTENDENT	14	week	2,800.00	39,200								
	PROJECT ENGINEER (full time)	IN FEE	week										
	PROJECT ACCOUNTANT (1/4 time)	IN FEE	hrs										
	SUBMITTALS	1	lpsm	750.00	750								
	AS-BUILT DOCUMENTS	1	lpsm	1,500.00	1,500								
	DOCUMENT REPRODUCTION	0	lpsm	250.00									
	PERMITS	1	lpsm	4,000.00				4,000					
	PHONES	0	lpsm	80.00									
	SUPERINTENDENT VEHICLE (full time)	0	month	500									
	PROJECT MANAGEMENT VEHICLE (1/4 time on-site)	0	month	125		0							
	POSTAGE/SHIPPING	0	month	50									
	LOCATES	1	lpsm	1,000.00	1,000								
	RAKEN DAILY LOG SERVICE	0	month	50			0						
							0						
					55,346	-	-	4,000					$ 59,346
DIV 1	GENERAL REQUIREMENTS												
		Duration	Unit	Unit Rate	Labor	Material	Equipment	Other					
	BUILDERS RISK INSURANCE	1	lpsm	see below				see below					
	CPM SCHEDULE	4	month	250	1,000								
	JOB SITE PHOTOS	4	month	110			440						
	TEMP FENCING	250	lnft	8.00				2,000					
	JOB TRAILER / SET UP (OTHER)	4	month	300			1,200						
	JOB TRAILER RAMP/STAIRS	1	lpsm	550		550							
	PORTOLETS (2 each)	4	month	290				1,160					
	CONNEX BOX (1 each)	4	month	125			500						
	DUMPSTER PULLS/TRAILER	4	pulls	500			2,000						
	SMALL TOOLS	1	month	200		200							
	SITE SAFETY / PPE / FIRST AID SUPPLIES	1	lpsm	200		200							
	ICE / WATER / CUPS		month	100		0							
	DAILY CLEAN UP	1	lpsm	1,000	1,000								
	FINAL CLEAN	1	lpsm	1,500	1,500								
	MATERIAL TESTING	1	lpsm	1,750	1,750								
					5,250	950	4,140	3,160					$ 13,500

TRADE PRICING

DIV #	DESCRIPTION	CCCI	SUBS	SUBS	SUBS	SUBS	SUBS	SUBS	SUBS	SUBS	SUBS	SUBS	
		CCCI	Brothers Construction	Shoreline	Fender								
DIV 2	SITE / MARINE WORK	0	461,229										$ 461,229
	Site / Marine Subcontractor		461,299	429,830	452,287	0	0	0	0	0	0		
	Mobilization		64,250	102,818	29,316								
	Turbidity Curtain		Y	Y	Y								
	Silt Fence		Y	Y	Excluded								
	Demolition - Removal of Existing Structures		24,250	21,860	6,000								
	New Fixed Docks		88,500	144,275	103,000								
	Piles - #2 Southern Yellow Pine - 10" Diameter, Treated, Wrapped with Polyshield		Y	Y	Polymer Coated								
	Decking, posts, wood posts, and caps to be pressure treated #1 Southern Yellow Pine		Y	Y	Y								
	Hardware - 316 Stainless Steel		Y	Y	Y								
	Aluminum Sheet Pile Wall - Northeast (83 LF)		95,450	32,945	80,072								
	Aluminum Sheet Pile Wall - Southwest (44 LF)		55,000	17,465	80,849								
	Concrete Plugs (3) - (4500 psi concrete @ 28 days)		4,500	8,980	4,261								
	Existing Wood Bulkhead - Cap & Wale Beam Repairs (approx 530 LF)		41,500	101,487	64,805								
	Rock Revetment - Armor Stone (370 ton) -FDOT 530-2.1.3.1		65,860	N	81,044								
	Rock Revetment - Armor Stone - Drop Test			N	Y								
	Rock Revetment - Filter Cloth Mirafi FW700 (147 SY)		441	N	2,940								
	Rock Revetment - Gravel (46 ton)		7,820	N	Y								
	Fill & Grading (160CY)		4,000	N	N								
	Site Restoration -The Contractor shall restore the boat ramp and the site landward of the shoreline to a pre-construction condition or better or as otherwise accepted by the Engineer.		3,500	N	N								
	SubContract Bonds		6,228	N	N								
		CCCI	Brothers Construction	Shoreline	Fender								
DIV 02	SITE CONCRETE		10,144										$ 10,144
			10,144		0								
	Concrete Sidewalk (73 SY) - 4500psi @ 28days w/ WWF		3,644	N	N								
	Concrete Pedestrian Ramp		6,500	N	N								
		CCCI	Brothers Construction	Shoreline	Fender								
DIV 02	ASPHALT PAVING / REPAIRS		25,207										$ 25,207
			25,207		0	0	0	0	0	0	0	0	
	Asphalt Repair (111 SY)		5,557	N	N								
	Asphalt Sealing, asphalt emulsion sealer - Masterseal or near equal.		14,150	N	N								
	Thermoplastic Asphalt Pavement Striping - FDOT 711		5,500	N	N								

		CCCI	Brothers Construction	LSP									
DIV 02	LANDSCAPING	3,000	7,778										$ 10,778
		3,000	7,778	9,400		0	0						
	Native Plants - Sand Cordgrass (Spartina Bakeri) - (222 EA)		7,778	9,400									
	Specified Watering Schedule - 1st month - 3 times per week, 2nd month - 2 times per week, 3rd month - once per week (24 total)		Y	Y									
	90 Day Warranty		Y	Y									
	Allowance for Sod - North & South side of project.	3,000											
	SUB TOTAL COST									SUB-TOTAL			$ 580,204
	GENERAL LIABILITY	0.525%								GENERAL LIABILITY			3,046
	BUILDERS RISK	0.35%								BUILDERS RISK			2,031
	SUBTOTAL									*SUB-TOTAL*			$ 585,281
	PROFIT	13%								OH & PROFIT			76,087
	SUBTOTAL									*SUB-TOTAL*			$ 661,367
	CONTINGENCY	5%								CONTINGENCY			33,068
	BOND	1.05%								BOND			6,966
	BID ITEM TOTAL									BID TOTAL			$ 701,402

ATTACHMENT "F"

ORDINANCE 98-37

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. (a) Potential lump sum bidders responding to a request for qualifications are required to submit information required by this article and as identified in the RFQ

package. A committee identified in the RFQ package will determine whether a potential bidder is qualified and responsive as defined in this article.

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

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

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

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

(d) At the completion of each competitively awarded County construction project, the County department which administered the construction contract shall

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

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

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

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

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

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

   - County evaluations of the performance on County projects;

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

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

4. The County Manager will establish committees which may debar a contractor, contractor's key personnel, contractor's surety, subcontractor and subcontractor's key personnel, or any entity which key personnel are later employed or retained by in a supervisory position, from bidding on any County project under the circumstances enumerated below. The decision to disbar is

discretionary, the seriousness of the offense and all mitigating factors should be considered in making the decision to disbar. The notice of debarment shall state the time when such debarment will be lifted, if ever, and the contractor's right to appeal such debarment to the Board of County Commissioners under the Board's regular agenda. The Board reserves the power to waive or lift any committee imposed suspension or debarment.

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

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

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

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

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

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

Section 3: Severability: If any provision of this ordinance is held to be illegal or invalid,

the other provisions shall remain in full force and effect.

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

ATTACHMENT "G"

PUBLIC CONSTRUCTION PAYMENT BOND

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

THE CONDITIONS OF THIS BOND are that if Principal:

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

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

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

Witness:

_____

_____
Principal Seal

Its: _____
Title

Witness:

_____
Surety Seal

Its: _____
Title

ATTACHMENT "H"

PUBLIC CONSTRUCTION PERFORMANCE BOND

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

THE CONDITIONS OF THIS BOND are that if Principal:

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

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

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

Witness:

_____

_____
Principal Seal

Its: _____
Title

Witness:

_____
Surety Seal

Its: _____
Title

ATTACHMENT "I"

CONSTRUCTION MANAGER'S
GUARANTEED MAXIMUM PRICE

ATTACH HERE

Canaveral Construction Co., Inc.

GMP PRICING SUMMARY

Port Saint John Boat Ramp Dock Replacement
Brevard County

Date: 12/21/2018

	DESCRIPTION	Quan		Rate	BASE
DIV 1	GENERAL CONDITIONS				
	PROJECT EXECUTIVE	32	hrs	83.00	$ 2,656
	PROJECT QUALITY CONTROL MANAGER	128	hrs	80.00	$ 10,240
	SUPERINTENDENT	14	week	2,800.00	$ 39,200
	PROJECT ENGINEER (full time)	IN FEE	week	0.00	$ -
	PROJECT ACCOUNTANT (1/4 time)	IN FEE	hrs	0.00	$ -
	SUBMITTALS	1	lpsm	750.00	$ 750
	AS-BUILT DOCUMENTS	1	lpsm	1,500.00	$ 1,500
	DOCUMENT REPRODUCTION	0	lpsm	250.00	$ -
	PERMITS	1	lpsm	4,000.00	$ 4,000
	PROJECT MANAGEMENT VEHICLE (1/4 time on-site)	0	month	125.00	$ -
	POSTAGE/SHIPPING	0	month	50.00	$ -
	LOCATES	1	lpsm	1,000.00	$ 1,000
	RAKEN DAILY LOG SERVICE	0	month	50.00	$ -
DIV 1	GENERAL REQUIREMENTS				
	CPM SCHEDULE	4	month	250	$ 1,000
	JOB SITE PHOTOS	4	month	110	$ 440
	TEMP FENCING	250	lnft	8	$ 2,000
	JOB TRAILER / SET UP (OTHER)	4	month	300	$ 1,200
	JOB TRAILER RAMP/STAIRS	1	lpsm	550	$ 550
	PORTOLETS (2 each)	4	month	290	$ 1,160
	CONNEX BOX (1 each)	4	month	125	$ 500
	DUMPSTER PULLS/TRAILER	4	pulls	500	$ 2,000
	SMALL TOOLS	1	month	200	$ 200
	SITE SAFETY / PPE / FIRST AID SUPPLIES	1	lpsm	200	$ 200
	ICE / WATER / CUPS	0	month	100	$ -
	DAILY CLEAN UP	1	lpsm	1,000	$ 1,000
	FINAL CLEAN	1	lpsm	1,500	$ 1,500
	MATERIAL TESTING	1	lpsm	1,750	$ 1,750
					$ -
DIV 2	SITE / MARINE WORK				$ 461,229
DIV 02	SITE CONCRETE				$ 10,144
DIV 02	ASPHALT PAVING / REPAIRS				$ 25,207
DIV 02	LANDSCAPING				$ 10,778
					$ 580,204
	GENERAL LIABILITY				$ 3,046
	BUILDERS RISK				$ 2,031
	SUB-TOTAL				$ 585,281
	OVERHEAD & PROFIT				$ 76,087
	SUB-TOTAL				$ 661,367
	BOND				$ 6,966
	CONTINGENCY				$ 33,068
	PROJECT TOTAL				$ 701,402

ATTACHMENT "J"

CERTIFICATE OF SUBSTANTIAL COMPLETION

(Insert Form Here)

ATTACHMENT "K"

CERTIFICATE OF FINAL COMPLETION

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

CERTIFICATE OF ARCHITECT/ENGINEER

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

A/E Firm Name: _____ By: _____

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

THROUGH THE SUBSTANTIAL COMPLETION PHASE

1. Notice to Proceed (N.T.P.)
2. Time Specified in Original Contract for Substantial Completion (S.C.)
3. Extension Granted By Change Orders (Days Between Original Contract S.C. and Final Contract S.C.)
4. Total Days Allowable to Substantial Completion (Add Lines 2 and 3)
5. Project Substantially Completed as Certified by A/E (Total Days from NTP through Date Certified by A/E)
6. Substantial Completion Overrun (Subtract Line 4 from 5 and Enter Overrun)

THROUGH THE FINAL COMPLETION PHASE

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

Architect: _____ Date: _____

Project Manager: _____ Date: _____

Facilities Construction Manager: _____ Date: _____

ATTACHMENT "L" (attached)

ALLOWABLE COSTS, OVERHEAD

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

Canaveral Construction Co., Inc.

GMP PRICING SUMMARY

Port Saint John Boat Ramp Dock Replacement
Brevard County

Date: 12/21/2018

	DESCRIPTION	Quan		Rate	BASE
DIV 1	GENERAL CONDITIONS				
	PROJECT EXECUTIVE	32	hrs	83.00	$ 2,656
	PROJECT QUALITY CONTROL MANAGER	128	hrs	80.00	$ 10,240
	SUPERINTENDENT	14	week	2,800.00	$ 39,200
	PROJECT ENGINEER (full time)	IN FEE	week	0.00	$ -
	PROJECT ACCOUNTANT (1/4 time)	IN FEE	hrs	0.00	$ -
	SUBMITTALS	1	lpsm	750.00	$ 750
	AS-BUILT DOCUMENTS	1	lpsm	1,500.00	$ 1,500
	DOCUMENT REPRODUCTION	0	lpsm	250.00	$ -
	PERMITS	1	lpsm	4,000.00	$ 4,000
	PROJECT MANAGEMENT VEHICLE (1/4 time on-site)	0	month	125.00	$ -
	POSTAGE/SHIPPING	0	month	50.00	$ -
	LOCATES	1	lpsm	1,000.00	$ 1,000
	RAKEN DAILY LOG SERVICE	0	month	50.00	$ -
DIV 1	GENERAL REQUIREMENTS				
	CPM SCHEDULE	4	month	250	$ 1,000
	JOB SITE PHOTOS	4	month	110	$ 440
	TEMP FENCING	250	lnft	8	$ 2,000
	JOB TRAILER / SET UP (OTHER)	4	month	300	$ 1,200
	JOB TRAILER RAMP/STAIRS	1	lpsm	550	$ 550
	PORTOLETS (2 each)	4	month	290	$ 1,160
	CONNEX BOX (1 each)	4	month	125	$ 500
	DUMPSTER PULLS/TRAILER	4	pulls	500	$ 2,000
	SMALL TOOLS	1	month	200	$ 200
	SITE SAFETY / PPE / FIRST AID SUPPLIES	1	lpsm	200	$ 200
	ICE / WATER / CUPS	0	month	100	$ -
	DAILY CLEAN UP	1	lpsm	1,000	$ 1,000
	FINAL CLEAN	1	lpsm	1,500	$ 1,500
	MATERIAL TESTING	1	lpsm	1,750	$ 1,750
					$ -
DIV 2	SITE / MARINE WORK				$ 461,229
DIV 02	SITE CONCRETE				$ 10,144
DIV 02	ASPHALT PAVING / REPAIRS				$ 25,207
DIV 02	LANDSCAPING				$ 10,778
					$ 580,204
	GENERAL LIABILITY				$ 3,046
	BUILDERS RISK				$ 2,031
	SUB-TOTAL				$ 585,281
	OVERHEAD & PROFIT				$ 76,087
	SUB-TOTAL				$ 661,367
	BOND				$ 6,966
	CONTINGENCY				$ 33,068
	PROJECT TOTAL				$ 701,402

ATTACHMENT "M" (attached)
(Direct Cost Items)
GENERAL CONDITIONS

SUPERINTENDENT

JOB SITE SECRETARY/CLERK

QUALITY CONTROL

SURVEY

PERMITS

IMPACT/CONNECTION FEES

CONSTRUCTION DRAWINGS/SPECS

PROGRESS PHOTOGRAPHS *(IF REQUESTED BY THE OWNER)*

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

SPECIAL SECURITY *(IF REQUESTED BY THE OWNER)*

PAYMENT & PERFORMANCE BONDS

BUILDERS RISK INSURANCE

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

TEMPORARY UTILITIES *(AS APPROVED BY THE OWNER)*

TEMPORARY JOBSITE FENCING *(INITIAL INSTALLATION ONLY)*

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

Canaveral
CONSTRUCTION CO., INC.

December 21, 2018

Brevard County Parks and Recreation
2727 Judge Fran Jamieson Way
Building B, Suite 203
Viera, FL, 32940

Attention: Mary Ellen Donner

Reference: Construction Management –Port St. John Boat Ramp Repair Project

Subject: Guaranteed Maximum Price Proposal

Dear Ms. Donner,

Please find the attached Guaranteed Maximum Price - Construction proposal in the amount listed below for replacing the docks and related work at the Port St. John Boat Ramp as per the plan set and technical specifications dated November 28, 2018 by Coastal Tech.

Scope of Services:

1) Demolish, remove and dispose of existing piles and docks.
2) Furnish & Install new piles and docks.
3) Furnish & Install aluminum sheet pile wall.
4) Furnish & Install concrete plugs.
5) Furnish & Install rock revetment.
6) Repair of wood bulkhead.
7) Replacement of damaged concrete sidewalk.
8) Furnish & Install new concrete pedestrian ramp.
9) Backfill and grading of eroded areas.
10) Asphalt repairs.
11) Asphalt sealing.
12) Thermoplastic asphalt pavement striping.
13) Planting and establishment of Sand Cordgrass.
14) Restoration of site to preconstruction condition.
15) Brevard County Permits

General Qualifications and Exclusions:

1) Anticipated duration from commencement of work to substantial completion is 14 weeks.
2) There is no asbestos or hazardous materials contemplated on the project, therefore no costs have been included for testing or removal.
3) All boat ramps will be closed during the construction of this project.
4) Any work or repair to the boat ramps is excluded.
5) No costs are included for subsurface / unforeseen conditions.
6) No costs are included for utility & drainage work.
7) No costs are included for vibration monitoring.
8) No costs are included for test piles and load testing.
9) No costs are included for benthic surveys.
10) No costs are included for turbidity sampling.
11) No costs are included for blow counts for driven pile.
12) No costs are included for any work not listed above or on the guaranteed maximum price spreadsheet.
13) St John's Water Management District and United States Army Corps of Engineers permits have not been included.

Canaveral
CONSTRUCTION CO., INC.

We appreciate the opportunity to perform this work for Brevard County. Please let us know if you have any questions.

Total Guaranteed Maximum Price $701,402.00

We appreciate the opportunity to perform this work for Brevard County Parks and Recreation and look forward to a mutually rewarding project. Please let us know if you have any questions.

Respectfully,

P.H. Siegel

P.H. Siegel
Senior Estimator
Canaveral Construction Co. Inc.

ATTACHMENT "N"

CERTIFICATE FOR PAYMENT

(INSERT FORM HERE)

APPLICATION AND CERTIFICATE FOR PAYMENT *AIA DOCUMENT G702* (Instructions on reverse side) PAGE ONE OF PAGES

TO (OWNER):

PROJECT:

APPLICATION NO:

Distribution to:
☐ OWNER
☐ ARCHITECT
☐ CONTRACTOR

PERIOD TO:

FROM (CONTRACTOR):

VIA (ARCHITECT):

ARCHITECT'S PROJECT NO: ☐

CONTRACT FOR:

CONTRACT DATE:

CONTRACTOR'S APPLICATION FOR PAYMENT

CHANGE ORDER SUMMARY			
Change Orders approved in previous months by Owner TOTAL		ADDITIONS	DEDUCTIONS
Approved this Month			
Number	Date Approved		
TOTALS			
Net change by Change Orders			

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

CONTRACTOR:

By: _____ Date: _____

Application is made for Payment, as shown below, in connection with the Contract. **Continuation Sheet, AIA Document G703,** is attached.

1. **ORIGINAL CONTRACT SUM** ..... $ _____
2. **Net change by Change Orders** ..... $ _____
3. **CONTRACT SUM TO DATE** (Line 1 ± 2) ..... $ _____
4. **TOTAL COMPLETED & STORED TO DATE** ..... $ _____
   (Column G on G703)
5. **RETAINAGE:**
   a. ____ % of Completed Work $ _____
   (Column D + E on G703)
   b. ____ % of Stored Material $ _____
   (Column F on G703)
   Total Retainage (Line 5a + 5b or Total in Column I of G703) ..... $ _____
6. **TOTAL EARNED LESS RETAINAGE** ..... $ _____
   (Line 4 less Line 5 Total)
7. **LESS PREVIOUS CERTIFICATES FOR PAYMENT** (Line 6 from prior Certificate) ..... $ _____
8. **CURRENT PAYMENT DUE** ..... $ _____
9. **BALANCE TO FINISH, PLUS RETAINAGE** ..... $ _____
   (Line 3 less Line 6)

State of: County of:
Subscribed and sworn to before me this day of ,19
Notary Public:
My Commission expires:

ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising the above application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED ..... $ _____ _____

(Attach explanation if amount certified differs from the amount applied for.)

ARCHITECT:

By: _____ Date: _____

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

AIA DOCUMENT G702 • APPLICATION AND CERTIFICATE FOR PAYMENT • MAY 1983 EDITION • AIA® • © 1983
THE AMERICAN INSTITUTE OF ARCHITECTS, 1735 NEW YORK AVENUE, N.W., WASHINGTON, D.C. 20006

CONTINUATION SHEET

AIA DOCUMENT G703 (Instructions on reverse side) PAGE OF PAGES

AIA Document G702, APPLICATION AND CERTIFICATE FOR PAYMENT, containing Contractor's signed Certification is attached.

In tabulations below, amounts are stated to the nearest dollar.

Use Column I on Contracts where variable retainage for line items may apply.

APPLICATION NUMBER:
APPLICATION DATE:
PERIOD TO:
ARCHITECT'S PROJECT NO:

A	B	C	D	E	F	G		H	I
ITEM NO.	DESCRIPTION OF WORK	SCHEDULED VALUE	WORK COMPLETED		MATERIALS PRESENTLY STORED (NOT IN D OR E)	TOTAL COMPLETED AND STORED TO DATE (D + E + F)	% (G ÷ C)	BALANCE TO FINISH (C – G)	RETAINAGE
			FROM PREVIOUS APPLICATION (D + E)	THIS PERIOD					

AIA DOCUMENT G703 • APPLICATION AND CERTIFICATE FOR PAYMENT • MAY 1983 EDITION • AIA® • © 1983
THE AMERICAN INSTITUTE OF ARCHITECTS, 1735 NEW YORK AVENUE, N.W., WASHINGTON, D.C. 20006

ATTACHMENT "O"

VENDOR AFFIDAVIT REGARDING SCRUTINIZED COMPANY LIST

Pursuant to § 287.135(2), Florida Statutes, a company is ineligible to, and may not, bid on, submit a proposal for, or enter into or renew a contract with an agency or local government entity for goods or services of $1 million or more if at the time of bidding or submitting a proposal for a new contract or renewal of an existing contract, the company: (1) is on the Scrutinized Companies that Boycott Israel List, created pursuant to s. 215.4725, or is engaged in a boycott of Israel; (2) is on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to s. 215.473; or (3) is engaged in business operations in Cuba or Syria.

If the bidder or contractor is found to have falsified the attached affidavit, the Board of County Commissioners of Brevard County may terminate the contract or reject the bid.

STATE OF FLORIDA
COUNTY OF

BEFORE ME, the undersigned authority, personally appeared J. David Nash, who, being by me first duly sworn, made the following statement:

1. The Business address of 3475 US HWY #1 Mims Fla (name of bidder or contractor) is Canaveral Construction Co Inc.

2. My relationship to (name of bidder or contractor) is President (relationship such as sole proprietor, partner, president, vice president).

3. I understand that "Boycott of Israel" has the same meaning as defined in §215.4725, Florida Statutes, and means refusing to deal, terminating business activities, or taking other actions to limit commercial relations with Israel, or persons or entities doing business in Israel or in Israeli-controlled territories, in a discriminatory manner. A statement by a company that it is participating in a boycott of Israel, or that it has initiated a boycott in response to a request for a boycott of Israel or in compliance with, or in furtherance of, calls for a boycott of Israel, may be considered by the State Board of Administration to be evidence that a company is participating in a boycott of Israel. The term does not include restrictive trade practices or boycotts fostered or imposed by foreign countries against Israel.

4. I understand that "business operations" means, for purposes specifically related to Cuba or Syria, engaging in commerce in any form in Cuba or Syria, including, but not limited to, acquiring, developing, maintaining, owning, selling, possessing,

leasing, or operating equipment, facilities, personnel, products, services, personal property, real property, military equipment, or any other apparatus of business or commerce.

5. _____ (name of the bidder or contractor) is not on the Scrutinized Companies that Boycott Israel List, created pursuant to s. 215.4725, Florida Statutes, or is engaged in a boycott of Israel.

6. _____ (name of the bidder or contractor) is not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to s. 215.473, Florida Statutes.

7. _____ (name of the bidder or contractor) is not engaged in business operations in Cuba or Syria.

_____
Signature

Sworn to and subscribed before me in the state and county first mentioned above on the _____ day of _____, 20___.

_____
Notary Public (affix seal)

My commission expires:

ATTACHMENT "P"

MINORITY EMPLOYMENT INFORMATION

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

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

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

   Company Name:
   Signature: _____ Date: _____

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

   Company Name:
   Signature: _____ Date: 1/7/19

Company Name: Canaveral Construction Co. Inc

Company Address: 3475 US Hwy #1 Mims, Fla

Company Telephone: 321 · 269 · 4011

Signature: _____ Printed Signature: J. David Nash

ATTACHMENT "Q"

PUBLIC ENTITY CRIME ACKNOWLEDGMENT

A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid/quote/proposal on a contract to provide goods or services to a public entity, may not submit a bid/quote/proposal on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids/quotes/proposals on leases of rental property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for Category Two ($15,000) for a period of thirty six (36) months from the date of being placed on the convicted vendor list.

NON-COLLUSION AFFIDAVIT OF PRIME BIDDER

State of Florida
County of Brevard
J. David Nash, being duly sworn, deposes and says that:

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

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

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

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

(5) The price or prices negotiated for the bid/quote/proposal are fair and proper and are not tainted by any collusion, conspiracy, connivance, or unlawful agreement

on the part of the Bidder or any of its agents, representatives, owners, employees, or parties of interest, including affiant.

_____
Signature

_____
Title

Subscribed and sworn to before me this ____ day of _____, 20___.

_____
Notary Public

My Commission expires: _____

H.C.2

CONTINUING
CONSTRUCTION MANAGER (AT RISK)
SERVICES AGREEMENT
(Federally Funded Projects)

THIS AGREEMENT, entered into this _____ day of _____, 2016 by and between **BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS**, a political subdivision of the State of Florida, hereinafter referred to as COUNTY, and **IVEY'S CONSTRUCTION, INC.** whose address is 4060 N. Courtenay Parkway, Merritt Island, FL 32953, a corporation under the laws of the State of Florida, hereinafter referred to as CONSTRUCTION MANAGER.

For and in consideration of the mutual agreement hereinafter contained, the COUNTY hereby retains the CONSTRUCTION MANAGER and the CONSTRUCTION MANAGER hereby covenants to provide Continuing Construction Manager (At Risk) services for Federally Funded County Projects ($1 - $2,000,000 each).

ARTICLE 1

1.1 The CONSTRUCTION MANAGER agrees to furnish its best skill and judgement and to cooperate with the Architect/Engineer, where applicable, in furthering the interest of the COUNTY. The CONSTRUCTION MANAGER agrees to furnish efficient business administration and supervision and to use its best efforts to complete the Project(s) in an expeditious and economical manner consistent with the interests of the COUNTY.

1.2 The Construction Team: The CONSTRUCTION MANAGER, the COUNTY and the Architect/Engineer (the "Construction Team") will work as a team through construction completion. The CONSTRUCTION MANAGER shall provide leadership to the Construction Team on all matters relating to construction. The Architect/Engineer will provide leadership to the Construction Team on all matters relating to design.

ARTICLE 2

2.1 The CONSTRUCTION MANAGER'S basic services under this Agreement include construction management services for federally funded projects ($1-$2,000,000). For each proposed Project, the COUNTY and the CONSTRUCTION MANAGER shall inter into a separate Agreement Between Owner and Construction Manager (**Attachment "A"**).

2.2 Selection for each proposed Project will be per Florida Statute 287.055, and Qualification Based Selection Criteria as follows:

A. Ability of firms professional personnel given the project's special characteristics;
B. Willingness to meet time and budget requirements;
C. Physical Location of Firm;
D. Recent, current and projected workload of the firms available under the continuing contract;

E. Volume of work previously awarded to the firm by the Board of County Commissioners, provided distribution does not violate the principles of selection of the most qualified firm for the project;
F. Previous Board of County Commissioners experience, including staff evaluations on file with Brevard County Facilities and Brevard County Purchasing Services.

2.3 The Contract Time for performance of each proposed Project shall be established in the "Agreement Between Owner and Construction Manager" for each proposed Project, including the Notice to Proceed.

2.4 This Agreement shall remain in effect for a period of one (1) year, and may be renewed for an additional three (3) one-year increments at the COUNTY'S option, based upon satisfactory performance of the CONSTRUCTION MANAGER.

2.5 The Guaranteed Maximum Price (GMP) for each proposed Project shall include the Cost of the Work required by the Contract Documents, and the CONSTRUCTION MANAGER'S fee. The GMP will be negotiated based on Contract Documents, Plans & Specifications for each proposed Project provided by the COUNTY.

2.6 Payment & Performance Bonds will be provided to the COUNTY by the CONSTRUCTION MANAGER for each proposed Project which exceeds $100,000 in construction cost. Insurance must be provided to the COUNTY by the CONSTRUCTION MANAGER for each proposed Project.

ARTICLE 3

3.1 The COUNTY and CONSTRUCTION MANAGER respectively bind themselves, their partners, successors, assigns and legal representatives to this Agreement and to the partners, successors, assigns and legal representatives of other party with respect to all covenants of this Agreement. Neither the COUNTY nor the CONSTRUCTION MANAGER shall assign this Agreement without written consent of the other.

3.2 This Agreement shall be governed by the laws of the State of Florida.

ARTICLE 4

4.1 The CONSTRUCTION MANAGER shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement.

4.2 The CONSTRUCTION MANAGER is required to pay its subcontractors performing work related to this Agreement for satisfactory performance of that work no later than thirty (30) days after the CONSTRUCTION MANAGER'S receipt of payment for that work from COUNTY. In addition, the CONSTRUCTION MANAGER may not hold retainage from its subcontractors.

ARTICLE 5

FEDERAL CLAUSES

5.1 **Fly America Requirements**
Applicability – all contracts involving transportation of persons or property, by air between the U.S. and/or places outside the U.S. These requirements do not apply to micro-purchases ($3,000 or less, except for construction contracts over $2,000).

Contractor shall comply with 49 USC 40118 (the "Fly America" Act) in accordance with General Services Administration regulations 41 CFR 301-10, stating that recipients and sub-recipients of Federal funds and their contractors are required to use US Flag air carriers for US Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a US flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. Contractor shall include the requirements of this section in all subcontracts that may involve international air transportation.

5.2 **Buy America Certification (Steel and Manufactured Products)**
Construction Contracts and Acquisition of Goods or Rolling Stock (valued at more than $100,000)

Contractor shall comply with 49 USC 5323(j) and 49 CFR 661, as amended by MAP-21 stating that Federal funds may not be obligated unless steel, iron and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include final assembly in the US for 15 passenger vans and 15 passenger wagons produced by Chrysler Corp., software, microcomputer equipment and small purchases (currently less than $100,000) made with capital, operating or planning funds. Separate requirements for rolling stock are stated at 5323(j)(2)(C) and 49 CFR 661.11. Rolling stock must be manufactured in the US and have a minimum 60% domestic content. A bidder or offeror shall submit appropriate Buy America certification to the County with all bids on FTA-funded contracts, except those subject to a general waiver. Proposals not accompanied by a completed Buy America certification shall be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

5.3 **Cargo Preference**
Contracts involving equipment, materials or commodities which may be transported by ocean vessels. These requirements do not apply to micro-purchases ($3,000 or less, except for construction contracts over $2,000).

Contractor shall: a. use privately owned US-Flag commercial vessels to ship at least 50% of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners and tankers) involved, whenever shipping any equipment, material or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for US flag commercial vessels; b. furnish within 20 working days following the loading date of shipments originating within the US or within 30 working days following the loading date of shipments originating outside the US, a legible copy of a rated, "on-board" commercial bill-of-lading in English for each shipment of cargo described herein to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the recipient (through contractor in the case of a subcontractor's bill-of-lading.); c. include these requirements in all subcontracts issued pursuant to this contract when the subcontract involves the transport of equipment, material or commodities by ocean vessel.

5.4 **Seismic Safety**

Construction of new buildings or additions to existing buildings. These requirements do not apply to micro- purchases ($3,000 or less, except for construction contracts over $2,000).

Contractor agrees that any new building or addition to an existing building shall be designed and constructed in accordance with the standards required in USDOT Seismic Safety Regulations 49 CFR 41 and shall certify compliance to the extent required by the regulation. Contractor shall also ensure that all work performed under this contract, including work performed by subcontractors, complies with the standards required by 49 CFR 41 and the certification of compliance issued on the project.

5.5 **Energy Conservation**

All Contracts except micro-purchases ($3,000 or less, except for construction contracts over $2,000).

Contractor shall comply with mandatory standards and policies relating to energy efficiency, stated in the state energy conservation plan issued in compliance with the Energy Policy & Conservation Act.

5.6 **Clean Water**

All Contracts and Subcontracts over $100,000.

Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq. Contractor shall report each violation to the County and understands and agrees that the County shall, in turn, report each violation as required to FTA and the appropriate EPA Regional Office. Contractor shall include these requirements in each subcontract exceeding $100,000 financed in whole or in part with FTA assistance.

5.7 **Lobbying**

Construction/Architectural and Engineering/Acquisition of Rolling Stock/Professional Service Contract/Operational Service Contract/Turnkey contracts over $100,000.

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104- 65 [to be codified at 2 U.S.C. § 1601, et seq.] - Contractors who apply or bid for an award of $100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non- Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the County.

5.8 **Access to Records and Reports**

Applicability – As shown below. These requirements do not apply to micro-purchases ($3,000 or less, except for construction contracts over $2,000)

The following access to records requirements apply to this Contract:

1. Where the purchaser is not a State but a local government and is an FTA recipient or a sub-grantee of FTA recipient in accordance with 49 CFR 18.36(i), contractor shall provide the purchaser, the FTA, the US Comptroller General or their authorized representatives access to any books, documents, papers and contractor records which are pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor shall also, pursuant to 49 CFR 633.17, provide authorized FTA representatives, including any PMO contractor, access to contractor's records and construction sites pertaining to a capital project, defined at 49 USC 5302(a)1, which is receiving FTA assistance through the programs described at 49 USC 5307, 5309 or 5311.

2. Where the purchaser is a State and is an FTA recipient or a sub-grantee of FTA recipient in accordance with 49 CFR 633.17, contractor shall provide the purchaser, authorized FTA representatives, including any PMO Contractor, access to contractor's records and construction sites pertaining to a capital project, defined at 49 USC 5302(a)1, which receives FTA assistance through the programs described at 49 USC 5307, 5309 or 5311. By definition, a capital project excludes contracts of less than the simplified acquisition threshold currently set at $100,000.

3. Where the purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is an FTA recipient or a sub-grantee of FTA recipient in accordance with 49 CFR 19.48, contractor shall provide the purchaser, the FTA, the US Comptroller General or their authorized representatives, access to any books, documents, papers and record of the contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.

4. Where a purchaser which is an FTA recipient or a sub-grantee of FTA recipient in accordance with 49 USC 5325(a) enters into a contract for a capital project or improvement (defined at 49 USC 5302(a)(1) through other than competitive bidding, contractor shall make available records related to the contract to the purchaser, the Secretary of USDOT and the US Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

5. Contractor shall permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

6. Contractor shall maintain all books, records, accounts and reports required under this contract for a period of not less than three (3) years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case contractor agrees to maintain same until the recipient, FTA Administrator, US Comptroller General, or any of their authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Re: 49 CFR 18.39(i)(11).

FTA does not require the inclusion of these requirements in subcontracts.

5.9 **Federal Changes**

All Contracts except micro-purchases ($3,000 or less, except for construction contracts over $2,000)

Contractor shall comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the purchaser and FTA, as they may be amended or promulgated from time to time during the term of the contract. Contractor's failure to comply shall constitute a material breach of the contract.

5.10 **Bonding Requirements**

Applicability – For those construction or facility improvement contracts or subcontracts exceeding $100,000, FTA may accept the bonding policy and requirements of the County, provided that they meet the minimum requirements for construction contracts as follows:

1. A bid guarantee from each bidder equivalent to five (5) percent of the bid price. The "bid guarantees" shall consist of a firm commitment such as a bid bond, certifies check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

2. A performance bond on the part to the Contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

3. A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment, as required by law, of all persons supplying labor and material in the execution of the work provided for in the contract.
   i.

The undersigned understands that any material alteration of any of the above or any of the material contained on this form, other than that requested will render the bid unresponsive.

4. Performance and Payment Bonding Requirements (Construction)

   The Contractor shall be required to obtain performance and payment bonds as follows:

   A. Performance Bonds
      i. The penal amount of performance bonds shall be 100 percent of the original contract price, unless the County determines that a lesser amount would be adequate for the protection of the County.

      ii. The County may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The County may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

   B. Payment Bonds
      The penal amount of the payment bonds shall equal 100% of the original contract price.

C. Patent Infringement Bonding Requirements (Patent Indemnity)
The Contractor may be required to obtain a patent indemnity bond if a performance bond is not furnished and the financial responsibility of the Contractor is unknown or doubtful. The County shall determine the amount of the patent indemnity to protect the County.

5.11 **Warranty of the Work and Maintenance Bonds**

1. The Contractor warrants to County, the Architect and/or Engineer that all materials and equipment furnished under this Contract will be of highest quality and new unless otherwise specified by County, free from faults and defects and in conformance with the Contract Documents. All work not so conforming to these standards shall be considered defective. If required by the [Project Manager], the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

2. The Work furnished must be of first quality and the workmanship must be the best obtainable in the various trades. The Work must be of safe, substantial and durable construction in all respects. The Contractor hereby guarantees the Work against defective materials or faulty workmanship for a minimum period of one (1) year after Final Payment by County and shall replace or repair any defective materials or equipment or faulty workmanship during the period of the guarantee at no cost to County. As additional security for these guarantees, the Contractor shall, prior to the release of Final Payment [as provided in Item X below], furnish separate Maintenance (or Guarantee) Bonds in form acceptable to County written by the same corporate surety that provides the Performance Bond and Labor and Material Payment Bond for this Contract. These bonds shall secure the Contractor's obligation to replace or repair defective materials and faulty workmanship for a minimum period of one (1) year after Final Payment and shall be written in an amount equal to ONE HUNDRED PERCENT (100%) of the CONTRACT SUM, as adjusted (if at all).

5.12 **Clean Air**

1. Contractor shall comply with all applicable standards, orders or regulations pursuant to the Clean Air Act, 42 USC 7401 et seq. Contractor shall report each violation to the County and understands and agrees that the County will, in turn, report each violation as required to FTA and the appropriate EPA Regional Office.

2. Contractor shall include these requirements in each subcontract exceeding $100,000 financed in whole or in part with FTA assistance.

5.13 **Recycled Products**
All contracts for items designated by the EPA, when the purchaser or contractor procures $10,000 or more of one of these items during the current or previous fiscal year using Federal funds.

The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive

Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

5.14 Davis-Bacon and Copeland Anti-Kickback Acts

(1) **Minimum wages –**

(i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

1. Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and
2. The classification is utilized in the area by the construction industry; and
3. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and
4. With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(v)(A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

1. The work to be performed by the classification requested is not performed by a classification in the wage determination; and

2. The classification is utilized in the area by the construction industry; and

3. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination with 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(v) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(2) **Withholding** - The County shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the County may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) **Payrolls and basic records –**

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the

commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the County for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

1. That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete;
2. That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;
3. That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) **Apprentices and trainees –**

(i) *Apprentices* - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination.

Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) *Trainees* - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination.

Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices.

Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the

ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) *Equal employment opportunity* - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) **Compliance with Copeland Act requirements** - The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) **Subcontracts** - The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) **Contract termination: debarment** - A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) **Compliance with Davis-Bacon and Related Act requirements** - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) **Disputes concerning labor standards** - Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) **Certification of eligibility** - (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

5.15 **Contract Work Hours & Safety Standards Act**
Applicability – Contracts over $100,000

1. Overtime requirements - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in

which he or she is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

2. Violation; liability for unpaid wages; liquidated damages - In the event of any violation of the clause set forth in para. (1) of this section, contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in para. (1) of this section, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in para. (1) of this section.

3. Withholding for unpaid wages and liquidated damages - the County shall upon its own action or upon written request of USDOL withhold or cause to be withheld, from any moneys payable on account of work performed by contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours & Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in para. (2) of this section.

4. Subcontracts - Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. Prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.

5.15 **No Government Obligation to Third Parties**

Applicability – All contracts except micro-purchases ($3,000 or less, except for construction contracts over $2,000)

1. The County and contractor acknowledge and agree that, notwithstanding any concurrence by the US Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the US Government, the US Government is not a party to this contract and shall not be subject to any obligations or liabilities to the County, the contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

2. Contractor agrees to include the above clause in each subcontract financed in whole or in part with FTA assistance. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

5.16 **Program Fraud and False or Fraudulent Statements or Related Acts**

Applicability – All contracts except micro-purchases ($3,000 or less, except for construction contracts over $2,000)

1. Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC 3801 et seq. and USDOT regulations, "Program Fraud Civil Remedies," 49 CFR 31, apply to its actions pertaining to this project. Upon execution of the underlying contract, contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification, the US Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act (1986) on contractor to the extent the US Government deems appropriate.

2. If contractor makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification to the US Government under a contract connected with a project that is financed in whole or in part with FTA assistance under the authority of 49 USC 5307, the Government reserves the right to impose the penalties of 18 USC 1001 and 49 USC 5307(n)(1) on contractor, to the extent the US Government deems appropriate.

3. Contractor shall include the above two clauses in each subcontract financed in whole or in part with FTA assistance. The clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

5.17 **Termination**

Applicability – All Contracts over $10,000, except contracts with nonprofit organizations and institutions of higher learning, where the threshold is $100,000.

1. Termination for Convenience (General Provision) the County may terminate this contract, in whole or in part, at any time by written notice to contractor when it is in the County's best interest. Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. Contractor shall promptly submit its termination claim to the County. If contractor is in possession of any of the County's property, contractor shall account for same, and dispose of it as the County directs.

2. Termination for Default [Breach or Cause] (General Provision) If contractor does not deliver items in accordance with the contract delivery schedule, or, if the contract is for services, and contractor fails to perform in the manner called for in the contract, or if contractor fails to comply with any other provisions of the contract, the County may terminate this contract for default. Termination shall be effected by serving a notice of termination to contractor setting forth the manner in which contractor is in default. Contractor shall only be paid the contract price for supplies delivered and accepted, or for services performed in accordance with the manner of performance set forth in the contract. If it is later determined by the County that contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of contractor, the County, after setting up a new delivery or performance schedule, may allow contractor to continue work, or treat the termination as a termination for convenience.

3. Opportunity to Cure (General Provision) the County in its sole discretion may, in the case of a termination for breach or default, allow contractor an appropriately short period of time in which to cure the defect. In such case, the notice of termination

shall state the time period in which cure is permitted and other appropriate conditions If contractor fails to remedy to the County's satisfaction the breach or default or any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by contractor or written notice from the County setting forth the nature of said breach or default, the County shall have the right to terminate the Contract without any further obligation to contractor. Any such termination for default shall not in any way operate to preclude the County from also pursuing all available remedies against contractor and its sureties for said breach or default.

4. Waiver of Remedies for any Breach In the event that the County elects to waive its remedies for any breach by contractor of any covenant, term or condition of this Contract, such waiver by the County shall not limit its remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

5. Termination for Convenience (Professional or Transit Service Contracts) the County, by written notice, may terminate this contract, in whole or in part, when it is in the County's interest. If the contract is terminated, the County shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

6. Termination for Default (Supplies and Service) If contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the contractor fails to comply with any other provisions of this contract, the County may terminate this contract for default. The County shall terminate by delivering to contractor a notice of termination specifying the nature of default. Contractor shall only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract. If, after termination for failure to fulfill contract obligations, it is determined that contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the County's convenience.

7. Termination for Default (Transportation Services) If contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if contractor fails to comply with any other provisions of this contract, the County may terminate this contract for default. The County shall terminate by delivering to contractor a notice of termination specifying the nature of default. Contractor shall only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract. If this contract is terminated while contractor has possession of the County goods, contractor shall, as directed by the County, protect and preserve the goods until surrendered to the County or its agent. Contractor and the County shall agree on payment for the preservation and protection of goods. Failure to agree on an amount shall be resolved under the Dispute clause. If, after termination for failure to fulfill contract obligations, it is determined that contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the County's convenience.

8. Termination for Default (Construction) If contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified, or any extension, or fails to complete the work within this time, or if contractor fails to comply with any other provisions of this contract, the County may terminate this contract for default. the County shall terminate by delivering to contractor a notice of termination specifying the nature of default. In this event, the

County may take over the work and compete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. Contractor and its sureties shall be liable for any damage to the County resulting from contractor's refusal or failure to complete the work within specified time, whether or not contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the County in completing the work.

Contractor's right to proceed shall not be terminated nor shall contractor be charged with damages under this clause if:

1. Delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of contractor. Examples of such causes include: acts of God, acts of the County, acts of another contractor in the performance of a contract with the County, epidemics, quarantine restrictions, strikes, freight embargoes; and

2. Contractor, within 10 days from the beginning of any delay, notifies the County in writing of the causes of delay. If in the County's judgment, delay is excusable, the time for completing the work shall be extended. The County's judgment shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses. If, after termination of contractor's right to proceed, it is determined that contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if termination had been issued for the County's convenience.

3. Termination for Convenience or Default (Architect & Engineering) the County may terminate this contract in whole or in part, for the County's convenience or because of contractor's failure to fulfill contract obligations. The County shall terminate by delivering to contractor a notice of termination specifying the nature, extent, and effective date of termination. Upon receipt of the notice, contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the County all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process. If termination is for the County's convenience, it shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services. If termination is for contractor's failure to fulfill contract obligations, the County may complete the work by contact or otherwise and contractor shall be liable for any additional cost incurred by the County. If, after termination for failure to fulfill contract obligations, it is determined that contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the County's convenience.

4. Termination for Convenience or Default (Cost-Type Contracts) the County may terminate this contract, or any portion of it, by serving a notice or termination on contractor. The notice shall state whether termination is for convenience of the County or for default of contractor. If termination is for default, the notice shall state the manner in which contractor has failed to perform the requirements of the contract. Contractor shall account for any property in its possession paid for from funds received from the County, or property supplied to contractor by the County. If termination is for default, the County may fix the fee, if the contract provides for a fee, to be paid to contractor in proportion to the value, if any, of work performed up to the time of termination. Contractor shall promptly submit its termination claim to the

County and the parties shall negotiate the termination settlement to be paid to contractor. If termination is for the County's convenience, contractor shall be paid its contract close- out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination. If, after serving a notice of termination for default, the County determines that contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of contractor, the County, after setting up a new work schedule, may allow contractor to continue work, or treat the termination as a termination for convenience.

5.18 **Government Wide Debarment and Suspension (Non Procurement)**

The County agrees to the following: (1) It will comply with the requirements of 2 C.F.R. part 180, subpart C, as adopted and supplemented by U.S. DOT regulations at 2 C.F.R. part 1200, which include the following: (a) It will not enter into any arrangement to participate in the development or implementation of the Project with any Third Party Participant that is debarred or suspended except as authorized by: 1 U.S. DOT regulations, "Non-procurement Suspension and Debarment," 2 C.F.R. part 1200, 2 U.S. OMB, "Guidelines to Agencies on Government wide Debarment and Suspension (Non procurement)," 2 C.F.R. part 180, including any amendments thereto, and 3 Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101 note, (b) It will review the U.S. GSA "System for Award Management," https://www.sam.gov, if required by U.S. DOT regulations, 2 C.F.R. part 1200, and (c) It will include, and require each of its Third Party Participants to include, a similar provision in each lower tier covered transaction, ensuring that each lower tier Third Party Participant: 1 Will comply with Federal debarment and suspension requirements, and 2 Reviews the "System for Award Management" at https://www.sam.gov, if necessary to comply with U.S. DOT regulations, 2 C.F.R. part 1200, and (2) If the County suspends, debars, or takes any similar action against a Third Party Participant or individual, the County will provide immediate written notice to the: (a) FTA Regional Counsel for the Region in which the County is located or implements the Project, (b) FTA Project Manager if the Project is administered by an FTA Headquarters Office, or (c) FTA Chief Counsel.

5.19 **Contracts Involving Federal Privacy Act Requirements**

When a grantee maintains files on drug and alcohol enforcement activities for FTA, and those files are organized so that information could be retrieved by personal identifier, the Privacy Act requirements apply to all contracts except micro-purchases ($3,000 or less, except for construction contracts over $2,000)

The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

1. The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

2. The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

5.20 **Civil Rights Requirements**

Applicability – All contracts except micro-purchases ($3,000 or less, except for construction contracts over $2,000)

The following requirements apply to the underlying contract:

The County understands and agrees that it must comply with applicable Federal civil rights laws and regulations, and follow applicable Federal guidance, except as the Federal Government determines otherwise in writing. Therefore, unless a Recipient or Program, including an Indian Tribe or the Tribal Transit Program, is specifically exempted from a civil rights statute, FTA requires compliance with that civil rights statute, including compliance with equity in service:

1. Nondiscrimination in Federal Public Transportation Programs. The County agrees to, and assures that each Third Party Participant will, comply with Federal transit law, 49 U.S.C. § 5332 (FTA's "Nondiscrimination" statute):

   A. FTA's "Nondiscrimination" statute prohibits discrimination on the basis of: (a) Race, (b) Color, (c) Religion, (d) National origin, (e) Sex, (f) Disability, or (g) Age, and (2) The FTA "Nondiscrimination" statute's prohibition against discrimination includes: (a) Exclusion from participation, (b) Denial of program benefits, or (c) Discrimination, including discrimination in employment or business opportunity, (3) Except as FTA determines otherwise in writing: (a) General. Follow: 1 The most recent edition of FTA Circular 4702.1, "Title VI Requirements and Guidelines for Federal Transit Administration Recipients," to the extent consistent with applicable Federal laws, regulations, and guidance, and 2 Other applicable Federal guidance that may be issued, but (b) Exception for the Tribal Transit Program. FTA does not require an Indian Tribe to comply with FTA program-specific guidelines for Title VI when administering its projects funded under the Tribal Transit Program:

   B. Nondiscrimination – Title VI of the Civil Rights Act. The County agrees to, and assures that each Third Party Participant will: (1) Prohibit discrimination based on: (a) Race, (b) Color, or (c) National origin, (2) Comply with: (a) Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d et seq., (b) U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964," 49 C.F.R. part 21, and (c) Federal transit law, specifically 49 U.S.C. § 5332, as stated in the preceding section a, and (3) Except as FTA determines otherwise in writing, follow: (a) The most recent edition of FTA Circular 4702.1, "Title VI and Title VI-Dependent Guidelines for Federal Transit Administration Recipients," to the extent consistent with applicable Federal laws, regulations, and guidance. (b) U.S. DOJ, "Guidelines for the enforcement of Title VI, Civil Rights Act of 1964," 28 C.F.R. § 50.3, and (c) Other applicable Federal guidance that may be issued,

   C. Equal Employment Opportunity. (1) Federal Requirements and Guidance. The County agrees to, and assures that each Third Party Participant will, prohibit discrimination on the basis of race, color, religion, sex, or national

origin, and: (a) Comply with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq., (b) Facilitate compliance with Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order No. 11246, Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note, (c) Comply with Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a, and (d) Comply with other applicable EEO laws and regulations, as provided in Federal guidance, including laws and regulations prohibiting discrimination on the basis of disability, except as the Federal Government determines otherwise in writing, (2) General. The County agrees to: (a) Ensure that applicants for employment are employed and employees are treated during employment without discrimination on the basis of their: 1 Race, 2 Color, 3 Religion, 4 Sex, 5 Disability, 6 Age, or 7 National origin, (b) Take affirmative action that includes, but is not limited to: 1 Recruitment advertising, 2 Recruitment, 3 Employment, 4 Rates of pay, 5 Other forms of compensation, 6 Selection for training, including apprenticeship, 7 Upgrading, 8 Transfers, 9 Demotions, 10 Layoffs, and 11 Terminations, but (b) Indian Tribe. Title VII of the Civil Rights Act of 1964, as amended, exempts Indian Tribes under the definition of "Employer".

D. Equal Employment Opportunity Requirements for Construction Activities. In addition to the foregoing, when undertaking "construction" as recognized by the U.S. Department of Labor (U.S. DOL), the County agrees to comply, and assures the compliance of each Third Party Participant, with: (a) U.S. DOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and (b) Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order No. 11246, Relating to Equal Employment Opportunity," 42 U.S.C.§ 2000e note,

E. Disadvantaged Business Enterprise. To the extent authorized by applicable Federal law, the County agrees to facilitate, and assures that each Third Party Participant will facilitate, participation by small business concerns owned and controlled by socially and economically disadvantaged individuals, also referred to as "Disadvantaged Business Enterprises" (DBEs), in the Project as follows: 1) Requirements. The County agrees to comply with: (a) Section 1101(b) of MAP-21, 23 U.S.C. § 101 note, (b) U.S. DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 C.F.R. part 26, and (c) Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a, (2) Assurance. As required by 49 C.F.R. § 26.13(a), (b) DBE Program Requirements. Recipients receiving planning, capital and/or operating assistance that will award prime third party contracts exceeding $250,000 in a Federal fiscal year must: 1 Have a DBE program meeting the requirements of 49 C.F.R. part 26, 2 Implement a DBE program approved by FTA, and 3 Establish an annual DBE participation goal, (c) Special Requirements for a Transit Vehicle Manufacturer. The County understands and agrees that each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, must certify that it has complied with the requirements of 49 C.F.R. part 26, (d) the County provides assurance that: The County shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 C.F.R. part 26. The County shall take all necessary and reasonable steps under

49 C.F.R. part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The County's DBE program, as required by 49 C.F.R. part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the County of its failure to carry out its approved program, the Department may impose sanctions as provided for under 49 C.F.R. part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. § 1001 and/or the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. § 3801 et seq., (2) Exception for the Tribal Transit Program. FTA exempts Indian tribes from the Disadvantaged Business Enterprise regulations at 49 C.F.R. part 26 under MAP-21 and previous legislation,

F. Nondiscrimination on the Basis of Sex. The County agrees to comply with Federal prohibitions against discrimination on the basis of sex, including: (1) Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 et seq., (2) U.S. DOT regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. part 25, and (3) Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a,

G. Nondiscrimination on the Basis of Age. The County agrees to comply with Federal prohibitions against discrimination on the basis of age, including: (1) The Age Discrimination in Employment Act (ADEA), 29 U.S.C. §§ 621 – 634, which prohibits discrimination on the basis of age, (2) U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, which implements the ADEA, (3) The Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., which prohibits discrimination against individuals on the basis of age in the administration of programs or activities receiving Federal funds, (4) U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, which implements the Age Discrimination Act of 1975, and (5) Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a,

H. Nondiscrimination on the Basis of Disability. The County agrees to comply with the following Federal prohibitions pertaining to discrimination against seniors or individuals with disabilities: (1) Federal laws, including: (a) Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of disability in the administration of federally funded programs or activities, (b) The Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. § 12101 et seq., which requires that accessible facilities and services be made available to individuals with disabilities, 1 General. Titles I, II, and III of the ADA apply to FTA Recipients, but 2 Indian Tribes. While Titles II and III of the ADA apply to Indian Tribes, Title I of the ADA exempts Indian Tribes from the definition of "employer," (c) The Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., which requires that buildings and public accommodations be accessible to individuals with disabilities, (d) Federal transit law, specifically 49 U.S.C. § 5332, which now includes disability as a prohibited basis for discrimination, and (e) Other applicable laws and amendments pertaining to access for elderly individuals or individuals with disabilities, (2) Federal regulations, including: (a) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. part 37, (b) U.S. DOT

regulations, "Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. part 27, (c) U.S. DOT regulations, "Transportation for Individuals with Disabilities: Passenger Vessels," 49 C.F.R. part 39, (d) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB) and U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. part 1192 and 49 C.F.R. part 38, (e) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. part 35, (f) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. part 36, (g) U.S. EEOC, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. part 1630, (h) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities," 47 C.F.R. part 64, Subpart F, (i) U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. part 1194, and (j) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. part 609, and (3) Other applicable Federal civil rights and nondiscrimination guidance,

I. Drug or Alcohol Abuse - Confidentiality and Other Civil Rights Protections. The County agrees to comply with the confidentiality and civil rights protections of: (1) The Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. § 1101 et seq., (2) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. § 4541 et seq., and (3) The Public Health Service Act, as amended, 42 U.S.C. §§ 290dd – 290dd-2,

J. Access to Services for People with Limited English Proficiency. Except as the Federal Government determines otherwise in writing, the County agrees to promote accessibility of public transportation services to people whose understanding of English is limited by following: 1) Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," August 11, 2000, 42 U.S.C. § 2000d-1 note, and (2) U.S. DOT Notice, "DOT Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficiency (LEP) Persons," 70 Fed. Reg. 74087, December 14, 2005,

K. Other Nondiscrimination Laws. Except as the Federal Government determines otherwise in writing, the County agrees to: (1) Comply with other applicable Federal nondiscrimination laws and regulations, and (2) Follow Federal guidance prohibiting discrimination.

L. Remedies. Remedies for failure to comply with applicable Federal Civil Rights laws and Federal regulations may be enforced as provided in those Federal laws or Federal regulations.

5.21 **Breaches and Dispute Resolution**
All contracts over $100,000

Disputes arising in the performance of this contract which are not resolved by agreement of the parties shall be decided in writing by the County's authorized representative. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, contractor mails or otherwise furnishes a written appeal to the County's CEO.

In connection with such appeal, contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the County's CEO shall be binding upon contractor and contractor shall abide by the decision. FTA has a vested interest in the settlement of any violation of Federal law including the False Claims Act, 31 U.S.C. § 3729.

Performance During Dispute - Unless otherwise directed by the County, contractor shall continue performance under this contract while matters in dispute are being resolved.

Claims for Damages - Should either party to the contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within ten days after the first observance of such injury or damage.

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the County and contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the residing State.

Rights and Remedies - Duties and obligations imposed by the contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the County or contractor shall constitute a waiver of any right or duty afforded any of them under the contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

5.22 **Disadvantaged Business Enterprise**

Contracts over $3,000 awarded on the basis of a bid or proposal offering to use DBEs

1. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 7%.

2. The contractor shall not discriminate on the basis of race, color, religion, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the municipal corporation deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

3. If a separate contract goal has been established, Bidders/offerors are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53.

4. If no separate contract goal has been established, the successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

5. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from the County. In addition, the contractor may not hold retainage from its subcontractors or must return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed or must return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor's work by the County and contractor's receipt of the partial retainage payment related to the subcontractor's work.

6. The contractor must promptly notify the County whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the County.

5.23 **Prompt payment**

Applicability – All contracts except micro-purchases ($3,000 or less, except for construction contracts over $2,000)

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contract receives from the County. The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractors work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the County. This clause applies to both DBE and non-DBE subcontracts.

5.24 **Incorporation of Federal Transit Administration (FTA) Terms**

All contracts except micro-purchases ($3,000 or less, except for construction contracts over $2,000)

The preceding provisions include, in part, certain Standard Terms & Conditions required by USDOT, whether or not expressly stated in the preceding contract provisions. All USDOT-required contractual provisions, as stated in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The contractor shall not perform any act, fail to perform any act, or refuse to comply with any request that would cause the County to be in violation of FTA terms and conditions.

5.25 **Other Federal Requirements**

The following requirements are not federal clauses.

1. **Full and Open Competition**

In accordance with 49 U.S.C. § 5325(a) all procurement transactions shall be conducted in a manner that provides full and open competition.

2. **Prohibition Against Exclusionary or Discriminatory Specifications**

Apart from inconsistent requirements imposed by Federal statute or regulations, the contractor shall comply with the requirements of 49 USC 5323(h)(2) by refraining

from using any FTA assistance to support procurements using exclusionary or discriminatory specifications.

5.26 **Conformance with ITS National Architecture**
Contractor shall conform, to the extent applicable, to the National Intelligent Transportation Standards architecture as required by SAFETEA-LU Section 5307(c), 23 U.S.C. Section 512 and as amended by MAP-21 23 U.S.C. § 517(d), note and follow the provisions of FTA Notice, "FTA National Architecture Policy on Transit Projects," 66 Fed. Reg.1455 et seq., January 8, 2001, and any other implementing directives FTA may issue at a later date, except to the extent FTA determines otherwise in writing.

5.27 **Access Requirements for Persons with Disabilities**
Contractor shall comply with 49 USC 5301(d), stating Federal policy that the elderly and persons with disabilities have the same rights as other persons to use mass transportation services and facilities and that special efforts shall be made in planning and designing those services and facilities to implement that policy. Contractor shall also comply with all applicable requirements of Sec. 504 of the Rehabilitation Act (1973), as amended, 29 USC 794, which prohibits discrimination on the basis of handicaps, and the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments thereto.

5.28 **Notification of Federal Participation**
To the extent required by law, in the announcement of any third party contract award for goods and services (including construction services) having an aggregate value of $500,000 or more, contractor shall specify the amount of Federal assistance to be used in financing that acquisition of goods and services and to express that amount of Federal assistance as a percentage of the total cost of the third party contract.

5.29 **Interest of Members or Delegates to Congress**
No members of, or delegates to, the US Congress shall be admitted to any share or part of this contract nor to any benefit arising therefrom.

5.30 **Ineligible Contractors and Subcontractors**
Any name appearing upon the Comptroller General's list of ineligible contractors for federally-assisted contracts shall be ineligible to act as a subcontractor for contractor pursuant to this contract. If contractor is on the Comptroller General's list of ineligible contractors for federally financed or assisted construction, the County shall cancel, terminate or suspend this contract.

5.31 **Other Contract Requirements**
To the extent not inconsistent with the foregoing Federal requirements, this contract shall also include those provisions attached hereto, and shall comply with the County's Procurement Guidelines, available upon request from the County.

5.32 **Compliance with Federal Regulations**
Any contract entered pursuant to this solicitation shall contain the following provisions: All USDOT-required contractual provisions, as set forth in FTA Circular 4220.1F, are incorporated by reference. Anything to the contrary herein notwithstanding, FTA mandated terms shall control in the event of a conflict with other provisions contained in this Agreement. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any grantee request that would cause the County to be in violation of FTA terms and conditions. Contractor shall comply with all applicable FTA regulations,

policies, procedures and directives, including, without limitation, those listed directly or incorporated by reference in the Master Agreement between the County and FTA, as may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

5.33 **Real Property**

Any contract entered into shall contain the following provisions: Contractor shall at all times comply with all applicable statutes and USDOT regulations, policies, procedures and directives governing the acquisition, use and disposal of real property, including, but not limited to, 49 CFR 18.31-18.34, 49 CFR 19.30-19.37, 49 CFR Part 24, 49 CFR 5326 as amended by MAP-21, 49 CFR part 18 or 19, 49 USC 5334, applicable FTA Circular 5010, and FTA Master Agreement, as they may be amended or promulgated during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

5.34 **Access to Services for Persons with Limited English Proficiency**

To the extent applicable and except to the extent that FTA determines otherwise in writing, the County agrees to comply with the policies of Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," 42 U.S.C. § 2000d 1 note, and with the provisions of U.S. DOT Notice, "DOT Guidance to Recipients on Special Language Services to Limited English Proficient (LEP) Beneficiaries," 70 Fed. Reg. 74087, December 14, 2005.

5.35 **Environmental Justice**

Except as the Federal Government determines otherwise in writing, the County agrees to promote environmental justice by following: (1) Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low- Income Populations," February 11, 1994, 42 U.S.C. § 4321 note, as well as facilitating compliance with that Executive Order, and (2) DOT Order 5610.2, "Department of Transportation Actions To Address Environmental Justice in Minority Populations and Low-Income Populations," 62 Fed. Reg. 18377, April 15, 1997, and (3) The most recent and applicable edition of FTA Circular 4703.1, "Environmental Justice Policy Guidance for Federal Transit Administration Recipients," August 15, 2012, to the extent consistent with applicable Federal laws, regulations, and guidance,

5.36 **Environmental Protections**

Compliance is required with any applicable Federal laws imposing environmental and resource conservation requirements for the project. Some, but not all, of the major Federal laws that may affect the project include: the National Environmental Policy Act of 1969; the Clean Air Act; the Resource Conservation and Recovery Act; the comprehensive Environmental response, Compensation and Liability Act; as well as environmental provisions with Title 23 U.S.C., and 49 U.C. chapter 53. The U.S. EPA, FHWA and other federal agencies may issue other federal regulations and directives that may affect the project. Compliance is required with any applicable Federal laws and regulations in effect now or that become effective in the future.

5.37 **Geographic Information and Related Spatial Data**

Any project activities involving spatial data or geographic information systems activities financed with Federal assistance are required to be consistent with the National Spatial Data Infrastructure promulgated by the Federal Geographic Data Committee, except to the extent that FTA determines otherwise in writing.

5.38 **Geographic Restrictions**

The County agrees that it will not use any State or local geographic preference, except: (1) A preference expressly mandated by applicable Federal law, or (2) A preference permitted by FTA; for example, a contractor's geographic location may be a selection criterion for a County that is procuring architectural engineering or related services, provided that a sufficient number of qualified firms are eligible to compete for that contract, or (3) As provided in section 418 of the Consolidated and Further Continuing Appropriations Act, 2015, Public Law No. 113-235, December 15, 2014, geographic preferences in construction hiring are protected from enforcement under former 49 C.F.R. § 18.36(c)(2), in accordance with any applicable federal regulations, requirements, and guidance and as implemented by FTA.

5.39 **Organizational Conflicts of Interest**

The County agrees that it will not enter into a procurement that involves a real or apparent organizational conflict of interest described as follows: (1) When It Occurs. An organizational conflict of interest occurs when the Project work, without appropriate restrictions on certain future activities, results in an unfair competitive advantage: (a) To that Third Party Participant or another Third Party Participant performing the Project work, and (b) That impairs that Third Party Participant's objectivity in performing the Project work, or (2) Other. An organizational conflict of interest may involve other situations resulting in fundamentally unfair competitive conditions, (3) Disclosure Requirements. Consistent with FTA policies, the County must disclose to FTA, and each of its Sub-recipients must disclose to the Recipient: (a) Any instances of organizational conflict of interest, or (b) Violations of federal criminal law, involving fraud, bribery, or gratuity violations potentially affecting the federal award, and (4) Failure to Disclose. Failure to make required disclosures can result in remedies for noncompliance, including debarment or suspension.

5.40 **Federal Single Audit Requirements for State Administered Federally Aid Funded Projects Only**

Non Federal entities that expend $750,000 or more in a year in Federal awards from all sources are required to comply with the Federal Single Audit Act provisions contained in U.S. Office of Management and Budget (OMB) Circular No. A 133, Audits of States, Local Governments, and Non Profit Organizations and (2 CFR § 200.501). Non Federal entities that expend Federal awards from a single source may provide a program specific audit, as defined in the Circular. Non Federal entities that expend less than $750,000 in a year in Federal awards from all sources are exempt from Federal audit requirements for that year, except as noted in '3052.215(a), but records must be available for review or audit by appropriate officials of the Federal and State agencies.

5.41 **Catalog of Federal Domestic Assistance (CFDA) Identification Number**

The municipal project sponsor is required to identify in its accounts all Federal awards received and expended, and the Federal programs under which they were received. Federal program and award identification shall include, as applicable, the CFDA title and number, award number and year, name of the Federal agency, and name of the pass through entity.

5.42 **CFDA number for the Federal Transportation Administration**

A Recipient covered by the Single Audit Act Amendments of 1996 and OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations," agrees to separately identify the expenditures for Federal awards under the Recovery Act on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by OMB Circular A-133. The County agrees to accomplish this by identifying expenditures for Federal awards made under Recovery Act separately on the

SEFA, and as separate rows under Item 9 of Part III on the SF-SAC by CFDA number, and inclusion of the prefix "ARRA" in identifying the name of the Federal program on the SEFA and as the first characters in Item 9d of Part III on the SF-SAC.

5.43 BUY AMERICA CERTIFICATION
(STEEL OR MANUFACTURED PRODUCTS)
[61 FR 6302, Feb. 16, 1996, as amended at 74 FR 30239, June 25, 2009]

General Requirement (as stated in 49 CFR661.5)

Except as provided in 49 CFR 661.7 and 49 CFR 661.11, no funds may be obligated by FTA for a grantee project unless all iron, steel, and manufactured products used in the project are produced in the United States.

All steel and iron manufacturing processes must take place in the United States, except metallurgical processes involving refinement of steel additives.

The steel and iron requirements apply to all construction materials made primarily of steel or iron and used in infrastructure projects such as, transit or maintenance facilities, rail lines, and bridges. These items include, but are not limited to, structural steel or iron, steel or iron beams and columns, running rail and contact rail. These requirements do not apply to steel or iron used as components or subcomponents of other manufactured products or rolling stock, or to bimetallic power rail incorporating steel or iron components.

For a manufactured product to be considered produced in the United States:

(1) All of the manufacturing processes for the product must take place in the United States; and

(2) All of the components of the product must be of U.S. origin. A component is considered of U.S. origin if it is manufactured in the United States, regardless of the origin of its subcomponents.

If steel, iron, or manufactured products (as defined in 49 CFR 661.3 and 661.5) are being procured, the appropriate certificate as set forth below shall be completed and submitted by each bidder or offeror in accordance with the requirement contained in 49 CFR 661.13(b).

☐ **Certificate of Non-Compliance with Buy America Steel or Manufactured Products Requirements** The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j), but it may qualify for an exception to the requirement pursuant to 49 U.S.C. 5323(j)(2), as amended, and the applicable regulations in 49 C.F.R. 661.7.

☐ **Certificate of Compliance with Buy America Requirements.**
The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(1), and the applicable regulations in 49 CFR part 661.

Signature _____ Date 4/28/16

Company IVEJS CONSTRUCTION

IN WITNESS WHEREOF, the parties have affixed their signatures, effective on the date first above written.

ATTEST:

Scott Ellis, Clerk

BREVARD COUNTY

BOARD OF COUNTY COMMISSIONERS

By: _____
Jim Barfield, Chairman

As approved by the Board on: 1/27/15

IVEY'S CONSTRUCTION, INC.

ATTEST:

By: KEVIN W. IVEY, PRESIDENT
Printed Name & Title

ATTACHMENT "A"
AGREEMENT
BETWEEN OWNER AND CONSTRUCTION MANAGER

THIS AGREEMENT made the __ day of _____ in the year Two Thousand Sixteen between the **BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS**, a political subdivision of the State of Florida whose address is 2725 Judge Fran Jamieson Way, Viera, Florida 32940 (hereinafter referred to as "Owner"), and _____ whose address is _____ (hereinafter referred to as "Construction Manager"), a company licensed to do business in the State of Florida.

ARTICLE 1

THE CONSTRUCTION TEAM AND EXTENT OF AGREEMENT

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

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

The specific representatives of the Construction Team are shown in **Attachment "A"** attached.

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

1.3 Definitions:

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

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

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

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

Construction Manager –

Architect/Engineer –

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

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

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

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

Substantial Completion - the point in the construction where all essential elements of the Project are sufficiently complete in conformance with the Contract, that the OWNER has both the occupancy of the Project, as evidenced by a Certificate of Occupancy issued by the governmental authority with

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

1.4 Extent of Agreement - This Agreement for Construction Management services for the construction of the _____ between the Owner and the Construction Manager supersedes any prior negotiations, representations or agreements. The drawings, specifications and other descriptive documents defining the work to be included under this construction contract are identified in **Attachment "D"**. The Construction Manager shall obtain from the Owner three (3) sets of signed, sealed and dated drawings, specifications and other documents upon which the GMP is based; shall acknowledge on the face of each document of each set that it is the set upon which he based his GMP; and shall send one (1) set of the documents to the Project Director along with his GMP proposal, while keeping one (1) set for himself and returning one (1) set to the Architect/Engineer.

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

ARTICLE 2

CONSTRUCTION MANAGER'S RESPONSIBILITIES

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

2.1 PRE-CONSTRUCTION PHASE

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

2.1.2 Consultation - Construction Manager will provide Design Disciplines Construction Documents Plans and Specifications review at all design milestones and a final constructability review. The review at each milestone will identify areas of omission, overlapping and identify documents to be modified in order to clarify

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

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

2.1.3 Preliminary Project Schedule - Construction Manager has prepared a Preliminary Project Schedule, a copy of which is attached as **Attachment "E"**. Construction Manager shall coordinate and integrate the Preliminary Project Schedule with the services and activities of Owner, Architect and Construction Manager. The Construction Manager shall provide current scheduling information and provide direction and coordination regarding milestones, beginning and finishing dates, responsibilities for performance and the relationships of the Construction Manager's work to the work of his subcontractors and suppliers to enable them to perform their respective tasks so that the development of construction progresses in a smooth and efficient manner in conformance with the overall Total Project Schedule. The schedule shall include all phases of construction work, material supplies, long lead procurement, approval of shop drawings, change orders in progress, schedules for change orders, and performance of testing requirements. The Construction Manager shall advise the Owner, its representatives and the Architect/Engineer of their required participation in any meeting or inspection giving each at least one (1) week notice unless such notice is made impossible by conditions beyond the Construction Manager's control. The Construction Manager shall hold jobsite meetings at least once each week with the Construction Team and at least once each week with the subcontractors and the Architect/Engineer field representatives, and Owner or more frequently as required by work progress, to review progress, discuss problems and their solutions and coordinate future work with all subcontractors.

2.1.4 Subcontractors and Suppliers - Construction Manager shall continue to develop subcontractor interest in the Project and shall furnish to Owner and Architect for

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

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

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

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

2.1.8 Separate Contracts Planning - The Construction Manager shall review the design with the Architect/Engineer and make recommendations to the Owner and to the Architect/Engineer with respect to dividing the work in such manner as will permit the Construction Manager to take bids and award separate construction subcontracts on the current schedule while the design is being completed. The Construction Manager shall take into consideration such factors as natural and practical lines of severability, sequencing, effectiveness, access and availability constraints, total time for completion, construction market conditions, availability of labor and materials, community relations and any other factors pertinent to

saving time and cost by overlapping design and construction that are authorized by the Owner.

2.2 CONSTRUCTION PHASE

2.2.1 Interfacing -

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

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

2.2.2 Solicitation of Bids

(1) Without assuming responsibilities of the Architect/Engineer, the Construction Manager shall prepare Invitations for Bids (or Request For

Proposals, when applicable) for all procurements of long lead times, materials and services for Subcontractor contracts and for site utilities.

(2) As part of such preparation, the Construction Manager shall review the specifications and drawings prepared by the Architect/Engineer. Ambiguities, conflicts or lack of clarity of language, use of illegally restrictive requirements, and any other defects in the specifications or in the drawings noted by the Construction Manager shall be brought to the attention of the Project Director and Architect/Engineer in written form.

(3) For each separate subcontractor or construction trade contract used in this project, the Construction Manager shall, unless waived by the Owner, conduct a pre-bid conference with prospective bidders, the Architect/Engineer and Project Director. In the event questions are raised which require an interpretation of the bidding documents or otherwise indicate a need for clarification or correction of the invitation, the Construction Manager shall transmit these to the Architect/Engineer and upon receiving clarification or correction in writing shall prepare an addendum to the bidding document, and issue same to all of the prospective bidders.

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

2.2.3 Bonds - For those projects where the cost will exceed $100,000.00, in accordance with the provisions of Section 255.05, Florida Statutes, the Construction Manager shall provide to the Owner, on forms furnished by the Owner (**Attachment "G" and "H"**), certified copies of the recorded 100% Public Construction Performance Bond and 100% Public Construction Payment Bond each in an amount not less than the total construction cost (GMP) as defined in Article 9 and inclusive of the construction fee. *Payment and Performance Bonds shall be recorded (by the Construction Manager) in the official record of the County in which the project is located*. The Contractor must provide a copy of the bond(s) to all subcontractors and notify them of deadlines to make claims under the bonds.

2.2.4 Quality Control - The Construction Manager shall develop and maintain a program, acceptable to the Owner and Architect/Engineer, to assure quality control of the construction (*this may include personnel if approved by the Owner*). The Construction Manager shall have a qualified and competent Superintendent to supervise the work of all Subcontractors providing instructions to each when

their work does not conform to the requirements of the plans and specifications and shall continue to exert influence and control over each Subcontractor to ensure that corrections are made in a timely manner so as to not affect the efficient progress of the work. Should disagreement occur between the Construction Manager and Architect/Engineer over acceptability of work and conformance with the requirements of the specifications and plans, the Owner shall be the final judge of performance and acceptability.

2.3 Guaranteed Maximum Price (GMP) and Contract Time

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

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

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

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

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

.3 The Preliminary Construction Schedule (**Attachment "E"**). As reflected in said Schedule, Construction Manager is to achieve Substantial Completion of the Work within ____ calendar days from issuance of Notice to Proceed. Final Completion shall be achieved within an additional ____ calendar days.

2.3.4 Included within the Guaranteed Maximum Price is the Construction Manager's fee. The Construction Manager's Fee is hereby established as $_____ for services provided in this Agreement. The sum of the Cost of the Project and the Construction Manager's Fee shall not exceed the Guaranteed Maximum

Price. The Construction Manager's Fee shall constitute Construction Manager's total compensation for profit. All costs in excess of the final approved GMP (as reduced by Owner direct purchases, if any, in accordance with **Attachment "C"**) are the responsibility of the Construction Manager. Any savings between the GMP (as reduced by Owner direct purchases) and the sum of the actual cost of the Project plus the Construction Manager's fee will be returned to the Owner.

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

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

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

2.4 Construction Phase

2.4.1 General

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

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

2.4.1.3 Construction Manager's Staff - The Construction Manager shall maintain sufficient off-site support staff, and competent full time staff at the Project site authorized to act on behalf of the Construction Manager and to coordinate, inspect and provide general direction of the work and progress of the subcontractors, and the Construction Manager shall provide no less than those personnel during the respective phases of construction. The Construction Manager shall not change any of those designated persons unless mutually agreed to by the Owner and Construction Manager. In such case, the Owner shall have the right of approval of the qualifications of replacement personnel. Such approval will not be reasonably withheld.

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

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

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

2.4.2 Administration

2.4.2.1 Those portions of the Project that Construction Manager does not customarily perform with Construction Manager's own personnel shall be performed under subcontracts or by other appropriate written agreements with Construction Manager. Construction Manager shall obtain bids from subcontractors and from suppliers of materials or equipment fabricated to a special design for the Project from the list previously reviewed and, after analyzing such bids, shall deliver such bids to the Owner and Architect for review and comment. Based upon that review and comment, Construction Manager shall then determine, subject to the reasonable objection of Architect or Owner, which bids will be accepted. Construction Manager shall not be required to contract with anyone to whom Construction Manager has reasonable objection. Notwithstanding anything herein to the contrary, Construction Manager covenants and agrees that it shall competitively bid all subcontracts. Further, with respect to all such subcontracts, Construction Manager covenants and agrees that it shall select and contract with the lowest, responsive and qualified bidder, unless otherwise consented to in writing by Owner.

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

prior written consent of Owner.

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

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

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

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

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

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

(Florida Statute 255.40 Use of asbestos in new public buildings or buildings newly constructed for lease to governmental agencies; prohibition - The use of asbestos or asbestos-based fiber materials is prohibited in any building, construction of which is commenced

after September 30, 1983, which is financed with public funds or is constructed for the express purpose of being leased to any governmental entity.)

2.7 Weather Protection - The Construction Manager will be responsible to ascertain what temporary enclosures, if any, of building areas should be provided for and may be provided as a practical matter, in order to assure orderly progress of the work in periods when extreme weather conditions are likely to be experienced. All costs associated with this shall be the responsibility of the Construction Manager.

2.8 Job Site Requirements

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

a. Maintain a log of daily activities, including manpower records, weather, delays, major decisions, etc. and require the same of subcontractors
b. Maintain a directory of companies on the Project with names, addresses, telephone numbers, emergency telephone numbers and fax numbers of key personnel.
c. Establish and enforce job rules governing parking, clean-up, use of facilities and worker discipline.
d. Provide labor relations management for a harmonious, productive Project.
e. Provide a safety program for the Project to meet OSHA requirements. Monitor for Subcontractor compliance without relieving them of responsibilities to perform work in accordance with the best acceptable practice.
f. Provide a quality control program.
g. Miscellaneous office supplies that support the construction efforts which are consumed by his own forces.

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

(1) Job Meetings - Hold weekly progress and coordination meetings to provide for an easy flowing Project. Implement procedures and assure timely submittals, expedite processing approvals and return of shop drawings, samples, etc. Coordinate and expedite critical ordering and delivery of materials, work sequences, inspection and testing, labor allocations, etc. Review and coordinate each Subcontractor's work. Review and implement revisions to the Schedule. Monitor and promote safety requirements.

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

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

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

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

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

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

(6) Reports and Project Site Documents - Record the progress of the Project. Submit written progress reports to the Owner and the Architect/Engineer including information on the Subcontractor's work, and the percentage of completion. Keep a daily log available to the Owner, the Architect/Engineer and the Permitting Authority inspectors.

(7) Substantial Completion - The Construction Manager shall secure the Certificate of Occupancy and notify the Owner and Architect/Engineer, in writing, that the Project will be ready for inspection to determine if it is substantially complete and ready for inspection on or after a specific date, which date shall be stated in the notice. The notice shall be given at least seven (7) calendar days in advance of said date. Inspection and testing shall take place at time(s) mutually agreeable to the Construction Manager, Architect/Engineer and Owner. The inspection will be conducted jointly between the Architect/Engineer, Owner and Construction Manager's representative. The inspection shall determine if substantial completion has been accomplished and the Architect/Engineer shall

produce a Certificate of Substantial Completion (**Attachment "J"**) and a written list of unfinished Work and defective work, commonly referred to as a "Punch List", which must be finished and corrected to obtain final completion.

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

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

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

The Construction Manager shall secure and transmit to the Architect/Engineer all required guarantees, affidavits, releases, bonds and waivers, manuals, record drawings, and maintenance books as part of final completion (in triplicate) unless stated otherwise in the Project specifications.

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

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

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

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

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

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

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

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

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

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

(13) Warranty - Where any work is performed by the Construction Manager's

own forces or by Subcontractors under contract with the Construction Manager, the Construction Manager shall warrant that all materials and equipment included in such Work will be new except where indicated otherwise in Contract Documents, and that such Work will be of good quality, free from improper workmanship and defective materials and in conformance with the Drawings and Specifications. With respect to the same Work, the Construction Manager further agrees to correct all work found by the Owner to be defective in material and workmanship or not in conformance with the Drawings and Specifications for a period of one (1) year from the Date of Final Completion or as may be set forth with respect to specific warranties contained in the trade sections of the Specifications. The Construction Manager shall collect and deliver to the Owner any specific written warranties given by others as required by the Contract Documents. **Also, the Construction Manager shall conduct, jointly with the Owner and the Architect/Engineer, a warranty inspection nine (9) months after the date of Owner Occupancy. This warranty inspection will be scheduled by a representative of the Owner.**

ARTICLE 3

OWNER'S RESPONSIBILITIES

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

3.2 Owner's Representative/Project Director - The Owner shall designate a representative who shall be fully acquainted with the Project and shall define the lines of Owner authority to approve Project Construction Budgets, and changes in Project. The Owner's representative shall render decisions promptly and furnish information expeditiously.

3.3 Architect and Engineer's Agreement - The Owner shall retain an Architect/Engineer for design and to prepare construction documents for the Project. The Architect/Engineer's services, duties and responsibilities are described in the Agreement between the Owner and the Architect/Engineer, a copy of which will be furnished to the Construction Manager upon request.

3.4 Approvals and Easements - The Owner shall pay for necessary approvals, easements, assessments and charges required for the construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

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

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

3.7 Cost of Surveys & Reports - The services, information, surveys and reports required by the above paragraphs shall be furnished with reasonable promptness in accordance with the approved schedule at the Owner's expense, and the Construction Manager shall be entitled to rely upon the accuracy and completeness thereof.

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

3.9 Funding - The Owner shall furnish, in accordance with the established schedule, reasonable evidence satisfactory to the Construction Manager that sufficient funds will be available and committed for the cost of each part of the Project.

3.10 Lines of Communication - The Owner and Architect/Engineer shall communicate with the Subcontractors or Suppliers only through the Construction Manager while such method of communication is effective in maintaining Project schedules and quality.

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

3.12 Permitting & Code Inspections - The Owner recognizes and coordinates with the Permitting Authority and expects the Construction Manager to do the same.

ARTICLE 4

PERMITTING AND INSPECTION

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

4.2 The Construction Manager shall comply with and give notices required by laws,

ordinances, rules and regulations and lawful orders of public authorities bearing on performance of the work required for the Project.

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

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

ARTICLE 5

SUBCONTRACTS

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

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

5.3 Required Subcontractor and Subcontract Conditions.

5.3.1 Subcontractual Relations - By an appropriate written agreement, the Construction Manager shall require each Subcontractor to the extent of the work to be performed by the Subcontractor, to be bound to the Construction Manager by the terms of the Contract Documents, and to assume toward the Construction Manager all the obligations and responsibilities which the Construction Manager by this Agreement, assumes toward the Owner and the Architect/Engineer. Said agreements shall preserve and protect the rights of the Owner and Architect/Engineer under the Contract Documents with respect to the work to be performed by the Subcontractor so that the subcontracting thereof will not prejudice such rights. Where appropriate, the Construction Manager shall require each Subcontractor to enter into similar agreements with his Subcontractor's

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

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

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

(3) All subcontracts shall provide:

a. LIMITATION OF REMEDY - NO DAMAGES FOR DELAY
That the Subcontractor's exclusive remedy for delays in the performance of the contract caused by events beyond its control, including delays claimed to be caused by the Owner or Architect/Engineer or attributable to the Owner or Architect/Engineer and including claims based on breach of contract or negligence, shall be an extension of its contract time.

In the event of a change in the work the Subcontractor's claim for adjustments in the contract sum are limited exclusively to its actual cost for such change, plus, no more than five percent (5%) for profit, and five percent (5%) for overhead.

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

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

5.4 Responsibilities for Acts and Omissions - The Construction Manager shall be responsible to the Owner for the acts and omissions of its employees and agents and its Subcontractors, agents and employees, and all other persons performing

any of the work or supplying materials under this contract to the Construction Manager.

ARTICLE 6

SCHEDULE, TIME OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

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

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

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

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

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

ARTICLE 7

GUARANTEED MAXIMUM PRICE FOR CONSTRUCTION

7.1 The Construction Manager will establish and submit in writing a Guaranteed Maximum Price to the Owner for its approval, guaranteeing the maximum price to

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

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

7.3 At the time of execution of the contract, the Construction Manager will verify the time schedule for activities and work which is adopted by the Construction Team and used to determine the Construction Manager's cost of work. Surplus funds from bids received below the applicable line items, including line items within the General Conditions, in the GMP will be set aside for contingency. Construction contingency funds will be used for the purpose of defraying the expenses due to unforeseen circumstances relating to construction. The Construction Manager will be required to furnish documentation evidencing expenditures charged to this contingency prior to the release of funds by the Owner. Documentation for use of the Contingency shall be determined by the Construction Team. The Architect/Owner shall verify and approve the actual costs.

If bids are received above the applicable line item in the GMP the deficiency will be taken from the contingency via an approved Authorization to Initiate Work/GMP Realignment form; however, such events shall not be cause to increase the GMP. If bids are not received for a portion of the work at or below the applicable line item amount in the GMP, the Construction Manager reserves the right to perform that portion of the work or negotiate for its performance for the specified line item lump sum amount or less.

ARTICLE 8

CONSTRUCTION MANAGER'S FEE

8.1 In consideration of the performance of the contract, the Owner agrees to pay the Construction Manager as compensation for his services fees as set forth in Subparagraphs 8.1.2 and 8.1.3. subject to the retainage specified in 8.1.1 below.

8.1.1 Construction Phase Fee - Prior to commencement of the Construction Phase, the Owner will direct the Construction Manager in writing to proceed into the Construction Phase. The Owner retains the right to review the need and effectiveness of any employee or employees assigned by the Construction Manager, should the Project Director question the need for the employee or employees. A percentage of the agreed upon Construction Phase Fee shall be paid monthly based on percentage (%) of work completed, less retainage, in accordance with subsection 12.1 below. The Construction Manager's first monthly Certificate for Payment shall be submitted no earlier than thirty (30) days following the issuance of the Notice to Proceed, and the final monthly payment shall be paid only when construction of the Project is finally completed, all original, final release of liens are received, closeout documentation has been submitted and occupancy of the Project accepted by the Owner. If construction is authorized only for a part of the Project, the fee paid shall be proportionate to the amount of work authorized by the Owner.

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

(a) The Construction Manager shall be paid an additional fee subject to negotiation if the Construction Manager is placed in charge of reconstruction of an insured or uninsured loss excluding any condition that may have been caused from negligent acts by the Construction Manager, subcontractors or others for whose acts the Construction Manager is responsible.

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

(a) Corporate costs including expenses and overhead and profit related to this project by the Construction Manager's principal and branch offices.

(b) Costs of all data processing, accounting, purchasing and associated staff which is performed at the home office.

(c) General operating expenses incurred in the management and supervision of the project, except as expressly included in Article 9.

(d) Salaries or other compensation of the Construction Manager's employees at his principal and branch offices.
(e) Those services set forth in Paragraph 2.1, 2.2, 2.3 and 2.4; except as expressly included in Article 9.
(f) Relocation expenses for Construction Manager's personnel.
(g) Costs of all project estimating, safety, scheduling and accounting staff.

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

ARTICLE 9

COST OF THE PROJECT

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

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

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

(1) Labor wages paid for the on-site Project Superintendent directly responsible for the operation and supervision of the project, clerical and Quality Control personnel (as opposed to wages paid to management or supervisory personnel who are not part of the on-site project management) in the direct employ of the Construction Manager in the performance of the Construction Manager's work under this Agreement, acceptable salary or wage schedules and such fringe benefits, if any, as

may be payable with respect thereto (labor burden not to exceed 40% for payroll and 15% for per diem).

(2) Payments due to Subcontractors from the Construction Manager or made by the Construction Manager to Subcontractors for their work performed pursuant to contract under this Agreement.

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

(4) Sales, use, gross receipts or similar taxes related to allowable direct costs of the Project imposed by a governmental authority, and for which the Construction Manager is liable. No costs shall be paid by the Owner to the Construction Manager for any expenses made necessary to correct defective workmanship or to correct any work not in conformance with the Plans and Specifications or to correct any deficiency or damage caused by negligent acts by the Construction Manager.

(5) If approved by the Owner, the Construction Manager, when qualified, may self perform all or a portion of the work for any item listed on the estimate or GMP breakdown where it is deemed advantageous due to schedule or economic benefit for the direct cost of the work.

(6) Legal costs reasonably and properly resulting from prosecution of the Project for the Owner, including handling claims for changes by subcontractors and vendors, subject to the following limitations:

(a) The Owner approved incurring such costs in advance, which approval shall not be unreasonably denied; and
(b) The legal costs were not incurred as result of the Construction Manager's own negligence or default.

(7) Costs for such temporary facilities during construction, as approved by the Owner, including temporary water, heat, power, sanitary facilities, telephones, radios and computers with software.

9.3 Allowances

Within the GMP, there may be specific items which the Construction Manager and Owner have agreed to include as allowances in the estimates until such time as the cost and schedule impact of these items can be more specifically ascertained. At the time that the Costs of the Work of allowance items becomes known (either through a subcontract price or by virtue of either (A) scope of work and cost agreed to by Construction Manager and Owner or (B) an actual buyout of the item), the GMP and Scheduled Completion Date will be adjusted (either

increased or decreased) by the actual Costs of the Work and schedule impact of the item. With respect to increases and decreases to the amount of an allowance item, Construction Manager shall be entitled to the Construction Manager's fee, subject to the limits set forth in Article 8, on the adjusted amount of such allowance, and the GMP shall be adjusted by reason thereof, by Change Order. Allowances must be agreed to by both parties. Allowances included within the GMP constitute approval of said allowances at the time the Guaranteed Maximum Price is approved.

9.4 Public Records Law and Audit Requirements

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

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

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

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

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

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

The Construction Manager shall meet all requirements for retaining public

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

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

ARTICLE 10

CHANGES IN THE PROJECT

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

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

expect that the change will be incorporated in a subsequently issued Change Order or be covered by an authorized contingency.

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

10.1.3 The increase or decrease in the Guaranteed Maximum Price resulting from Change Orders in the Project shall be determined by one of the following ways:

(1) by mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation by the Architect/Engineer and Owner;
(2) by unit prices stated in the Agreement or subsequently agreed upon;
(3) by cost as defined in Article 9 plus a mutually acceptable fixed or percentage fee; or
(4) by the method provided in Subparagraph 10.1.4.

10.1.4 If none of the methods set forth in Clause 10.1.3 is agreed upon, the Construction Manager, provided he receives a written order signed by the Owner, shall promptly proceed with the work required by the Construction Change Directive involved. The cost of such work shall then be determined on the basis of the reasonable expenditures and savings of those performing the work attributed to the change. However, in the event a Change Order is issued under these conditions, the Architect/Engineer will establish an estimated cost of the work and the Construction Manager shall not perform any work whose cost exceeds that estimate without prior written approval by the Owner. In such case, and also under Article 10.1.3 above, the Construction Manager shall keep and present, in such forms as the Owner may prescribe, an itemized accounting together with appropriate supporting data of the increase in the Cost of the Project as outlined in Article 9. The amount of decrease in the Guaranteed Maximum Price to be allowed by the Construction Manager to the Owner for any deletion or change which results in a net decrease in cost will be the amount of the actual net decrease in the Cost of the Project and the Construction Manager's fee subject to the limits set forth in Article 7.

10.1.5 If unit prices are stated in the Agreement or subsequently agreed upon and if the quantities originally contemplated are so changed in a proposed

Change Order that application of the agreed unit prices to the quantities of Work proposed will cause substantial inequity to the Owner or the Construction Manager, the applicable unit prices and Guaranteed Maximum Price shall be equitably adjusted.

10.1.6 Should the Construction Manager or his contracted subcontractors encounter:

(1) concealed conditions in the performance of the Work below the surface of the ground; or
(2) concealed or unknown conditions in an existing structure be at variance with the conditions indicated by the Drawings, Specifications, or Owner furnished information; or
(3) unknown physical conditions below the surface of the ground; or
(4) concealed or unknown conditions in an existing structure of an unusual nature;

differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Agreement, then the Guaranteed Maximum Price and the Construction Completion date shall be equitably adjusted by Change Order upon a request for Change Order in accordance with Article 10.2. and Article 11.

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

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

10.1.7 The Construction Manager shall review any Owner directed change and shall respond in writing within seven (7) calendar days after receipt of the proposed change (or such other reasonable time as the Owner may direct), stating the effect of the proposed change upon the Construction Manager's Work, including any increase or decrease in the contract time

or price. The Construction Manager shall furnish to the Owner an itemized breakdown of the quantities and prices used in computing the change in Contract price.

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

10.2 **Claims for Additional Cost or Time**

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

10.2.1 If the Construction Manager is delayed at any time in the progress of the work by any act or neglect of the Owner or the Architect or of any employee of either or by any separate Construction Manager employed by the Owner or by any changes ordered in the work by labor disputes, fire, or unusual delay in transportation, unavoidable casualties or any causes beyond the Construction Manager's control or by delay authorized by the Owner pending resolution or disputes, and such delay extends the completion date, the Substantial Completion shall be extended by Change Order for such reasonable time as the Construction Team may determine.

10.2.2 All change orders must indicate that the Contract Time for Completion is not changed or is either increased or decreased by a specific number of days. The previous Time for Completion and, if there is one, the new Time for Completion must be stated. The Construction Manager must provide written justification for an extension of the Time for Completion to the Architect/Engineer and to the Owner. The written justification must demonstrate an anticipated actual increase in the time required to complete the Work beyond that allowed by the Contract as adjusted by prior change orders or amendments to the Contract, not just an increase or decrease in the time needed to complete some portion of the total Work. No increase to the Time for Completion shall be allowed unless the additional or changed Work increases the length of the critical path. Approved increases in time required to complete the Work shall be added to the Time for Completion. Decreases in time as a result of the change order shall be demonstrated by a decrease in the critical path of the Work if CPM scheduling is properly used and updated by the Construction Manager. If no CPM is used the Owner shall determine the appropriate decrease by the best means possible. Approved decreases in the time needed to complete the Work shall be deducted from the Contract completion date. The change to time and Contract price allowed by each

change order shall include all time and monetary impacts of the change, whether the change order is considered alone or with all other changes during the course of the project. Failure to include a change to time and Contract price in a change order shall waive any change to the time and Contract price unless the parties mutually agree in writing to postpone a determination of the change to time and price resulting from the change order. Such a determination may be postponed not more than forty five (45) days to give the Construction Manager an opportunity to demonstrate a change in the time and price needed to complete the Work.

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

10.3 Minor Changes in the Project (Realignment of Work)
The Owner and/or Architect/Engineer will have authority to order minor changes in the Project not involving an adjustment in the Guaranteed Maximum Price or an extension of the Construction Completion Date and not inconsistent with the intent of the Drawings and Specifications. Such changes shall be affected by written order. Documentation of changes shall be determined by the Construction Team, and included in the Project Manual. Changes shall be approved by the Project Director, Architect/Engineer. It shall be the Owner's discretion as to whether a Realignment of Work requires the A/E signature. All changes or realignments of work performed within the Guaranteed Maximum Price will not include overhead, profit or General Condition additional costs, since costs are absorbed within the Guaranteed Maximum Price (GMP).

10.4 In any emergency affecting the safety of persons or property, the Construction Manager shall act at his discretion, to prevent threatened damage, injury or loss. Any increase in the Guaranteed Maximum Price or extension of time claimed by the Construction Manager on account of emergency work shall be determined as provided in Article 10.

ARTICLE 11

DISCOUNTS

11.1 All discounts for prompt payment shall accrue to the Owner to the extent the Cost of the Project is paid directly by the Owner or from a fund made available by the Owner to the Construction Manager for such payments.

To the extent the Cost of the Project is paid with funds of the Construction Manager, all cash discounts shall accrue to the Construction Manager. All trade discounts, rebates and refunds, and all returns from sale of surplus materials and equipment, shall be credited to the Cost of the Project.

ARTICLE 12

PAYMENTS TO THE CONSTRUCTION MANAGER

12.1 Monthly Statements - The Construction Manager shall submit to the Owner a sworn statement along with the Certificate for Payment, showing in detail all monies paid out, cost accumulated or costs incurred on account of the Cost of the Project during the previous period and the amount of the Construction Manager's fees due as provided in Article 8. This data shall be attached to the Certificate for Payment Form shown in **Attachment "N"**, and shall include, but not be limited, to the following:

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

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

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

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

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

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

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

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

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

12.4 Withholding Payments to Subcontractors - The Construction Manager shall not

withhold payments to Subcontractors if such payments have been made to the Construction Manager. Should this occur for any reason, the Construction Manager shall immediately return such monies to the Owner, adjusting pay requests and project bookkeeping, as required.

ARTICLE 13

INSURANCE, INDEMNITY WAIVER OF SUBROGATION

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

(2) The Owner shall cause any other Construction Manager who may have a contract with the Owner to perform construction or installation work in the area where work will be performed under this Agreement, to agree to indemnify the Owner and the Construction Manager and hold them harmless from all claims for bodily injury and property damage (other than property insured under Paragraph 13.2(3)) that may arise from the Construction Manager's operations.

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

13.2 Insurance

(1) The Construction Manager shall not commence any construction work in connection with this Agreement until the Construction Manager has obtained all of the following types of insurance and such insurance

certificate(s) have been submitted to the Owner and have been approved by the Owner, nor shall the Construction Manager allow any Subcontractor to commence work on his subcontract until all insurance required of the Subcontractor has been so obtained and approved. All insurance policies shall be with insurers qualified and doing business in the State of Florida.

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

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

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

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

3. Contractual Liability Work Contracts - The Construction Manager's Liability Policy shall include Contractual Liability Coverage designed to protect the Construction Manager for contractual liabilities assumed by the Construction Manager in the performance of this Agreement.

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

d. Performance and Payment Bonds - With limits of not less than 100% of the total construction cost of this project. Payment and Performance Bond shall be recorded in the official record of the County in which the project is located. These bonds shall remain in effect at least until one (1) year after the date when the final payment is approved. Any bonding company submitting a Bid Bond, Performance Bond or Payment Bond to Brevard County must be licensed to transact a fidelity and surety business in the State of Florida, and hold a Certificate of Authority from the Secretary of the Treasury under Act of Congress, approved by July

30, 1947 (U.S.C. 613), and approved by Brevard County. Acceptable surety companies shall be licensed to do business in Florida and shall have an A.M. Best Rating of "A-" and financial size V or higher.

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

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

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

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

(1) The name of the insured Construction Manager, the specific job by name and job number, the name of the insurer, the number of the policy, its effective date, and its termination date.

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

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

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

13.3 Waiver of Subrogation

13.3.1 The Owner and the Construction Manager waive all rights against each

other, for damages caused by perils covered by insurance provided under Article 13.2 to the extent covered by such insurance except such rights as they may have to the proceeds of such insurance held by the Owner and Construction Manager as trustees. The Construction Manager shall require similar waivers from all Subcontractors and their Sub-subcontractors.

13.3.2 The Owner and Construction Manager waive all rights against each other for loss or damage to any equipment used in connection with the Project and covered by any property insurance. The Construction Manager shall require similar waivers from all subcontractors and their sub-subcontractors.

13.3.3 The Owner waives subrogation against the Construction Manager on all property and consequential loss policies carried by the Owner on adjacent properties and under property and consequential loss policies purchased for the Project after its completion.

13.3.4 If the policies of insurance referred to in this Article require an endorsement to provide for continued coverage where there is a waiver of subrogation, the Owner of such policies will cause them to be so endorsed. Failure to obtain proper endorsement nullifies the waiver of subrogation.

ARTICLE 14

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

14.1 Termination by the Construction Manager - If the Project is stopped for a period of thirty (30) days under an order of any court or other public authority having jurisdiction or as a result of an act of government, such as a declaration of a national emergency making materials unavailable, through no act or fault of the Construction Manager, or if the Project should be stopped for a period of thirty (30) days by the Owner, then the Construction Manager may, upon seven (7) days written notice to the Owner, request undisputed payment for all work executed, the Construction Manager's fee earned to date, and for any proven loss sustained upon any materials, equipment, tools, construction equipment, and machinery, including reasonable profit, damages and terminal expenses incurred by the Construction Manager.

14.2 Owner's Right to Perform Construction Manager's Obligations and Termination by Owner for Cause -

(1) If the Construction Manager fails to perform any of its obligations under this Agreement, the Owner may, after seven (7) days written notice during

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

(2) If the Construction Manager is adjudged a bankrupt, or if he makes a general assignment for the benefit of his creditors, or if a receiver is appointed on account of his insolvency, or if he persistently or repeatedly refuses or fails, except in case for which extension of time is provided, to supply enough properly skilled workmen or proper materials and fails to maintain an established schedule (failure to maintain schedule shall be defined as any activity on the critical path that falls forty-five (45) days or more behind schedule) which has been adopted by the Construction Team, or if he fails to make prompt payment to subcontractors for materials or labor, or persistently disregards laws, rules, ordinances, regulations, or orders of any public authority having jurisdiction, or otherwise is guilty of a substantial violation of a provision of the Agreement, then the Owner may, without prejudice to any right or remedy and after giving the Construction Manager and his surety, if any, seven (7) days written notice, during which period Construction Manager fails to cure the violation, terminate the employment of the Construction Manager and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Construction Manager, and may finish the Project by whatever method he may deem expedient. In such case, the Construction Manager shall not be entitled to receive any further payment until the Project is finished nor shall he be relieved from his obligations assumed under Article 7. Reasonable termination expenses incurred by the Owner may be deducted from any payments left owing the Construction Manager (excluding monies owed the Construction Manager for subcontract work).

14.3 Termination by Owner for Convenience

(1) If the Owner terminates this Agreement other than pursuant to Article 14.2(2) or Article 14.3(2), he shall reimburse the Construction Manager for any unpaid cost of the Project due him under Article 9, plus that part of the unpaid balance of the Construction Phase Fee in an amount as will increase the payment on account of his fee to a sum which bears the same ratio to the Construction Phase Fee as the Cost of the Project at the time of termination bears to the Guaranteed Maximum Price, if established, otherwise to the Owner's Construction Budget. The Owner shall also pay to the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment

retained. In case of such termination of Agreement the Owner shall reimburse the Construction Manager for obligations and commitments made before notice of termination was received by the Construction Manager.

(2) After the establishment of the Guaranteed Maximum Price or at the completion of the Construction Phase, if the final cost estimates or lack of legislative funding make the Project no longer feasible from the standpoint of the Owner, the Owner may terminate this Agreement and pay the Construction Manager his proportionate fee due in accordance with Article 8.1, plus any costs incurred pursuant to Articles 9 and 10.

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

ARTICLE 15

ASSIGNMENT AND GOVERNING LAW

15.1 Neither the Owner nor the Construction Manager shall assign his interest in this Agreement without the written consent of the other except as to the assignment of proceeds.

15.2 This Agreement shall be governed by the Laws of the State of Florida.

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

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

ARTICLE 16

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

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

the following provisions:

(a) All claims must be submitted as a Request for Change Order in the manner as provided herein;

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

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

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

The Construction Manager agrees that the Owner shall not be liable for any claim that the Construction Manager fails to submit as a Request for Change Order as provided in this section.

16.2 After receipt of a Request for Change Order, the Owner, in consultation with the Architect/Engineer, shall deliver to the Construction Manager its written determination of the claim. As to disputed matters subject to the determination by final Owner action (not actions for breach of contract or tort) the Owner's written decision following compliance with the dispute resolution procedure set forth in sections 16.4 through 16.6 below shall be final Owner action.

16.3 For work the Construction Manager performs with its own forces, and in addition to the adjustments provided for in Article 8, the Construction Manager's exclusive remedy for delays in performance of the construction caused by events beyond its control, including delays claimed to be caused by or attributable to the Owner or the Architect/Engineer, including claims based on breach of contract or negligence, shall be a claim submitted in compliance with Article 16.1 above, for an extension of the scheduled construction time. In the event of a change in

such work that will modify the GMP, the Construction Manager's claim for adjustment in contract sum are limited exclusively to its actual costs for such changes, including costs involved in claim preparation, plus five percent (5%) overhead, five percent (5%) profit and a two percent (2%) bond in the General Conditions. The Construction Manager expressly agrees that the foregoing constitute its sole and exclusive remedies for delays and changes in such work, and eliminate any other remedies for claim for increase in the contract price, delays, changes in the work, damages, losses or additional compensation.

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

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

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

16.5 Within thirty (30) days after denial of a request for a change order or contract modification by the project manager or engineer involving (1) an amount in excess of the County Manager's expenditure authority or (2) for the amount the contractor claims to be due at the time the project is ready for beneficial use or occupation, the County may, at the County's option in lieu of the procedure

specified in subparagraph 16.4, submit the dispute to a mediator with knowledge or experience in construction management, as agreed upon by the parties. Upon referral to a mediator, the County and contractor shall each pay half the estimated cost of the mediator, up front. Within fifteen (15) days after the date of submittal, the mediator, applying the standards set forth in subparagraph 16.4, shall investigate the dispute and submit a written recommendation for disposition of the dispute to the County Manager or a designee with the qualifications specified in subparagraph 16.4. Within fifteen (15) days after receiving the mediator's recommendation, the County Manager shall submit the recommendation to the County Commission, along with a staff report analyzing the dispute and mediator's recommendation. Based on the standards set forth in subparagraph 16.4 above, the Commission shall decide whether to grant or deny, in whole or in part, the amounts recommended by the mediator. The Commission's decision will be deemed final action on the disputed claim for the purposes of ripening the decision for judicial review. If the mediator recommends that no change order or contract modification be granted, the contractor shall reimburse the county for any amounts paid by the county to the mediator.

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

ARTICLE 17

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

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

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

the schedules to be used by the Construction Manager, separate contractors and the Owner until subsequently revised.

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

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

17.5 If part of the Construction Manager's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Construction Manager shall, prior to proceeding with that portion of the Work, promptly report to the Architect/Engineer or Owner apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Construction Manager to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Construction Manager's Work, except as to defects not then reasonably discoverable.

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

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

ARTICLE 18

MISCELLANEOUS

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

18.2 Harmony - Construction Manager is advised and hereby agrees to exert every reasonable and diligent effort to assure that all labor employed by Construction Manager and his Subcontractors for work on the Project shall work in harmony with and be compatible with all other labor being used by building and Construction Managers now or hereafter on the site of the Project.

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

18.3 Apprentices - If the Construction Manager employs apprentices on the project, the behavior of the Construction Manager and the Owner shall be governed by the provision of Chapter 446, Florida Statutes, and by applicable standards and policies governing apprentice programs and agreements established by the Division of Labor of the State of Florida Department of Labor and Employment Security. The Construction Manager will include a provision similar to the foregoing sentence in each subcontract.

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

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

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

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

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

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

ATTEST:

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA

Scott Ellis, Clerk

Jim Barfield
Brevard County Commission

As Approved By the Brevard County Commission:

(Company name here)

BY:
Construction Manager

STATE OF FLORIDA
COUNTY OF BREVARD

The foregoing instrument was acknowledged before me this day of 2016 by whose position is with the firm of, a Florida Corporation, on behalf of the corporation. He/She is personally known to me or has produced as identification.

(SEAL)

NOTARY PUBLIC

Typed, Printed or Stamped Name

ATTACHMENT "A"

CONSTRUCTION TEAM ASSIGNED REPRESENTATIVES

Owner
Brevard County Facilities Department

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

Architect-Engineer

Construction Manager

President
Vice President/Principal-In-Charge
Project Manager
Project Administrator
Project Superintendent
Estimator/Cost Control
Schedules

ATTACHMENT "B"

PROJECT SCOPE OF WORK

ATTACHMENT "C"

DIRECT PURCHASING PROCEDURE
CONSTRUCTION MANAGEMENT AGREEMENT

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

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

a) Contract: Construction Management Agreement by and between Construction Manager and Brevard County Board of County Commissioners, Viera, Florida for the construction of _____.

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

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

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

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

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

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

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

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

j) Material Requisition: A request by the Construction Manager to the Owner that the Owner directly purchase specific items described in sufficient detail, including quantity, grade, brand, etc., along with the vendor or material supplier and that

vendor or material supplier's quoted price for the Materials.

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

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

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

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

The Manager shall be fully responsible for all matters relating to the receipt of County Purchased Materials under these Procedures, including, but not limited to, preparation of shop

drawings and submittals, verifying correct quantities, verifying documents of orders in a timely manner, coordinating purchases, providing and obtaining all warranties and guarantees required by the Contract Documents, inspection and acceptance of the goods at the time of delivery, and loss or damage to equipment and materials due to the negligence of the Manager. The Manager shall coordinate delivery schedules, sequence of delivery, loading orientation, and other arrangements normally required by the Manager for the Materials furnished. The Manager shall provide all services required for the unloading, handling and storage of Materials through installation. The Manager agrees to indemnify and hold the Owner harmless from any and all claims of whatever nature resulting from non-payment of goods to suppliers arising from the actions of Manager.

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

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

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

Following performance of the Purchase Orders by the suppliers, and submittal of documentation

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

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

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

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

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

ATTACHMENT "D"

DRAWINGS AND SPECIFICATIONS

ATTACHMENT "E"

CONSTRUCTION MANAGER'S
PRELIMINARY CONSTRUCTION SCHEDULE

ATTACHMENT "F"

ORDINANCE 98-37

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. (a) Potential lump sum bidders responding to a request for qualifications are required to submit information required by this article and as identified in the RFQ

package. A committee identified in the RFQ package will determine whether a potential bidder is qualified and responsive as defined in this article.

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

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

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

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

(d) At the completion of each competitively awarded County construction project, the County department which administered the construction contract shall

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

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

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

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

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

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

   - County evaluations of the performance on County projects;

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

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

4. The County Manager will establish committees which may debar a contractor, contractor's key personnel, contractor's surety, subcontractor and subcontractor's key personnel, or any entity which key personnel are later employed or retained by in a supervisory position, from bidding on any County project under the circumstances enumerated below. The decision to disbar is

discretionary, the seriousness of the offense and all mitigating factors should be considered in making the decision to disbar. The notice of debarment shall state the time when such debarment will be lifted, if ever, and the contractor's right to appeal such debarment to the Board of County Commissioners under the Board's regular agenda. The Board reserves the power to waive or lift any committee imposed suspension or debarment.

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

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

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

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

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

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

Section 3: Severability: If any provision of this ordinance is held to be illegal or invalid,

the other provisions shall remain in full force and effect.

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

ATTACHMENT "G"

PUBLIC CONSTRUCTION PAYMENT BOND

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

THE CONDITIONS OF THIS BOND are that if Principal:

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

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

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

Witness:

_____

_____
Principal Seal

Its: _____
Title

Witness:

_____

_____
Surety Seal

Its: _____
Title

ATTACHMENT "H"

PUBLIC CONSTRUCTION PERFORMANCE BOND

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

THE CONDITIONS OF THIS BOND are that if Principal:

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

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

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

Witness:

_____

_____
Principal Seal

Its: _____
Title

Witness:

_____

_____
Surety Seal

Its: _____
Title

ATTACHMENT "I"

CONSTRUCTION MANAGER'S
GUARANTEED MAXIMUM PRICE

ATTACH HERE

ATTACHMENT "J"

CERTIFICATE OF SUBSTANTIAL COMPLETION

(Insert Form Here)

ATTACHMENT "K"

CERTIFICATE OF FINAL COMPLETION

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

CERTIFICATE OF ARCHITECT/ENGINEER

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

A/E Firm Name: _____ By: _____

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

THROUGH THE SUBSTANTIAL COMPLETION PHASE

1. Notice to Proceed (N.T.P.)
2. Time Specified in Original Contract for Substantial Completion (S.C.)
3. Extension Granted By Change Orders (Days Between Original Contract S.C. and Final Contract S.C.)
4. Total Days Allowable to Substantial Completion (Add Lines 2 and 3)
5. Project Substantially Completed as Certified by A/E (Total Days from NTP through Date Certified by A/E)
6. Substantial Completion Overrun (Subtract Line 4 from 5 and Enter Overrun)

THROUGH THE FINAL COMPLETION PHASE

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

Architect: _____ Date: _____

Project Manager: _____ Date: _____

Facilities Construction Manager: _____ Date: _____

ATTACHMENT "L"

ALLOWABLE COSTS, OVERHEAD

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

ATTACHMENT "M"
(Direct Cost Items)
GENERAL CONDITIONS

SUPERINTENDENT

JOB SITE SECRETARY/CLERK

QUALITY CONTROL

SURVEY

PERMITS

IMPACT/CONNECTION FEES

CONSTRUCTION DRAWINGS/SPECS

PROGRESS PHOTOGRAPHS *(IF REQUESTED BY THE OWNER)*

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

SPECIAL SECURITY *(IF REQUESTED BY THE OWNER)*

PAYMENT & PERFORMANCE BONDS

BUILDERS RISK INSURANCE

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

TEMPORARY UTILITIES *(AS APPROVED BY THE OWNER)*

TEMPORARY JOBSITE FENCING *(INITIAL INSTALLATION ONLY)*

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

ATTACHMENT "N"

CERTIFICATE FOR PAYMENT

(INSERT FORM HERE)

ATTACHMENT "O"

MINORITY EMPLOYMENT INFORMATION

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

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

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

   Company Name:
   Signature: _____ Date: _____

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

   Company Name:
   Signature: _____ Date: _____

Company Name: _____

Company Address: _____

Company Telephone: _____

Signature: _____ Printed Signature: _____

ATTACHMENT "P"

PUBLIC ENTITY CRIME ACKNOWLEDGMENT

A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid/quote/proposal on a contract to provide goods or services to a public entity, may not submit a bid/quote/proposal on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids/quotes/proposals on leases of rental property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for Category Two ($15,000) for a period of thirty six (36) months from the date of being placed on the convicted vendor list.

NON-COLLUSION AFFIDAVIT OF PRIME BIDDER

State of Florida
County of Brevard

_____, being duly sworn, deposes and says that:

(1) Affiant is _____ of _____, the Bidder that has submitted a bid/quote/proposal;

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

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

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

(5) The price or prices negotiated for the bid/quote/proposal are fair and proper and are not tainted by any collusion, conspiracy, connivance, or unlawful agreement

on the part of the Bidder or any of its agents, representatives, owners, employees, or parties of interest, including affiant.

_____
Signature

_____
Title

Subscribed and sworn to before me this ____ day of _____, 20___.

_____
Notary Public

My Commission expires: _____

II.C.2

AGREEMENT
BETWEEN OWNER AND CONSTRUCTION MANAGER

THIS AGREEMENT made the 2nd day of October in the year Two Thousand Eighteen between the **BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS**, a political subdivision of the State of Florida whose address is 2725 Judge Fran Jamieson Way, Viera, Florida 32940 (hereinafter referred to as "Owner"), and Heard Construction, Inc. (hereinafter referred to as "Construction Manager"), 95 E. Hall Road, Merritt Island, FL, 32953, a company licensed to do business in the State of Florida.

ARTICLE 1

THE CONSTRUCTION TEAM AND EXTENT OF AGREEMENT

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

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

The specific representatives of the Construction Team are shown in **Attachment "A"** attached.

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

1.3 Definitions:

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

Owner - Brevard County Board of County Commissioners, Central Services Department - Facilities, 2725 Judge Fran Jamieson Way, Building A, 2nd Floor,

Viera, Florida 32940, (321) 633-2050; facsimile (321) 633-2101. For the purposes of this agreement, the Owner may also include the County Manager or the Project Director with regard to the performance of designated functions and duties specified for each under the terms and provisions of this agreement.

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

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

Construction Manager – Heard Construction, Inc.

Architect/Engineer – TLC Engineering for Architecture, Inc.

Project Director - The person designated by the Owner to provide direct interface with the Construction Manager with respect to the Owner's responsibilities. Tim Lawry is the designated Project Director, and George Clark is the designated Construction Coordinator.

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

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

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

Substantial Completion - the point in the construction where all essential elements of the Project are sufficiently complete in conformance with the Contract, that the OWNER has both the occupancy of the Project, as evidenced by a Certificate of Occupancy issued by the governmental authority with jurisdiction and the beneficial use of the Project for its intended purpose where only minor punch list items are required for final completion. Substantial

Completion shall not be deemed to have occurred where 1) latent defects are revealed subsequent to use and occupation of the project by the OWNER or 2) where the scope of substantial defects in workmanship or materials are not readily observable or discoverable when use and occupancy of the project commenced or 3) the failure to meet grant specifications, if any.

1.4 Extent of Agreement - This Agreement for Construction Management services between the Owner and the Construction Manager - for the removal of roof from the existing building; installation of a new 750 square foot storage shed and new metal roof over the existing building and the new shed - supersedes any prior negotiations, representations or agreements. The drawings, specifications and other descriptive documents defining the work to be included under this construction contract are identified in **Attachment "D"**. The Construction Manager shall obtain from the Owner three (3) sets of signed, sealed and dated drawings, specifications and other documents upon which the GMP is based; shall acknowledge on the face of each document of each set that it is the set upon which he based his GMP; and shall send one (1) set of the documents to the Project Director along with his GMP proposal, while keeping one (1) set for himself and returning one (1) set to the Architect/Engineer.

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

ARTICLE 2

CONSTRUCTION MANAGER'S RESPONSIBILITIES

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

2.1 PRE-CONSTRUCTION PHASE

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

2.1.2 Consultation - Construction Manager will provide Design Disciplines Construction Documents Plans and Specifications review at all design milestones and a final constructability review. The review at each milestone will identify areas of omission, overlapping and identify documents to be modified in order to clarify the construction details. The review will also include the coordination and

interface of the contract document's General Conditions, Special Conditions, trade contractor bid packages and site utilization planning during construction. Reviews shall be completed and comments provided within five (5) business days. As part of the design review, Construction Manager will provide Value Engineering and construction alternatives, identifying to the Owner and Architect options for systems and components that are cost effective, ease of maintainability and efficiency to be considered.

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

2.1.3 Preliminary Project Schedule - Construction Manager has prepared a Preliminary Project Schedule, a copy of which is attached as **Attachment "E"**. Construction Manager shall coordinate and integrate the Preliminary Project Schedule with the services and activities of Owner, Architect and Construction Manager. The Construction Manager shall provide current scheduling information and provide direction and coordination regarding milestones, beginning and finishing dates, responsibilities for performance and the relationships of the Construction Manager's work to the work of his subcontractors and suppliers to enable them to perform their respective tasks so that the development of construction progresses in a smooth and efficient manner in conformance with the overall Total Project Schedule. The schedule shall include all phases of construction work, material supplies, long lead procurement, approval of shop drawings, change orders in progress, schedules for change orders, and performance of testing requirements. The Construction Manager shall advise the Owner, its representatives and the Architect/Engineer of their required participation in any meeting or inspection giving each at least one (1) week notice unless such notice is made impossible by conditions beyond the Construction Manager's control. The Construction Manager shall hold jobsite meetings at least once each week with the Construction Team and at least once each week with the subcontractors and the Architect/Engineer field representatives, and Owner or more frequently as required by work progress, to review progress, discuss problems and their solutions and coordinate future work with all subcontractors.

2.1.4 Subcontractors and Suppliers - Construction Manager shall continue to develop subcontractor interest in the Project and shall furnish to Owner and Architect for their information a list of possible subcontractors, including suppliers who are to

furnish materials or equipment fabricated to a special design, from whom proposals will be requested for each principal portion of the Project. Owner will promptly reply in writing to Construction Manager if Owner has an objection to any such subcontractor or supplier. The receipt of such list shall not require Owner to investigate the qualifications of proposed subcontractors or suppliers, nor shall it waive the rights of Owner to later object to or reject any proposed subcontractor or supplier.

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

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

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

2.1.8 Separate Contracts Planning - The Construction Manager shall review the design with the Architect/Engineer and make recommendations to the Owner and to the Architect/Engineer with respect to dividing the work in such manner as will permit the Construction Manager to take bids and award separate construction subcontracts on the current schedule while the design is being completed. The Construction Manager shall take into consideration such factors as natural and practical lines of severability, sequencing, effectiveness, access and availability constraints, total time for completion, construction market conditions, availability of labor and materials, community relations and any other factors pertinent to saving time and cost by overlapping design and construction that are authorized

by the Owner.

2.2 CONSTRUCTION PHASE

2.2.1 Interfacing -

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

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

2.2.2 Solicitation of Bids

(1) Without assuming responsibilities of the Architect/Engineer, the Construction Manager shall prepare Invitations for Bids (or Request For Proposals, when applicable) for all procurements of long lead times,

materials and services for Subcontractor contracts and for site utilities.

(2) As part of such preparation, the Construction Manager shall review the specifications and drawings prepared by the Architect/Engineer. Ambiguities, conflicts or lack of clarity of language, use of illegally restrictive requirements, and any other defects in the specifications or in the drawings noted by the Construction Manager shall be brought to the attention of the Project Director and Architect/Engineer in written form.

(3) For each separate subcontractor or construction trade contract used in this project, the Construction Manager shall, unless waived by the Owner, conduct a pre-bid conference with prospective bidders, the Architect/Engineer and Project Director. In the event questions are raised which require an interpretation of the bidding documents or otherwise indicate a need for clarification or correction of the invitation, the Construction Manager shall transmit these to the Architect/Engineer and upon receiving clarification or correction in writing shall prepare an addendum to the bidding document, and issue same to all of the prospective bidders.

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

2.2.3 Bonds - For those projects where the cost will exceed $100,000.00, in accordance with the provisions of Section 255.05, Florida Statutes, the Construction Manager shall provide to the Owner, on forms furnished by the Owner (**Attachment "G" and "H"**), certified copies of the recorded 100% Public Construction Performance Bond and 100% Public Construction Payment Bond each in an amount not less than the total construction cost (GMP) as defined in Article 9 and inclusive of the construction fee. *Payment and Performance Bonds shall be recorded (by the Construction Manager) in the official record of the County in which the project is located.* The Contractor must provide a copy of the bond(s) to all subcontractors and notify them of deadlines to make claims under the bonds.

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

and shall continue to exert influence and control over each Subcontractor to ensure that corrections are made in a timely manner so as to not affect the efficient progress of the work. Should disagreement occur between the Construction Manager and Architect/Engineer over acceptability of work and conformance with the requirements of the specifications and plans, the Owner shall be the final judge of performance and acceptability.

2.3 Guaranteed Maximum Price (GMP) and Contract Time

2.3.1 Construction Manager acknowledges and agrees the Drawings and Specifications are sufficiently complete for Construction Manager to propose a Guaranteed Maximum Price (GMP), which is the total not to exceed sum of the Construction Manager's Fee and the Cost of the Project. Accordingly, the Guaranteed Maximum Price (GMP) is hereby established at **$203,248.97**. *The final approved GMP spread sheet is hereby attached as* **Attachment "I"** *to and shall become a part of this Agreement between Owner and Construction Manager.*

2.3.2 The Cost of the Work shall include Construction Manager's contingency, a sum agreed to by all parties for the Manager's use to cover costs arising from unforeseen conditions in the project. Construction Manager's contingency is hereby established as a separate line item of $0.00 within the Guaranteed Maximum Price.

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

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

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

.3 The Preliminary Construction Schedule (**Attachment "E"**). As reflected in said Schedule, Construction Manager is to achieve Substantial Completion of the Work within **91 calendar days** from issuance of Notice to Proceed. Final Completion shall be achieved within an additional **30 calendar days**.

2.3.4 Included within the Guaranteed Maximum Price is the Construction Manager's fee. The Construction Manager's Fee is hereby established as **$18,294.24** for services provided in this Agreement. The sum of the Cost of the Project and the Construction Manager's Fee shall not exceed the Guaranteed Maximum Price. The Construction Manager's Fee shall constitute Construction Manager's total

compensation for profit. All costs in excess of the final approved GMP (as reduced by Owner direct purchases, if any, in accordance with **Attachment "C"**) are the responsibility of the Construction Manager. Any savings between the GMP (as reduced by Owner direct purchases) and the sum of the actual cost of the Project plus the Construction Manager's fee will be returned to the Owner.

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

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

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

2.4 Construction Phase

2.4.1 General

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

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

2.4.1.3 Construction Manager's Staff - The Construction Manager shall maintain sufficient off-site support staff, and competent full time staff at the Project site authorized to act on behalf of the Construction Manager and to coordinate, inspect and provide general direction of the work and progress of the subcontractors, and the Construction Manager shall provide no less than those personnel during the respective phases of construction. The Construction Manager shall not change any of those designated persons unless mutually agreed to by the Owner and Construction Manager. In such case, the Owner shall have the right of approval of the qualifications of replacement personnel. Such approval will not be reasonably withheld.

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

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

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

2.4.2 Administration

2.4.2.1 Those portions of the Project that Construction Manager does not customarily perform with Construction Manager's own personnel shall be performed under subcontracts or by other appropriate written agreements with Construction Manager. Construction Manager shall obtain bids from subcontractors and from suppliers of materials or equipment fabricated to a special design for the Project from the list previously reviewed and, after analyzing such bids, shall deliver such bids to the Owner and Architect for review and comment. Based upon that review and comment, Construction Manager shall then determine, subject to the reasonable objection of Architect or Owner, which bids will be accepted. Construction Manager shall not be required to contract with anyone to whom Construction Manager has reasonable objection. Notwithstanding anything herein to the contrary, Construction Manager covenants and agrees that it shall competitively bid all subcontracts. Further, with respect to all such subcontracts, Construction Manager covenants and agrees that it shall select and contract with the lowest, responsive and qualified bidder, unless otherwise consented to in writing by Owner.

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

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

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

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

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

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

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

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

constructed for the express purpose of being leased to any governmental entity.)

2.7 Weather Protection - The Construction Manager will be responsible to ascertain what temporary enclosures, if any, of building areas should be provided for and may be provided as a practical matter, in order to assure orderly progress of the work in periods when extreme weather conditions are likely to be experienced. All costs associated with this shall be the responsibility of the Construction Manager.

2.8 Job Site Requirements

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

a. Maintain a log of daily activities, including manpower records, weather, delays, major decisions, etc. and require the same of subcontractors
b. Maintain a directory of companies on the Project with names, addresses, telephone numbers, emergency telephone numbers and fax numbers of key personnel.
c. Establish and enforce job rules governing parking, clean-up, use of facilities and worker discipline.
d. Provide labor relations management for a harmonious, productive Project.
e. Provide a safety program for the Project to meet OSHA requirements. Monitor for Subcontractor compliance without relieving them of responsibilities to perform work in accordance with the best acceptable practice.
f. Provide a quality control program.
g. Miscellaneous office supplies that support the construction efforts which are consumed by his own forces.

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

(1) Job Meetings - Hold weekly progress and coordination meetings to provide for an easy flowing Project. Implement procedures and assure timely submittals, expedite processing approvals and return of shop drawings, samples, etc. Coordinate and expedite critical ordering and delivery of materials, work sequences, inspection and testing, labor allocations, etc. Review and coordinate each Subcontractor's work. Review and implement revisions to the Schedule. Monitor and promote safety requirements.

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

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

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

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

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

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

(6) Reports and Project Site Documents - Record the progress of the Project. Submit written progress reports to the Owner and the Architect/Engineer including information on the Subcontractor's work, and the percentage of completion. Keep a daily log available to the Owner, the Architect/Engineer and the Permitting Authority inspectors.

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

written list of unfinished Work and defective work, commonly referred to as a "Punch List", which must be finished and corrected to obtain final completion.

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

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

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

The Construction Manager shall secure and transmit to the Architect/Engineer all required guarantees, affidavits, releases, bonds and waivers, manuals, record drawings, and maintenance books as part of final completion (in triplicate) unless stated otherwise in the Project specifications.

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

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

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

Contracts and Purchase Orders

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

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

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

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

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

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

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

(13) Warranty - Where any work is performed by the Construction Manager's own forces or by Subcontractors under contract with the Construction

Manager, the Construction Manager shall warrant that all materials and equipment included in such Work will be new except where indicated otherwise in Contract Documents, and that such Work will be of good quality, free from improper workmanship and defective materials and in conformance with the Drawings and Specifications. With respect to the same Work, the Construction Manager further agrees to correct all work found by the Owner to be defective in material and workmanship or not in conformance with the Drawings and Specifications for a period of one (1) year from the Date of Final Completion or as may be set forth with respect to specific warranties contained in the trade sections of the Specifications. The Construction Manager shall collect and deliver to the Owner any specific written warranties given by others as required by the Contract Documents. **Also, the Construction Manager shall conduct, jointly with the Owner and the Architect/Engineer, a warranty inspection nine (9) months after the date of Owner Occupancy. This warranty inspection will be scheduled by a representative of the Owner**.

ARTICLE 3

OWNER'S RESPONSIBILITIES

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

3.2 Owner's Representative/Project Director - The Owner shall designate a representative who shall be fully acquainted with the Project and shall define the lines of Owner authority to approve Project Construction Budgets, and changes in Project. The Owner's representative shall render decisions promptly and furnish information expeditiously.

3.3 Architect and Engineer's Agreement - The Owner shall retain an Architect/Engineer for design and to prepare construction documents for the Project. The Architect/Engineer's services, duties and responsibilities are described in the Agreement between the Owner and the Architect/Engineer, a copy of which will be furnished to the Construction Manager upon request.

3.4 Approvals and Easements - The Owner shall pay for necessary approvals, easements, assessments and charges required for the construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

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

3.6 Drawings and Specifications - The Owner will provide to the Construction

Manager a reproducible set of all drawings and specifications reasonably necessary and ready for printing.

3.7 Cost of Surveys & Reports - The services, information, surveys and reports required by the above paragraphs shall be furnished with reasonable promptness in accordance with the approved schedule at the Owner's expense, and the Construction Manager shall be entitled to rely upon the accuracy and completeness thereof.

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

3.9 Funding - The Owner shall furnish, in accordance with the established schedule, reasonable evidence satisfactory to the Construction Manager that sufficient funds will be available and committed for the cost of each part of the Project.

3.10 Lines of Communication - The Owner and Architect/Engineer shall communicate with the Subcontractors or Suppliers only through the Construction Manager while such method of communication is effective in maintaining Project schedules and quality.

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

3.12 Permitting & Code Inspections - The Owner recognizes and coordinates with the Permitting Authority and expects the Construction Manager to do the same.

ARTICLE 4

PERMITTING AND INSPECTION

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

4.2 The Construction Manager shall comply with and give notices required by laws, ordinances, rules and regulations and lawful orders of public authorities bearing

on performance of the work required for the Project.

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

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

ARTICLE 5

SUBCONTRACTS

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

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

5.3 Required Subcontractor and Subcontract Conditions.

5.3.1 Subcontractual Relations - By an appropriate written agreement, the Construction Manager shall require each Subcontractor to the extent of the work to be performed by the Subcontractor, to be bound to the Construction Manager by the terms of the Contract Documents, and to assume toward the Construction Manager all the obligations and responsibilities which the Construction Manager by this Agreement, assumes toward the Owner and the Architect/Engineer. Said agreements shall preserve and protect the rights of the Owner and Architect/Engineer under the Contract Documents with respect to the work to be performed by the Subcontractor so that the subcontracting thereof will not prejudice such rights. Where appropriate, the Construction Manager shall require each Subcontractor to enter into similar agreements with his Subcontractor's Subcontractor.

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

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

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

(3) All subcontracts shall provide:

a. LIMITATION OF REMEDY - NO DAMAGES FOR DELAY
That the Subcontractor's exclusive remedy for delays in the performance of the contract caused by events beyond its control, including delays claimed to be caused by the Owner or Architect/Engineer or attributable to the Owner or Architect/Engineer and including claims based on breach of contract or negligence, shall be an extension of its contract time.

In the event of a change in the work the Subcontractor's claim for adjustments in the contract sum are limited exclusively to its actual cost for such change, plus, no more than five percent (5%) for profit, and five percent (5%) for overhead.

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

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

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

Manager.

ARTICLE 6

SCHEDULE, TIME OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

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

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

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

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

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

ARTICLE 7

GUARANTEED MAXIMUM PRICE FOR CONSTRUCTION

7.1 The Construction Manager will establish and submit in writing a Guaranteed Maximum Price to the Owner for its approval, guaranteeing the maximum price to the Owner, for the construction cost of the Project or designated part thereof,

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

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

7.3 At the time of execution of the contract, the Construction Manager will verify the time schedule for activities and work which is adopted by the Construction Team and used to determine the Construction Manager's cost of work. Surplus funds from bids received below the applicable line items, including line items within the General Conditions, in the GMP will be set aside for contingency. Construction contingency funds will be used for the purpose of defraying the expenses due to unforeseen circumstances relating to construction. The Construction Manager will be required to furnish documentation evidencing expenditures charged to this contingency prior to the release of funds by the Owner. Documentation for use of the Contingency shall be determined by the Construction Team. The Architect/Owner shall verify and approve the actual costs.

If bids are received above the applicable line item in the GMP the deficiency will be taken from the contingency via an approved Authorization to Initiate Work/GMP Realignment form; however, such events shall not be cause to increase the GMP. If bids are not received for a portion of the work at or below the applicable line item amount in the GMP, the Construction Manager reserves the right to perform that portion of the work or negotiate for its performance for the specified line item lump sum amount or less.

ARTICLE 8

CONSTRUCTION MANAGER'S FEE

8.1 In consideration of the performance of the contract, the Owner agrees to pay the Construction Manager as compensation for his services fees as set forth in Subparagraphs 8.1.2 and 8.1.3. subject to the retainage specified in 8.1.1 below.

8.1.1 Construction Phase Fee - Prior to commencement of the Construction Phase, the Owner will direct the Construction Manager in writing to proceed into the Construction Phase. The Owner retains the right to review the need and effectiveness of any employee or employees assigned by the Construction Manager, should the Project Director question the need for the employee or employees. A percentage of the agreed upon Construction Phase Fee shall be paid monthly based on percentage (%) of work completed, less retainage, in accordance with subsection 12.1 below. The Construction Manager's first monthly Certificate for Payment shall be submitted no earlier than thirty (30) days following the issuance of the Notice to Proceed, and the final monthly payment shall be paid only when construction of the Project is finally completed, all original, final release of liens are received, closeout documentation has been submitted and occupancy of the Project accepted by the Owner. If construction is authorized only for a part of the Project, the fee paid shall be proportionate to the amount of work authorized by the Owner.

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

(a) The Construction Manager shall be paid an additional fee subject to negotiation if the Construction Manager is placed in charge of reconstruction of an insured or uninsured loss excluding any condition that may have been caused from negligent acts by the Construction Manager, subcontractors or others for whose acts the Construction Manager is responsible.

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

(a) Corporate costs including expenses and overhead and profit related to this project by the Construction Manager's principal and branch offices.
(b) Costs of all data processing, accounting, purchasing and associated staff which is performed at the home office.
(c) General operating expenses incurred in the management and

supervision of the project, except as expressly included in Article 9.

(d) Salaries or other compensation of the Construction Manager's employees at his principal and branch offices.

(e) Those services set forth in Paragraph 2.1, 2.2, 2.3 and 2.4; except as expressly included in Article 9.

(f) Relocation expenses for Construction Manager's personnel.

(g) Costs of all project estimating, safety, scheduling and accounting staff.

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

ARTICLE 9

COST OF THE PROJECT

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

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

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

(1) Labor wages paid for the on-site Project Superintendent directly responsible for the operation and supervision of the project, clerical and Quality Control personnel (as opposed to wages paid to management or supervisory personnel who are not part of the on-site project management) in the direct employ of the Construction Manager in the performance of the Construction Manager's work under this Agreement,

acceptable salary or wage schedules and such fringe benefits, if any, as may be payable with respect thereto (labor burden not to exceed 40% for payroll and 15% for per diem).

(2) Payments due to Subcontractors from the Construction Manager or made by the Construction Manager to Subcontractors for their work performed pursuant to contract under this Agreement.

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

(4) Sales, use, gross receipts or similar taxes related to allowable direct costs of the Project imposed by a governmental authority, and for which the Construction Manager is liable. No costs shall be paid by the Owner to the Construction Manager for any expenses made necessary to correct defective workmanship or to correct any work not in conformance with the Plans and Specifications or to correct any deficiency or damage caused by negligent acts by the Construction Manager.

(5) If approved by the Owner, the Construction Manager, when qualified, may self perform all or a portion of the work for any item listed on the estimate or GMP breakdown where it is deemed advantageous due to schedule or economic benefit for the direct cost of the work.

(6) Legal costs reasonably and properly resulting from prosecution of the Project for the Owner, including handling claims for changes by subcontractors and vendors, subject to the following limitations:

(a) The Owner approved incurring such costs in advance, which approval shall not be unreasonably denied; and
(b) The legal costs were not incurred as result of the Construction Manager's own negligence or default.

(7) Costs for such temporary facilities during construction, as approved by the Owner, including temporary water, heat, power, sanitary facilities, telephones, radios and computers with software.

9.3 Allowances

Within the GMP, there may be specific items which the Construction Manager and Owner have agreed to include as allowances in the estimates until such time as the cost and schedule impact of these items can be more specifically ascertained. At the time that the Costs of the Work of allowance items becomes known (either through a subcontract price or by virtue of either (A) scope of work and cost agreed to by Construction Manager and Owner or (B) an actual buyout

of the item), the GMP and Scheduled Completion Date will be adjusted (either increased or decreased) by the actual Costs of the Work and schedule impact of the item. With respect to increases and decreases to the amount of an allowance item, Construction Manager shall be entitled to the Construction Manager's fee, subject to the limits set forth in Article 8, on the adjusted amount of such allowance, and the GMP shall be adjusted by reason thereof, by Change Order. Allowances must be agreed to by both parties. Allowances included within the GMP constitute approval of said allowances at the time the Guaranteed Maximum Price is approved.

9.4 Public Records Law and Audit Requirements

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

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

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

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

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

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

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

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

ARTICLE 10

CHANGES IN THE PROJECT

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

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

the contract price or the contract time, but is evidence that the parties expect that the change will be incorporated in a subsequently issued Change Order or be covered by an authorized contingency.

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

10.1.3 The increase or decrease in the Guaranteed Maximum Price resulting from Change Orders in the Project shall be determined by one of the following ways:

(1) by mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation by the Architect/Engineer and Owner;
(2) by unit prices stated in the Agreement or subsequently agreed upon;
(3) by cost as defined in Article 9 plus a mutually acceptable fixed or percentage fee; or
(4) by the method provided in Subparagraph 10.1.4.

10.1.4 If none of the methods set forth in Clause 10.1.3 is agreed upon, the Construction Manager, provided he receives a written order signed by the Owner, shall promptly proceed with the work required by the Construction Change Directive involved. The cost of such work shall then be determined on the basis of the reasonable expenditures and savings of those performing the work attributed to the change. However, in the event a Change Order is issued under these conditions, the Architect/Engineer will establish an estimated cost of the work and the Construction Manager shall not perform any work whose cost exceeds that estimate without prior written approval by the Owner. In such case, and also under Article 10.1.3 above, the Construction Manager shall keep and present, in such forms as the Owner may prescribe, an itemized accounting together with appropriate supporting data of the increase in the Cost of the Project as outlined in Article 9. The amount of decrease in the Guaranteed Maximum Price to be allowed by the Construction Manager to the Owner for any deletion or change which results in a net decrease in cost will be the amount of the actual net decrease in the Cost of the Project and the Construction Manager's fee subject to the limits set forth in Article 7.

10.1.5 If unit prices are stated in the Agreement or subsequently agreed upon

and if the quantities originally contemplated are so changed in a proposed Change Order that application of the agreed unit prices to the quantities of Work proposed will cause substantial inequity to the Owner or the Construction Manager, the applicable unit prices and Guaranteed Maximum Price shall be equitably adjusted.

10.1.6 Should the Construction Manager or his contracted subcontractors encounter:

(1) concealed conditions in the performance of the Work below the surface of the ground; or
(2) concealed or unknown conditions in an existing structure be at variance with the conditions indicated by the Drawings, Specifications, or Owner furnished information; or
(3) unknown physical conditions below the surface of the ground; or
(4) concealed or unknown conditions in an existing structure of an unusual nature;

differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Agreement, then the Guaranteed Maximum Price and the Construction Completion date shall be equitably adjusted by Change Order upon a request for Change Order in accordance with Article 10.2. and Article 11.

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

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

10.1.7 The Construction Manager shall review any Owner directed change and shall respond in writing within seven (7) calendar days after receipt of the proposed change (or such other reasonable time as the Owner may direct), stating the effect of the proposed change upon the Construction

Manager's Work, including any increase or decrease in the contract time or price. The Construction Manager shall furnish to the Owner an itemized breakdown of the quantities and prices used in computing the change in Contract price.

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

10.2 **Claims for Additional Cost or Time**

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

10.2.1 If the Construction Manager is delayed at any time in the progress of the work by any act or neglect of the Owner or the Architect or of any employee of either or by any separate Construction Manager employed by the Owner or by any changes ordered in the work by labor disputes, fire, or unusual delay in transportation, unavoidable casualties or any causes beyond the Construction Manager's control or by delay authorized by the Owner pending resolution or disputes, and such delay extends the completion date, the Substantial Completion shall be extended by Change Order for such reasonable time as the Construction Team may determine.

10.2.2 All change orders must indicate that the Contract Time for Completion is not changed or is either increased or decreased by a specific number of days. The previous Time for Completion and, if there is one, the new Time for Completion must be stated. The Construction Manager must provide written justification for an extension of the Time for Completion to the Architect/Engineer and to the Owner. The written justification must demonstrate an anticipated actual increase in the time required to complete the Work beyond that allowed by the Contract as adjusted by prior change orders or amendments to the Contract, not just an increase or decrease in the time needed to complete some portion of the total Work. No increase to the Time for Completion shall be allowed unless the additional or changed Work increases the length of the critical path. Approved increases in time required to complete the Work shall be added to the Time for Completion. Decreases in time as a result of the change order shall be demonstrated by a decrease in the critical path of the Work if CPM scheduling is properly used and updated by the Construction Manager. If no CPM is used the Owner shall determine the appropriate decrease by the best means possible. Approved decreases in the time needed to complete the Work shall be deducted from the Contract

completion date. The change to time and Contract price allowed by each change order shall include all time and monetary impacts of the change, whether the change order is considered alone or with all other changes during the course of the project. Failure to include a change to time and Contract price in a change order shall waive any change to the time and Contract price unless the parties mutually agree in writing to postpone a determination of the change to time and price resulting from the change order. Such a determination may be postponed not more than forty five (45) days to give the Construction Manager an opportunity to demonstrate a change in the time and price needed to complete the Work.

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

10.3 Minor Changes in the Project (Realignment of Work)
The Owner and/or Architect/Engineer will have authority to order minor changes in the Project not involving an adjustment in the Guaranteed Maximum Price or an extension of the Construction Completion Date and not inconsistent with the intent of the Drawings and Specifications. Such changes shall be affected by written order. Documentation of changes shall be determined by the Construction Team, and included in the Project Manual. Changes shall be approved by the Project Director, Architect/Engineer. It shall be the Owner's discretion as to whether a Realignment of Work requires the A/E signature. All changes or realignments of work performed within the Guaranteed Maximum Price will not include overhead, profit or General Condition additional costs, since costs are absorbed within the Guaranteed Maximum Price (GMP).

10.4 In any emergency affecting the safety of persons or property, the Construction Manager shall act at his discretion, to prevent threatened damage, injury or loss. Any increase in the Guaranteed Maximum Price or extension of time claimed by the Construction Manager on account of emergency work shall be determined as provided in Article 10.

ARTICLE 11

DISCOUNTS

11.1 All discounts for prompt payment shall accrue to the Owner to the extent the Cost of the Project is paid directly by the Owner or from a fund made available by the Owner to the Construction Manager for such payments.

To the extent the Cost of the Project is paid with funds of the Construction Manager, all cash discounts shall accrue to the Construction Manager. All trade discounts, rebates and refunds, and all returns from sale of surplus materials and

equipment, shall be credited to the Cost of the Project.

ARTICLE 12

PAYMENTS TO THE CONSTRUCTION MANAGER

12.1 Monthly Statements - The Construction Manager shall submit to the Owner a sworn statement along with the Certificate for Payment, showing in detail all monies paid out, cost accumulated or costs incurred on account of the Cost of the Project during the previous period and the amount of the Construction Manager's fees due as provided in Article 8. This data shall be attached to the Certificate for Payment Form shown in **Attachment "N"**, and shall include, but not be limited, to the following:

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

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

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

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

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

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

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

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

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

12.4 Withholding Payments to Subcontractors - The Construction Manager shall not

withhold payments to Subcontractors if such payments have been made to the Construction Manager. Should this occur for any reason, the Construction Manager shall immediately return such monies to the Owner, adjusting pay requests and project bookkeeping, as required.

ARTICLE 13

INSURANCE, INDEMNITY WAIVER OF SUBROGATION

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

(2) The Owner shall cause any other Construction Manager who may have a contract with the Owner to perform construction or installation work in the area where work will be performed under this Agreement, to agree to indemnify the Owner and the Construction Manager and hold them harmless from all claims for bodily injury and property damage (other than property insured under Paragraph 13.2(3)) that may arise from the Construction Manager's operations.

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

13.2 Insurance

(1) The Construction Manager shall not commence any construction work in connection with this Agreement until the Construction Manager has obtained all of the following types of insurance and such insurance

certificate(s) have been submitted to the Owner and have been approved by the Owner, nor shall the Construction Manager allow any Subcontractor to commence work on his subcontract until all insurance required of the Subcontractor has been so obtained and approved. All insurance policies shall be with insurers qualified and doing business in the State of Florida.

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

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

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

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

   3. Contractual Liability Work Contracts - The Construction Manager's Liability Policy shall include Contractual Liability Coverage designed to protect the Construction Manager for contractual liabilities assumed by the Construction Manager in the performance of this Agreement.

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

d. Performance and Payment Bonds - With limits of not less than 100% of the total construction cost of this project. Payment and Performance Bond shall be recorded in the official record of the County in which the project is located. These bonds shall remain in effect at least until one (1) year after the date when the final payment is approved. Any bonding company submitting a Bid Bond, Performance Bond or Payment Bond to Brevard County must be licensed to transact a fidelity and surety business in the State of Florida, and hold a Certificate of Authority from the Secretary of the Treasury under Act of Congress, approved by July

30, 1947 (U.S.C. 613), and approved by Brevard County. Acceptable surety companies shall be licensed to do business in Florida and shall have an A.M. Best Rating of "A-" and financial size V or higher.

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

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

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

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

(1) The name of the insured Construction Manager, the specific job by name and job number, the name of the insurer, the number of the policy, its effective date, and its termination date.

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

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

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

13.3 Waiver of Subrogation

13.3.1 The Owner and the Construction Manager waive all rights against each

other, for damages caused by perils covered by insurance provided under Article 13.2 to the extent covered by such insurance except such rights as they may have to the proceeds of such insurance held by the Owner and Construction Manager as trustees. The Construction Manager shall require similar waivers from all Subcontractors and their Sub-subcontractors.

13.3.2 The Owner and Construction Manager waive all rights against each other for loss or damage to any equipment used in connection with the Project and covered by any property insurance. The Construction Manager shall require similar waivers from all subcontractors and their sub-subcontractors.

13.3.3 The Owner waives subrogation against the Construction Manager on all property and consequential loss policies carried by the Owner on adjacent properties and under property and consequential loss policies purchased for the Project after its completion.

13.3.4 If the policies of insurance referred to in this Article require an endorsement to provide for continued coverage where there is a waiver of subrogation, the Owner of such policies will cause them to be so endorsed. Failure to obtain proper endorsement nullifies the waiver of subrogation.

ARTICLE 14

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

14.1 Termination by the Construction Manager - If the Project is stopped for a period of thirty (30) days under an order of any court or other public authority having jurisdiction or as a result of an act of government, such as a declaration of a national emergency making materials unavailable, through no act or fault of the Construction Manager, or if the Project should be stopped for a period of thirty (30) days by the Owner, then the Construction Manager may, upon seven (7) days written notice to the Owner, request undisputed payment for all work executed, the Construction Manager's fee earned to date, and for any proven loss sustained upon any materials, equipment, tools, construction equipment, and machinery, including reasonable profit, damages and terminal expenses incurred by the Construction Manager.

14.2 Owner's Right to Perform Construction Manager's Obligations and Termination by Owner for Cause -

(1) If the Construction Manager fails to perform any of its obligations under this Agreement, the Owner may, after seven (7) days written notice during

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

(2) If the Construction Manager is adjudged a bankrupt, or if he makes a general assignment for the benefit of his creditors, or if a receiver is appointed on account of his insolvency, or if he persistently or repeatedly refuses or fails, except in case for which extension of time is provided, to supply enough properly skilled workmen or proper materials and fails to maintain an established schedule (failure to maintain schedule shall be defined as any activity on the critical path that falls forty-five (45) days or more behind schedule) which has been adopted by the Construction Team, or if he fails to make prompt payment to subcontractors for materials or labor, or persistently disregards laws, rules, ordinances, regulations, or orders of any public authority having jurisdiction, or otherwise is guilty of a substantial violation of a provision of the Agreement, then the Owner may, without prejudice to any right or remedy and after giving the Construction Manager and his surety, if any, seven (7) days written notice, during which period Construction Manager fails to cure the violation, terminate the employment of the Construction Manager and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Construction Manager, and may finish the Project by whatever method he may deem expedient. In such case, the Construction Manager shall not be entitled to receive any further payment until the Project is finished nor shall he be relieved from his obligations assumed under Article 7. Reasonable termination expenses incurred by the Owner may be deducted from any payments left owing the Construction Manager (excluding monies owed the Construction Manager for subcontract work).

14.3 Termination by Owner for Convenience

(1) If the Owner terminates this Agreement other than pursuant to Article 14.2(2) or Article 14.3(2), he shall reimburse the Construction Manager for any unpaid cost of the Project due him under Article 9, plus that part of the unpaid balance of the Construction Phase Fee in an amount as will increase the payment on account of his fee to a sum which bears the same ratio to the Construction Phase Fee as the Cost of the Project at the time of termination bears to the Guaranteed Maximum Price, if established, otherwise to the Owner's Construction Budget. The Owner shall also pay to the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment retained. In case of such termination of Agreement the Owner shall

reimburse the Construction Manager for obligations and commitments made before notice of termination was received by the Construction Manager.

(2) After the establishment of the Guaranteed Maximum Price or at the completion of the Construction Phase, if the final cost estimates or lack of legislative funding make the Project no longer feasible from the standpoint of the Owner, the Owner may terminate this Agreement and pay the Construction Manager his proportionate fee due in accordance with Article 8.1, plus any costs incurred pursuant to Articles 9 and 10.

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

14.4 Termination for Prohibition Against Contracting With Scrutinized Companies

(1) Pursuant to § 287.135(2), Florida Statutes, a company is ineligible to, and may not, bid on, submit a proposal for, or enter into or renew a contract with an agency or local government entity for goods or services of any amount if, at the time of bidding or submitting a proposal for, or entering into a new contract or renewal of an existing contract, the company is on the Scrutinized Companies that Boycott Israel List, created pursuant to s. 215.4725, or is engaged in a boycott of Israel.

At the time a company submits a bid or proposal for a contract or before the company enters into or renews a contract with an agency or local governmental entity for goods or services of any amount, the company must certify that the company is not participating in a boycott of Israel.

As required by § 287.135(5), Florida Statutes, prior to entering into a contract to provide goods or services to Brevard County, individual with authority to execute this Contract for the Construction Manager shall file a sworn statement with the contracting officer or Purchasing Director, as applicable verifying that none of the three conditions above exist. If the Construction Manager is found to have falsified the affidavit attached as Attachment "O", the County/Owner may terminate the Contract.

(2) Pursuant to § 287.135(2), Florida Statutes, a company is ineligible to, and may not, bid on, submit a proposal for, or enter into or renew a contract with an agency or local government entity for goods or services $1 million or more if, at the time of bidding or submitting a proposal for, or entering into a new contract or renewal of an existing contract, the company is on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to s. 215.473; or (3) is engaged in business operations in Cuba or Syria.

As required by § 287.135(5), Florida Statutes, prior to entering into a contract (formal contract or purchase order in excess of $1 million dollars to provide goods or services to Brevard County, individual with authority to execute this Agreement for the Construction Manager shall file a sworn statement with the contracting officer or Purchasing Director, as applicable verifying that none of the three conditions above exist. If the Construction Manager is found to have falsified the affidavit attached as **Attachment "O"**, the County/Owner may terminate the contract.

(3) If subsequent to the submittal of the attached affidavit, the Contractor (1) has been placed on the Scrutinized Companies that Boycott Israel List, or is engaged in a boycott of Israel; (2) is on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List; or (3) is engaged in business operations in Cuba or Syria.

(4) If, after the agency or the local governmental entity determines, using credible information available to the public, that the company has submitted a false certification, the County/Owner may terminate the contract following the procedure set forth in Florida Statute 287.135(5) and institute civil action to recoup appropriate civil penalties.

ARTICLE 15

ASSIGNMENT AND GOVERNING LAW

15.1 Neither the Owner nor the Construction Manager shall assign his interest in this Agreement without the written consent of the other except as to the assignment of proceeds.

15.2 This Agreement shall be governed by the Laws of the State of Florida.

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

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

ARTICLE 16

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

RESOLUTION

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

(a) All claims must be submitted as a Request for Change Order in the manner as provided herein;

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

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

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

The Construction Manager agrees that the Owner shall not be liable for any claim that the Construction Manager fails to submit as a Request for Change Order as provided in this section.

16.2 After receipt of a Request for Change Order, the Owner, in consultation with the Architect/Engineer, shall deliver to the Construction Manager its written determination of the claim. As to disputed matters subject to the determination by final Owner action (not actions for breach of contract or tort) the Owner's written decision following compliance with the dispute resolution procedure set forth in sections 16.4 through 16.6 below shall be final Owner action.

16.3 For work the Construction Manager performs with its own forces, and in addition to the adjustments provided for in Article 8, the Construction Manager's exclusive remedy for delays in performance of the construction caused by events beyond its control, including delays claimed to be caused by or attributable to the Owner or the Architect/Engineer, including claims based on breach of contract or negligence, shall be a claim submitted in compliance with Article 16.1 above, for an extension of the scheduled construction time. In the event of a change in such work that will modify the GMP, the Construction Manager's claim for adjustment in contract sum are limited exclusively to its actual costs for such changes, including costs involved in claim preparation, plus five percent (5%) overhead, five percent (5%) profit and a two percent (2%) bond in the General Conditions. The Construction Manager expressly agrees that the foregoing constitute its sole and exclusive remedies for delays and changes in such work, and eliminate any other remedies for claim for increase in the contract price, delays, changes in the work, damages, losses or additional compensation.

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

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

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

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

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

ARTICLE 17

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

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

17.2 The Owner shall provide for coordination of the activities of the Owner's own

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

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

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

17.5 If part of the Construction Manager's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Construction Manager shall, prior to proceeding with that portion of the Work, promptly report to the Architect/Engineer or Owner apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Construction Manager to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Construction Manager's Work, except as to defects not then reasonably discoverable.

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

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

ARTICLE 18

MISCELLANEOUS

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

18.2 Harmony - Construction Manager is advised and hereby agrees to exert every reasonable and diligent effort to assure that all labor employed by Construction Manager and his Subcontractors for work on the Project shall work in harmony with and be compatible with all other labor being used by building and Construction Managers now or hereafter on the site of the Project.

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

18.3 Apprentices - If the Construction Manager employs apprentices on the project, the behavior of the Construction Manager and the Owner shall be governed by the provision of Chapter 446, Florida Statutes, and by applicable standards and policies governing apprentice programs and agreements established by the Division of Labor of the State of Florida Department of Labor and Employment Security. The Construction Manager will include a provision similar to the foregoing sentence in each subcontract.

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

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

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

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

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

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

ATTEST:

Scott Ellis, Clerk

Reviewed for legal form and content:

Shannon L. Wilson, Deputy County Attorney

11/9/18
Date

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA

Kristine Isnardi, Chairman
Brevard County Commission

As Approved By the Brevard County Commission on:

C.I.P.

Heard Construction, Inc.

BY:
Construction Manager

STATE OF FLORIDA
COUNTY OF BREVARD

The foregoing instrument was acknowledged before me this 22 day of Nov of 2018 by whose position is President with the firm of Heard Const., a Florida Corporation, on behalf of the corporation. He/She is personally known to me or has produced Known as identification.

(SEAL)

Notary Public State of Florida
Mary E Bowers
My Commission GG 144136
Expires 01/10/2022

NOTARY PUBLIC

Mary Bowers
Typed, Printed or Stamped Name

ATTACHMENT "A"

CONSTRUCTION TEAM ASSIGNED REPRESENTATIVES

Owner
Brevard County Facilities Department

Tim Lawry	Project Director
George Clark	Construction Coordinator
Mary Bowers	Support Services Manager/Contracts
Sherry Collett	Special Projects Coordinator II

Architect-Engineer

TLC Engineering

Construction Manager

Andy Day	President
LuAnne Woodley	Vice President/Principal-In-Charge
LuAnne Woodley	Project Manager
LuAnne Woodley	Project Administrator
Jonathan Nichols	Project Superintendent
LuAnne Woodley/ Andy Day	Estimator/Cost Control
Not applicable	Schedules

ATTACHMENT "B"

PROJECT SCOPE OF WORK

Remove and replace with expanded/larger metal roof; install a new 750 square foot storage shed. The new metal roof shall serve as the roof for the new storage shed as well as for the existing structure.

ATTACHMENT "C"

DIRECT PURCHASING PROCEDURE
CONSTRUCTION MANAGEMENT AGREEMENT

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

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

a) Contract: Construction Management Agreement by and between Construction Manager and Brevard County Board of County Commissioners, Viera, Florida for the construction of a new storage shed and removal of an existing metal roof over the existing structure and replacement with a metal roof over the existing structure and new storage shed.

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

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

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

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

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

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

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

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

j) Material Requisition: A request by the Construction Manager to the Owner that

the Owner directly purchase specific items described in sufficient detail, including quantity, grade, brand, etc., along with the vendor or material supplier and that vendor or material supplier's quoted price for the Materials.

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

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

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

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

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

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

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

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

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

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

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

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

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

ATTACHMENT "D"

DRAWINGS AND SPECIFICATIONS

Attached.

ELECTRICAL SYMBOL LEGEND

BASIC MATERIALS

SYMBOL	DESCRIPTION
	DEVICE ABBREVIATION TAGS ETR = EXISTING TO REMAIN RL = RELOCATED WP = WEATHERPROOF
S	WALL MOUNTED SWITCH
	PHOTOCELL MOUNTED ON ROOF FACING NORTH
	DUPLEX RECEPTACLE
	GFCI RECEPTACLE. "WP" INDICATES CAST METAL "IN-USE" WEATHERPROOF COVER. WEATHER-RESISTANT LISTED
	BRANCH CIRCUIT PANELBOARD, UNDER 250 VOLTS, SURFACE MOUNTED
	BRANCH CIRCUIT PANELBOARD, UNDER 250 VOLTS, FLUSH MOUNTED
	CONDUIT CONCEALED ABOVE CEILING OR IN WALL
	CONDUIT EXPOSED
	CONDUIT CONCEALED IN SLAB, UNDERGROUND OR UNDER FLOOR
	CONDUIT HOMERUN TO ELECTRICAL PANEL
UP	CONDUIT TURNING UP
DN	CONDUIT TURNING DOWN
	CONDUIT STUBBED OUT OR UP
	CONDUIT CONTINUED
	FLEXIBLE CONDUIT
	CONDUIT SEAL-OFF FITTING
	GROUND OR GROUND ROD AS NOTED
	EXISTING TO BE REMOVED (HEAVY, DASHED LINE)
	EXISTING TO REMAIN (LIGHT, SOLID LINE)
	NEW (HEAVY, SOLID LINE)
	GROUND ROD

SYMBOL	DESCRIPTION
	LIGHTING
	UNDER LED SURFACE MOUNT FIXTURE FIXTURE TYPE LED OR FLUORESCENT FIXTURE, RECESSED, PENDANT OR SURFACE CEILING LOWER CASE LETTER INDICATES CONTROLLING SWITCH CIRCUIT NUMBER LIGHTING CONTROL ZONE NUMBER

ABBREVIATIONS

A/C	AIR CONDITIONING
AC	ALTERNATING CURRENT
ABV CLG	ABOVE CEILING
ADA	AMERICANS WITH DISABILITIES ACT
AF	AMPERE FRAME
AFF	ABOVE FINISHED FLOOR
AFG	ABOVE FINISHED GRADE
AHU	AIR HANDLING UNIT
AIC	AMPERE INTERRUPTING CAPACITY
AL	ALUMINUM
AMP	AMPERE
ANSI	AMERICAN NATIONAL STANDARDS INSTITUTE
ASA	AMERICAN STANDARDS ASSOCIATION
AT	AMPERE TRIP
ATS	AUTOMATIC TRANSFER SWITCH
AUX	AUXILIARY
AWG	AMERICAN WIRE GUAGE
BC	BASE COPPER
BIL	BASIC IMPULSE LEVEL
BAS	BUILDING AUTOMATION SYSTEM
BMS	BUILDING MANAGEMENT SYSTEM
BRKR OR BKR	BREAKER
CAB	CABINET
C	CONDUIT OR RACEWAY
CKT	CIRCUIT
CB	CIRCUIT BREAKER
CBM	CERTIFIED BALLAST MANUFACTURERS
CATV	CABLE TELEVISION
CCTV	CLOSED CIRCUIT TELEVISION
CLEC	CLOCK EQUIPMENT CABINET
CLG	CEILING
CO	CONDUIT OR RACEWAY ONLY
COAX	COAXIAL CABLE
COND	CONDUCTOR
CONN	CONNECTION
CPU	CENTRAL PROCESSING UNIT
CRT	CATHODE RAY TERMINAL (VIDEO DISPLAY TERMINAL)
CT	CURRENT TRANSFORMER
CU	COPPER
CW	COLD WATER
DC	DIRECT CURRENT
DDC	DIRECT DIGITAL CONTROL
DEG	DEGREE
DF	DEMAND FACTOR
DISC	DISCONNECT
DISC SW	DISCONNECT SWITCH
DO	DRAW OUT
DN	DOWN
DPST	DOUBLE POLE SINGLE THROW
EDH	ELECTRIC DUCT HEATER
EMT	ELECTRIC METALLIC TUBING
EO	ELECTRICALLY OPERATED
EOL	END OF LINE
EOR	ENGINEER OF RECORD
ETR	EXISTING TO REMAIN
EWC	ELECTRIC WATER COOLER
FA	FIRE ALARM
FAAP	FIRE ALARM ANNUNCIATOR PANEL
FATC	FIRE ALARM TERMINAL CABINET
FBC	FLORIDA BUILDING CODE
FCU	FAN COIL UNIT
FLA	FULL LOAD AMPERES
FM	FACTORY MUTUAL
FPU	FAN POWERED UNIT
FT	FEET
GF	GROUND FAULT
GFA	GROUND FAULT ALARM
GFCI	GROUND FAULT CIRCUIT INTERRUPTER
GFR	GROUND FAULT RELAY
GND, G	GROUND
HP	HORSEPOWER
HOA	HAND-OFF-AUTOMATIC
HORIZ	HORIZONTAL
IBC	INTERNATIONAL BUILDING CODE
IC	INTERCOM
ICU	INTENSIVE CARE UNIT
IECC	INTERNATIONAL ENERGY CONSERVATION CODE
IEEE	INSTITUTE OF ELECTRICAL AND ELECTRONIC ENGINEERS
IES	ILLUMINATING ENGINEERING SOCIETY
IMC	INTERMEDIATE METAL CONDUIT
IN	INCHES
IPCEA	INSULATED POWER CABLE ENGINEERS ASSOCIATION
IT	INSTANTANEOUS TRIP
JB OR J-BOX	JUNCTION BOX
KCMIL	ONE THOUSAND CIRCULAR MILS
KV	KILOVOLT
KVA	KILOVOLT AMPERES
KW	KILOWATT
KWH	KILOWATT HOURS
LBS	POUNDS
LED	LIGHT EMITTING DIODE
LP	LIGHTNING PROTECTION
LT	LIGHT
LTG	LIGHTING
LSIG	LONG TIME, SHORT TIME, INSTANTANEOUS, GROUND
LSI	LONG TIME, SHORT TIME, INSTANTANEOUS, ALARM
LSI	LONG TIME, SHORT TIME, INSTANTANEOUS
MAX	MAXIMUM
MCA	MINIMUM CIRCUIT AMPS
MCB	MAIN CIRCUIT BREAKER
MCC	MOTOR CONTROL CENTER
MDP	MAIN SERVICE DISTRIBUTION PANEL
MIC	MICROPHONE
MIN	MINIMUM
MLO	MAIN LUGS ONLY
MOCP	MAXIMUM OVERCURRENT PROTECTION
MSB	MAIN SERVICE SWITCHBOARD
MTD	MOUNTED
MTG	MOUNTING
MTR	MOTOR
MTS	MANUAL TRANSFER SWITCH
MUX	MULTIPLEX (TRANSPONDER) PANEL
MVA	MEGA VOLT AMPS
N	NEUTRAL
NC	NORMALLY CLOSED
NEC	NATIONAL ELECTRICAL CODE
NEMA	NATIONAL ELECTRICAL MANUFACTURERS ASSOCIATION
NFPA	NATIONAL FIRE PROTECTION ASSOCIATION
NIC	NOT IN CONTRACT
NF	NON-FUSED
NL	NON-LINEAR
NO	NORMALLY OPEN OR NUMBER
OL	OVERLOAD
OSHA	OCCUPATIONAL SAFETY & HEALTH ADMINISTRATION
P	POLE
PB	PULLBOX
PF	POWER FACTOR
PIV	POST INDICATOR VALVE
PNL	PANEL
PR	PAIR
PRI	PRIMARY
PT	POTENTIAL TRANSFORMER
PVC	POLYVINYLCHLORIDE
PWR	POWER
REC, RECEPT	RECEPTACLE
REF	REFRIGERATOR
RGS, GRC	RIGID GALVANIZED STEEL CONDUIT
RLA	RUNNING LOAD AMPERES
RMS	ROOT-MEAN-SQUARE
RPM	REVOLUTIONS PER MINUTE
RTU	ROOF TOP UNIT
SCA	SHORT CIRCUIT AMPERES
SD	SMOKE DETECTOR
SEC	SECONDARY
SN	SOLID NEUTRAL
SPD	SURGE PROTECTIVE DEVICE
SPKR	SPEAKER
SPST	SINGLE POLE SINGLE THROW
SS	STAINLESS STEEL
SST	SOLID STATE TRIP
STD	SHORT TIME TRIP
SW	SWITCH
SWBD	SWITCHBOARD
SWGR	SWITCHGEAR
TEL	TELEPHONE
TTB	TELEPHONE TERMINAL BOARD
TTC	TELEPHONE TERMINAL CABINET
TVEC	TELEVISION EQUIPMENT CABINET
TYP	TYPICAL
UG	UNDERGROUND
UON	UNLESS OTHERWISE NOTED
UL	UNDERWRITERS LABORATORIES
UTIL	UTILITY
V	VOLT
VA	VOLTAMPERE
VAR	VOLT AMPERE REACTIVE
VAV	VARIABLE AIR VOLUME
VFD	VARIABLE FREQUENCY DRIVE
W	WIRE
WP	WEATHER PROOF
XFMR	TRANSFORMER
XFR	TRANSFER

ELECTRICAL DEMOLITION NOTES

1. DEVICES, LIGHT FIXTURES AND EQUIPMENT SHOWN IN DASHED LINE TYPE ARE EXISTING TO BE DEMOLISHED. DEVICES, LIGHT FIXTURES AND EQUIPMENT SHOWN IN LIGHT SOLID LINE TYPE ARE EXISTING TO REMAIN, UNLESS OTHERWISE NOTED.
2. EXISTING EQUIPMENT, LIGHT FIXTURES, DEVICES SHOWN ARE BASED ON FIELD SURVEYS AND RECORD DRAWINGS PROVIDED BY THE OWNER, AND IS NOT NECESSARILY ALL INCLUSIVE IN EVERY AREA AS FAR AS EXISTING ELECTRICAL EQUIPMENT, LIGHT FIXTURES AND DEVICES. EXISTING CIRCUITING SHOWN IS BASED ON RECORD DRAWINGS AND THE SURVEYED PANEL DIRECTORIES. WHERE THEY WERE AVAILABLE. THE ACTUAL CONDITIONS MAY VARY. ALL EXISTING CONDITIONS MUST BE VERIFIED PRIOR TO BID. THE CONDITIONS SHOWN ARE INTENDED TO SHOW THE LOCATIONS OF EXISTING DEVICES, LIGHT FIXTURES AND EQUIPMENT WHERE SHOWN ON THE PLAN DRAWINGS, AND IN NO WAY RELIEVES THE CONTRACTOR FROM PROVIDING ANY AND ALL COORDINATION NECESSARY TO COMPLETE THE NEW WORK. FIELD CONDITIONS SHALL GOVERN.
3. WHERE EXISTING DEVICES ARE INDICATED TO REMAIN OR RELOCATED, LOCATED WITHIN THE SCOPE OF THIS PROJECT AND EXISTING CIRCUITING INFORMATION IS UNAVAILABLE, CONTRACTOR IS TO PROVIDE CIRCUIT TRACING TO IDENTIFY PANEL AND CIRCUIT DEVICES ARE CONNECTED TO AND PROVIDE THAT INFORMATION TO ME PRIOR TO ADDING CONDUITS AND WIRING FOR NEW DEVICES AND EQUIPMENT WITHIN THE SCOPE OF THIS PROJECT.
4. WHERE EXISTING DEVICES ARE TO REMAIN, CONTRACTOR MUST EXTEND EXISTING CIRCUITING WHERE NECESSARY TO MAINTAIN CONTINUITY OF CIRCUIT.
5. COORDINATE WITH THE OWNER FOR DISPOSITION OF ELECTRICAL ITEMS TO BE DEMOLISHED. OWNER SHALL HAVE THE OPTION TO RETAIN REUSABLE ITEMS SUCH AS COVERPLATES, RECEPTACLES, LIGHT FIXTURES, PANELBOARDS, TRANSFORMERS, ETC., NOT BEING USED IN THE FINISHED WORK. COORDINATE WITH THE OWNER PRIOR TO START OF DEMOLITION. PROPERLY AND LEGALLY DISPOSE OF ALL EQUIPMENT AND MATERIALS BEING REMOVED.
6. COORDINATE EXACT AREAS WALLS, CEILINGS, ETC. TO BE DEMOLISHED WITH ARCHITECTURAL, STRUCTURAL, PLUMBING AND MECHANICAL DEMOLITION PLANS.
7. WHERE EXISTING DEVICES, LIGHT FIXTURES AND EQUIPMENT ARE INDICATED TO BE DEMOLISHED, REMOVE ASSOCIATED CONDUIT AND WIRING BACK TO SOURCE PANEL OR TO NEAREST JUNCTION BOX TO MAINTAIN CIRCUIT CONTINUITY OF DEVICES TO REMAIN AND EQUIPMENT TO REMAIN. WHERE PANELS ARE TO BE REMAIN, TURN BREAKER TO "OFF" POSITION AND LABEL THE CIRCUIT AS "SPARE" ON THE PANEL DIRECTORY.
8. ALL AREAS OUTSIDE THE SCOPE OF CONSTRUCTION ARE TO REMAIN ENERGIZED. COORDINATE PHASING WITH CONSTRUCTION MANAGER AND OWNER PRIOR TO DEMOLITION WHICH MAY RESULT IN INTERRUPTION OF POWER.
9. REFER TO ARCHITECTURAL DEMOLITION DRAWINGS FOR EXTENT OF AREA REQUIRING DEMOLITION AND ADDITIONAL INFORMATION ON ELECTRICAL DEMOLITION WITHIN THAT AREA. DISCONNECT ELECTRICAL SERVICE TO ALL EQUIPMENT BEING REMOVED. DEMOLITION SHALL BE PHASED AS REQUIRED BY DIVISION 1 OR DIRECTED BY THE OWNER.
10. REMOVE ALL CONDUIT LEFT EXPOSED BY REMOVAL OF WALLS AND CEILINGS IN REMODELED OR RENOVATED AREA. CAP BOTH ENDS OF REMAINING CONDUIT IN WALL OR FLOOR WHERE CUT.
11. ELECTRICAL DEVICES CONCEALED BY STORAGE SHELVING, CASEWORK, FURNITURE, ETC., AND NOT NOTED ON THE DEMOLITION DRAWINGS ARE TO BE REMOVED AS REQUIRED, UNLESS SHOWN AS EXISTING TO REMAIN.
12. CONTRACTOR SHALL BE RESPONSIBLE FOR PATCHING ALL OPENINGS IN EXISTING CONSTRUCTION AFTER REMOVAL OF EQUIPMENT AND ELECTRICAL DEVICES, UNLESS OTHERWISE NOTED ON ARCHITECTURAL PLANS. REPAIRS ARE TO BE DONE TO LOGICAL EDGES OF SURFACES AFFECTED AND SHALL MATCH IMMEDIATE ADJACENT AREAS IN CONSTRUCTION MATERIAL, FIRE RATING, FINISH AND COLOR.
13. PROVIDE BLANK COVERPLATES WHERE DEVICES ARE BEING REMOVED FROM EXISTING WALLS TO REMAIN. MATCH COLOR OF NEW ADJACENT DEVICE COVERPLATES.
14. FIELD VERIFY ALL EXISTING CONDITIONS AND DIMENSIONS PRIOR TO COMMENCEMENT OF WORK AND OBTAIN CLARIFICATIONS FROM ARCHITECT/ENGINEER IF NECESSARY.
15. COORDINATE SERVICE INTERRUPTION WITH CONSTRUCTION MANAGER, OWNER, LANDLORD, AND UTILITY COMPANY, WHERE APPLICABLE, AND DO NOT INTERRUPT POWER WITHOUT WRITTEN PERMISSION. PROVIDE A MINIMUM OF ONE WEEK'S WRITTEN NOTIFICATION WHEN POWER IS DESIRED TO BE INTERRUPTED.
16. EXERCISE EXTREME CAUTION WHEN REMOVING/ RELOCATING WIRING AND EQUIPMENT. IT IS THE CONTRACTOR'S RESPONSIBILITY TO ENSURE THAT OTHER WIRING DEVICES, EQUIPMENT AND LIGHT FIXTURES THAT MAY BE CONNECTED TO THE SAME CIRCUIT REMAIN OPERATIONAL AND ENERGIZED.
17. DEMOLITION INDICATED IN THE DEMOLITION PORTION OF THE CONTRACT DRAWINGS IS DIAGRAMMATIC IN NATURE. FIELD VERIFY ELECTRICAL CIRCUIT HOMERUNS TO ALL ELECTRICAL ITEMS SCHEDULED TO BE DEMOLISHED AND PERFORM THE WORK AS INTENDED AND DEPICTED ON THE DRAWINGS.
18. UPDATE ALL EXISTING ELECTRICAL EQUIPMENT NAMEPLATES AND DIRECTORIES AS NECESSARY TO REFLECT FINAL AS-BUILT CONDITIONS AT THE END OF CONSTRUCTION.
19. STORE ITEMS INDICATED TO BE RETURNED TO THE OWNER IN A DRY, CLEAN AND PROTECTED AREA. NOTIFY OWNER WHEN ITEMS ARE READY TO BE REMOVED.
20. COORDINATE ANY ALTERATION AND CHANGES TO THE ELECTRICAL SERVICE WITH THE LOCAL UTILITY COMPANY AND THE OWNER PRIOR TO COMMENCEMENT OF WORK.
21. SCHEDULE ALL POWER INTERRUPTION WITH OWNER FOR EXACT DATE, TIME AND DURATION. PROVIDE A MINIMUM OF 72 HOURS NOTICE PRIOR TO DISCONNECTING ANY POWER TO ANY PORTION OF THE BUILDING, AND MAKE ARRANGEMENTS TO MAINTAIN POWER TO ALL CRITICAL EQUIPMENT AS NEEDED AND REQUESTED BY THE OWNER PRIOR TO COMMENCEMENT OF WORK.
22. PROVIDE ANY NECESSARY REPROGRAMMING OF EXISTING BUILDING FIRE ALARM SYSTEMS TO DISABLE FIRE ALARM DEVICES THAT ARE BEING DISCONNECTED AND REMOVED, AND FOR ANY NEW DEVICES THAT ARE ADDED, AS PART OF BID PRICE.
23. THE DEMOLITION PLAN IS NOT INCLUSIVE OF ALL ELECTRICAL DEVICES WITHIN THE PROJECT AREA. IT IS INTENDED TO PROVIDE A GENERAL KNOWLEDGE OF THE EXISTING CONDITIONS WITHIN THE PROJECT AREA. ANY DISCREPANCIES OR CONDITIONS NOT SHOWN ON THE PLAN SHALL BE BROUGHT TO THE ATTENTION OF THE A/E. THE CONTRACTOR IS RESPONSIBLE FOR ALL REQUIRED ELECTRICAL DEMOLITION WHETHER INDICATED ON THE PLANS OR NOT.
24. ALL CONDUITS SERVING OTHER SPACES THAT RUN THROUGH THE PROJECT AREA SHALL REMAIN ACTIVE DURING CONSTRUCTION SO AS NOT TO CAUSE DISRUPTION TO THESE OTHER SPACES. ENSURE THAT ALL CONDUITS, NEW OR EXISTING WITHIN THE PROJECT AREA ARE PROPERLY SUPPORTED IN ACCORDANCE WITH THE NEC.
27. REMOVE ALL ABANDONED WIRING AND CONDUIT THAT IS WITHIN THE PROJECT AREA PRIOR TO THE END OF CONSTRUCTION.

NOTE: SOME SYMBOLS SHOWN ON THIS LEGEND MAY NOT PERTAIN TO THIS PROJECT.

TLC ENGINEERING FOR ARCHITECTURE
874 Dixon Blvd.
Cocoa, Florida 32922
PH: 321.636.0274
Fax: 321.639.8886
www.tlc-engineers.com
COA #15

© Copyright 2018 TLC Engineering for Architecture, Inc.

Mosquito Control Storage Facility
2865 GREENBROOKE ST, GRANT-VALKARIA, FL 32949

No.	Date	Description

Seal

100% CONSTRUCTION DOCUMENTS - NOT FOR CONSTRUCTION

Project No.	518060
Issue Date	08/22/18
Drawn By	JB
Approved By	SBC
Scale	N.T.S.

Drawing Title
ELECTRICAL LEGEND AND GENERAL NOTES

Drawing No.
E-001

C:\Users\Lloyd\Desktop\2018 Mosquito Storage Facility_R19_E_Central_updated_detailed.rvt

260519 BASIC ELECTRICAL REQUIREMENTS

ELECTRICAL DESIGN IN ACCORDANCE WITH
1. STATE OF FLORIDA,
2. BREVARD COUNTY,
3. CITY OF PORT ST JOHN
4. LIFE SAFETY CODE - NFPA 101 (2009),
5. UNDERWRITERS LABORATORIES, INC. PUBLICATIONS
6. NATIONAL FIRE PROTECTION ASSOCIATION (NFPA),
7. AMERICAN NATIONAL STANDARDS INSTITUTE (ANSI),
8. NATIONAL ELECTRICAL CODE - NFPA 70 (2017),
9. INSTITUTE OF ELECTRICAL AND ELECTRONIC ENGINEERS (IEEE),
10. NATIONAL ELECTRICAL MANUFACTURER'S ASSOCIATION (NEMA),
11. INTERNATIONAL POWER CABLE ENGINEER'S ASSOCIATION (IPCEA),
12. NATIONAL ELECTRICAL SAFETY CODE (IEEE HANDBOOK 81)
13. REQUIREMENTS OF LOCAL POWER CORPORATION,
14. THE STATE FIRE PREVENTION CODE, 4468 (2013),
15. BUILDING CODE: FLORIDA BUILDING CODE (2017)
16. NFPA 110 (1999)

1. GENERAL PROVISIONS: PROVIDE ALL LABOR, MATERIALS, EQUIPMENT, AND INCIDENTALS REQUIRED FOR MAKE READY FOR USE COMPLETE ELECTRICAL SYSTEMS AS SHOWN ON THE DRAWINGS. THE WORD "PROVIDE" WHERE USED ON THE DRAWINGS SHALL MEAN "FURNISH, INSTALL, MOUNT, CONNECT, TEST COMPLETE, AND MAKE READY FOR OPERATION". THE WORD "INSTALL" WHERE USED ON THE DRAWINGS OR IN THE SPECIFICATIONS SHALL MEAN "MOUNT, CONNECT, TEST COMPLETE, AND MAKE READY FOR OPERATION". PERFORM WORK REQUIRED BY AND IN ACCORDANCE WITH THE CONTRACT DOCUMENTS. INSTALLATION: PROVIDE AND PLACE IN SATISFACTORY CONDITION, READY FOR PROPER OPERATION, RACEWAYS, WIRES, CABLES, AND OTHER MATERIALS NEEDED FOR ALL COMPLETE ELECTRICAL SYSTEMS REQUIRED BY THE CONTRACT DOCUMENTS, ADDITIONAL RACEWAYS AND WIRING SHALL BE PROVIDED TO COMPLETE THE INSTALLATION OF THE SPECIFIC EQUIPMENT PROVIDED. INCLUDE AUXILIARIES, AND ACCESSORIES FOR COMPLETE AND PROPERLY OPERATION SYSTEMS. PROVIDE ELECTRICAL SYSTEMS AND ACCESSORIES TO COMPLY WITH THE NEC, STATE AND LOCAL CODES AND ORDINANCES. IT IS THE INTENT OF THESE SPECIFICATIONS THAT THE ELECTRICAL SYSTEMS BE SUITABLE IN EVERY WAY FOR THE USE INTENDED, MATERIAL AND WORK WHEN IS INCIDENTAL TO THE WORK OF THIS CONTRACT SHALL BE PROVIDED AT NO ADDITIONAL COST TO THE CONTRACT.

2. SCOPE OF WORK: PROVIDE LABOR, MATERIALS, PERMITS, INSPECTIONS AND RE-INSPECTION FEES, TOOLS, EQUIPMENT, TRANSPORTATION, INSURANCE, TEMPORARY PROTECTION, TEMPORARY POWER AND LIGHTING, SUPERVISION AND INCIDENTAL ITEMS ESSENTIAL FOR PROPER INSTALLATION AND OPERATION OF THE ELECTRICAL SYSTEMS INDICATED IN THE CONTRACT DOCUMENTS. MINOR MATERIALS NOT SPECIFICALLY MENTIONED OR INDICATED BUT WHICH ARE USUALLY PROVIDED OR ARE ESSENTIAL FOR PROPER INSTALLATION AND OPERATION OF THE ELECTRICAL SYSTEMS INDICATED IN THE CONTRACT DOCUMENTS, GIVE NOTICES, FILE PLANS, PAY FEES, AND OBTAIN PERMITS AND APPROVALS FROM AUTHORITIES HAVING JURISDICTION, INCLUDE ALL FEES IN THE BID PRICE.

3. INTERPRETATION OF DRAWINGS: THE DRAWINGS ARE DIAGRAMMATIC AND ARE NOT INTENDED TO SHOW EXACT LOCATIONS OF RACEWAY RUNS, OUTLET BOXES, JUNCTION BOXES, PULL BOXES, ETC. THE LOCATIONS OF EQUIPMENT, APPLIANCES, FIXTURES, RACEWAYS, OUTLETS BOXES AND SIMILAR DEVICES SHOWN OF THE DRAWINGS ARE APPROXIMATE ONLY. EXACT LOCATIONS SHALL BE DETERMINED AND COORDINATED ON THE FIELD. THE RIGHT IS RESERVED TO CHANGE, WITHOUT ADDITIONAL COST, THE LOCATION OF ANY OUTLET WITHIN THE SAME ROOM OR GENERAL AREA BEFORE IT IS PERMANENTLY INSTALLED. OBTAIN ALL INFORMATION RELEVANT TO THE PLACING OF ELECTRICAL WORK AND IN CASE OF INTERFERENCE WITH OTHER WORK, PROCEED AS DIRECTED BY THE ARCHITECT.
COORDINATION: COORDINATE FINAL EQUIPMENT LOCATIONS WITH DRAWINGS OF OTHER DISCIPLINES. LAYOUT BEFORE INSTALLATION SO THAT ALL TRADES MAY INSTALL EQUIPMENT IN AVAILABLE SPACE. PROVIDE COORDINATION AS REQUIRED FOR INSTALLATION IN A NEAT AND WORKMANLIKE MANNER.

4. RECORD DRAWINGS: THE CONTRACTOR SHALL PROVIDE TWO (2) SETS OF RED OR BLUE LINE ON WHITE DRAWINGS TO MAINTAIN AND SUBMIT RECORD "AS-BUILT DOCUMENTS". LABEL EACH SHEET OF THE RECORD DOCUMENT SET WITH "PROJECT RECORD DOCUMENTS" WITH COMPANY NAME OF THE INSTALLING CONTRACTOR BE STAMPED OR PRINTED LETTERS. ONE SET SHALL BE
MAINTAINED AT THE SITE AND AT ALL TIMES BE ACCURATE CLEAR AND COMPLETE. THESE DRAWINGS SHALL BE AVAILABLE AT ALL TIMES TO THE ARCHITECT'S FIELD REPRESENTATIVES.

5. CODES, FEES, AND STANDARDS: THE CODES, STANDARDS AND PRACTICES LISTED HEREIN GENERALLY APPLY TO THE ENTIRE PROJECT AND SPECIFICATION SECTIONS. OTHER CODES, STANDARDS OR PRACTICES THAT ARE MORE SPECIFIC WILL BE INDICATED WITHIN A PARTICULAR SPECIFICATION. MATERIALS AND EQUIPMENT SHALL BE NEW AND FREE OF DEFECTS, AND SHALL BE U.L. LISTED. BEAR THE U.L. LABEL OR BE LABELED OR LISTED WITH A APPROVED NATIONALLY RECOGNIZED ELECTRICAL TESTING AGENCY. WHERE NO LABELING OR LISTING SERVICE IS AVAILABLE OR DESIRED FOR CERTAIN TYPES OF EQUIPMENT TEST DATA SHALL BE SUBMITTED TO VALIDATE THAT EQUIPMENT MEETS OR EXCEEDS AVAILABLE STANDARDS.

6. SHOP DRAWINGS: THE SHOP DRAWING RECORD SUBMITTAL SHALL INCLUDE THE FOLLOWING INFORMATION TO THE EXTENT APPLICABLE TO THE PARTICULAR ITEM: MANUFACTURER'S NAME AND PRODUCT DESIGNATION OR CATALOG NUMBER. STANDARDS OF SPECIFICATIONS OF ANSI, ASTM, IEEE, EIA, NEMA, NFPA, OSHA, U.L. OR OTHER ORGANIZATIONS, INCLUDING THE TYPE, SIZE, OR OTHER DESIGNATION. DIMENSIONED PLAN SECTIONS, AND ELEVATIONS SHOWING MEANS FOR MOUNTING, RACEWAY CONNECTIONS, AND CLEARANCE, AND SHOWING LAYOUT OF COMPONENTS. MATERIALS AND FINISH SPECIFICATIONS, INCLUDING PARTS, LIST OF COMPONENTS INCLUDING MANUFACTURER'S MAKES AND CATALOG NUMBERS. INTERNAL WIRING DIAGRAM INDICATION CONNECTIONS TO COMPONENTS AND MAINTENANCE. MANUFACTURER'S RECOMMENDED LIST OF SPARE PARTS. PROVIDE 10"x1'-6" ENLARGED ELECTRICAL ROOM LAYOUT DRAWINGS FOR ALL ELECTRICAL ROOMS. ALL EQUIPMENT SHALL BE INDICATED A ACTUAL SIZE OF EQUIPMENT BEING PROVIDED. ALL DIMENSIONS AND REQUIRED WORKING CLEARANCES SHALL BE SHOWN.

7. IDENTIFICATION OF EQUIPMENT: ELECTRICAL ITEMS SHALL BE IDENTIFIED AS SPECIFIED IN THE CONTRACT DOCUMENTS. SUCH IDENTIFICATION SHALL BE IN ADDITION TO THE MANUFACTURER'S NAMEPLATES AND SHALL SERVE TO IDENTIFY THE ITEM'S FUNCTION AND THE EQUIPMENT OF SYSTEM WHICH IT SERVES OR CONTROLS. REFER TO IDENTIFICATION SECTION OF THE SPECIFICATIONS FOR ADDITIONAL INFORMATION.

8. CUTTING AND PATCHING: THE CONTRACTOR SHALL BE RESPONSIBLE FOR CORE DRILLING AS REQUIRED FOR WORK UNDER THIS SECTION, BUT IN NO CASE SHALL THE CONTRACTOR CUT INTO OR WELD ON TO ANY STRUCTURAL ELEMENT OF THE PROJECT WITHOUT THE WRITTEN APPROVAL OF THE ARCHITECT. ROOF PENETRATIONS: PROVIDE ROOFER WITH PITCH PANS, FITTINGS, ETC., REQUIRED FOR ELECTRICAL ITEMS WHICH PENETRATE THE ROOF. ROOF PENETRATIONS AREA TO BE MAKE WATERPROOFED IN SUCH A MANNER THAT ROOFING GUARANTEES ARE FULLY IN FORCE. ROOF PENETRATIONS SHALL BE COORDINATED WITH OTHER TRADES TO ENSURE THAT ROOF WARRANTY IS NOT INVALIDATED.

9. OPERATION AND MAINTENANCE INSTRUCTIONS: THOROUGHLY INSTRUCT THE OWNER'S REPRESENTATIVE TO THE COMPLETE SATISFACTION OF THE ARCHITECT AND ENGINEER IN THE PROPER OPERATION OF ALL SYSTEMS AND EQUIPMENT PROVIDED. THE CONTRACTOR SHALL MAKE ALL ARRANGEMENTS, WITH THE ARCHITECT, AS TO WHOM THE INSTRUCTIONS ARE TO BE GIVEN IN THE OPERATION OF THE SYSTEMS AND THE PERIOD OF TIME IN WHICH THEY ARE TO BE GIVEN. THE ARCHITECT SHALL BE COMPLETELY SATISFIED THAT THE OWNER'S REPRESENTATIVE HAS BEEN THOROUGHLY AND COMPLETELY INSTRUCTED IN THE PROPER OPERATION OF ALL SYSTEMS AND EQUIPMENT BEFORE FINAL PAYMENT IS MADE. IF THE ARCHITECT DETERMINES THAT COMPLETE AND THOROUGH INSTRUCTIONS HAVE NOT BEEN GIVEN BY THE CONTRACTOR TO THE OWNER'S REPRESENTATIVE, THEN THE CONTRACTOR SHALL BE DIRECTED BY THE ARCHITECT OR PROVIDE WHATEVER INSTRUCTIONS ARE NECESSARY UNTIL THE INTENT OF THIS PARAGRAPH OF THE SPECIFICATION HAS BEEN COMPLIED WITH.

10. WORKMANSHIP: THE INSTALLATION OF MATERIALS AND EQUIPMENT SHALL BE PERFORMED IN A NEAT, WORKMANLIKE AND TIMELY MANNER BY AN ADEQUATE NUMBER OF CRAFTSMEN KNOWLEDGEABLE OF THE REQUIREMENTS OF THE CONTRACT DOCUMENTS. THEY SHALL BE SKILLED IN THE METHODS AND CRAFTSMANSHIP NEEDED TO PRODUCE A QUALITY LEVEL OF WORKMANSHIP. PERSONNEL WHO INSTALL MATERIALS AND EQUIPMENT SHALL BE QUALIFIED BY TRAINING AND EXPERIENCE TO PERFORM THEIR ASSIGNED TASKS.

11. SYSTEMS GUARANTEE: PROVIDE A ONE-YEAR GUARANTEE. THIS GUARANTEE SHALL BE BY THE CONTRACTOR TO THE OWNER FOR ANY DEFECTIVE WORKMANSHIP OR MATERIAL WHICH HAS BEEN PROVIDED UNDER THIS CONTRACT AT NO COST TO THE OWNER FOR A PERIOD OF ONE YEAR FROM THE DATE OF SUBSTANTIAL COMPLETION OF THE SYSTEM. THE GUARANTEE SHALL INCLUDE LAMPS, FOR NINETY DAYS AFTER DATE OF SUBSTANTIAL COMPLETION OF THE SYSTEM, EXPLAIN THE PROVISIONS OF GUARANTEE TO THE OWNER AT THE "DEMONSTRATION OF COMPLETED SYSTEM".

12. REMOVE IF TEMPORARY ELECTRICAL SERVICE IS NOT REQUIRED.
12. TEMPORARY LIGHT AND POWER: PROVIDE CAPACITY FROM NEW TEMPORARY SERVICE. MAKE ARRANGEMENTS WITH THE OWNER FOR TEMPORARY SERVICE AND PAY ALL RELATED EXPENSES. TEMPORARY LIGHT AND POWER SHALL BE PROVIDED CONSTANTLY DURING THE PROJECT DEPENDENT UPON OWNER'S SAFETY REQUIREMENTS. REMOVE IF NEW ELECTRICAL SERVICE IS NOT REQUIRED.

13. SERVICE AND METERING: VERIFY ALL REQUIREMENTS WITH THE UTILITY COMPANY SERVING THE PROJECT WHICH WILL BE REFERRED TO AS THE UTILITY COMPANY HEREIN. MAKE ARRANGEMENTS WITH THE UTILITY COMPANY FOR OR CAUSE A COMPLETE SERVICE. PAY CHARGES AND PROVIDE LABOR AND MATERIAL FOR THE SERVICE. PROVIDE UNDERGROUND CABLES AND RACEWAYS FOR INCOMING SERVICES OR COSTS FROM THE UTILITY'S TRANSFORMER TO EQUIPMENT. FEES: CONTACT THE UTILITY COMPANY TO DETERMINE IF ANY FEES, CHARGES OR COSTS WILL BE DUE THE COMPANY AS REQUIRED FOR TEMPORARY POWER, PERMANENT POWER INSTALLATIONS, HOOKUPS, ETC. THIS FEE, CHARGE OR COST SHALL BE INCLUDED IN THE BID PRICE. PAY FOR REQUIRED LICENSES, FEES AND INSPECTIONS. INCLUDE COSTS IN THE PROPOSED CONSTRUCTION COST SUBMISSION. THESE COSTS SHALL INCLUDE BUT NOT BE LIMITED TO APPLICABLE TAXES, PERMITS, NECESSARY NOTICES, CERTIFICATES AND COSTS REQUIRED TO OBTAIN SAME. INSTALL A COMPLETE SYSTEM IN ACCORDANCE WITH THE LATEST EDITION OF THE NATIONAL ELECTRICAL CODE AND LATEST REGULATIONS OF GOVERNING LOCAL, STATE, COUNTY AND OTHER APPLICABLE CODES, INCLUDING THE UTILITY COMPANY REQUIREMENTS. PROVIDE TRANSFORMER PAD PER UTILITY COMPANY REQUIREMENTS.

REMOVE IF POWER OUTAGE IS NOT REQUIRED.
14. POWER OUTAGE: SPECIAL ATTENTION IS CALLED TO THE FACT THAT WORK INVOLVED IS IN CONNECTION WITH EXISTING BUILDINGS WHICH SHALL REMAIN IN OPERATION WHILE WORK IS BEING PERFORMED. WORK MUST BE DONE IN ACCORDANCE WITH THE PRIORITY SCHEDULE. SCHEDULE WORK FOR A MINIMUM OUTAGE TO OWNER. REQUEST WRITTEN PERMISSION AND RECEIVE WRITTEN ACCEPTANCE FROM THE OWNER NO LATER THAN 72 HOURS IN ADVANCE OF POWER AND COMMUNICATION SHUT-DOWNS. PERFORM WORK AS REQUIRED AT OTHER THAN STANDARD WORKING HOURS WHERE OUTAGES CANNOT BE ACCEPTED BY OWNER DURING REGULAR WORKING HOURS. PROTECT EXISTING BUILDINGS AND EQUIPMENT DURING CONSTRUCTION.

REMOVE IF DEMOLITION IS NOT REQUIRED
15. DEMOLITION: RELOCATE EXISTING EQUIPMENT AND REROUTE EXISTING EQUIPMENT AND REROUTE EXISTING RACEWAYS IN AREAS BEING RENOVATED AS REQUIRED TO FACILITATE THE INSTALLATION OF THE NEW SYSTEMS. THE OWNER SHALL REQUIRE CONTINUOUS OPERATION OF THE EXISTING SYSTEMS WHILE DEMOLITION, RELOCATION WORK OR NEW TIE-INS ARE PERFORMED.

INCLUDE ONLY WHERE COORDINATION STUDY IS REQUIRED ON HEALTH CARE PROJECTS.
16. COORDINATION STUDY: ALL PANELBOARD AND CIRCUIT BREAKERS SHALL BE OF THE MANUFACTURER AND TYPE SPECIFIED HEREIN, AND A INDICATED ON THE DRAWINGS OF THE COORDINATION STUDY. ANY DISCREPANCIES OR CONFLICTS IN SPECIFIED EQUIPMENT SHALL BE BROUGHT TO THE ATTENTION OF THE ENGINEER DURING BID, FOR FORMAL CLARIFICATION.

260519 LOW VOLTAGE ELECTRICAL POWER CONDUCTORS AND CABLES

1. COPPER CONDUCTORS: COMPLY WITH NEMA WC 70. CONDUCTOR INSULATION: COMPLY WITH NEMA WC 70 FOR TYPES THWN. THWN, SOLID FOR NO. 10AWG AND SMALLER. STRANDED FOR NO. 8 AWG AND LARGER.

2. MANUFACTURERS: PROVIDE PRODUCTS BY ONE OF THE FOLLOWING: AFC CABLE SYSTEMS, INC., HUBBELL POWER SYSTEMS, INC., OKONEDEVICE, EGS ELECTRICAL GROUP, LLC, 3M, ELECTRICAL PRODUCTS DIVISION, TYCO ELECTRONICS CORP.

3. CONCEAL CABLES IN FINISHED WALLS, CEILINGS AND FLOORS, UNLESS OTHERWISE INDICATED.

4. USE MANUFACTURER-APPROVED PULLING COMPOUND OR LUBRICANT WHERE NECESSARY. COMPOUND USED MUST NOT DETERIORATE CONDUCTOR OF INSULATION. DO NOT EXCEED MANUFACTURER'S RECOMMENDED MAXIMUM PULLING TENSIONS AND SIDEWALL PRESSURE VALUES.

5. USE PULLING MEANS, INCLUDING FISH TAPE, CABLE, ROPE, AND BASKET-WEAVE WIRE/CABLE GRIPS, THAT WILL NOT DAMAGE CABLES OR RACEWAY.

6. TIGHTEN ELECTRICAL CONNECTORS AND TERMINALS ACCORDING TO MANUFACTURER'S PUBLISHED TORQUE-TIGHTENING VALUES. IF MANUFACTURER'S TORQUE VALUES ARE NOT INDICATED, USE THOSE SPECIFIED IN UL 486A AND UL 486B.

7. MAKE SPLICES AND TAPS THAT ARE COMPATIBLE WITH CONDUCTOR MATERIAL AND THAT POSSESS EQUIVALENT OR BETTER MECHANICAL STRENGTH AND INSULATION RATINGS THAN UNSPLICED CONDUCTORS.

8. APPLY FIRE-STOPPING TO ELECTRICAL PENETRATIONS IF FIRE-RATED FLOOR AND WALL ASSEMBLIES TO RESTORE ORIGINAL FIRE- RESISTANCE RATING OF ASSEMBLY.

9. ALL WIRING SHALL BE IN CONDUIT, 3/4" MINIMUM.

260526 GROUNDING AND BONDING

1. INSULATED CONDUCTORS SHALL BE COPPER WIRE OR CABLE INSULATED FOR 600 VOLTS.

2. BARE CONDUCTORS AS NOTED ON DOCUMENTS.

3. GROUND BARS SHALL BE PREDRILLED COPPER.

4. GROUND RODS SHALL BE COPPER CLAD STEEL, 3/4" BY 10' IN SUFFICIENT QUANTITY TO SATISFY NEC RESISTANCE REQUIREMENTS.

5. UNDER GROUND CONNECTIONS SHALL BE EXOTHERMIC WELDED.

260529 HANGERS AND SUPPORT

1. SUPPORT ANCHORAGE AND ATTACHMENT COMPONENTS
A. STEEL AND NONMETALLIC SLOTTED SUPPORT SYSTEMS.
B. STEEL CONDUIT HANGERS, CLAMPS, ETC.
C. STRUCTURAL STEEL FOR FABRICATED SUPPORTS.
D. ATTACHMENT SUPPORTS
a. POWDER-ACTUATED FASTENERS
b. MECHANICAL-EXPANSION ANCHORS
c. CLAMPS FOR ATTACHMENT TO STEEL
d. THREADED HANGER RODS

2. RATED STRENGTH: SHALL CONTAIN A MINIMUM STRUCTURAL SAFETY FACTOR OF FIVE (5) TIMES THE APPLIED FORCE.

260533 RACEWAYS AND BOXES FOR ELECTRICAL SYSTEMS

3.2 MATERIALS
A. METAL CONDUITS, TUBING, AND FITTINGS
1. GRC.
2. ARC.
3. PVC-COATED RIGID STEEL CONDUIT.
4. EMT.
5. FMC, ZINC-COATED STEEL.
6. LFMC.
7. FITTINGS.
a. CONDUIT FITTINGS FOR HAZARDOUS (CLASSIFIED) LOCATIONS.
b. EMT STEEL COMPRESSION TYPE.
c. EXPANSION FITTINGS.
d. PVC COATED.
B. NONMETALLIC CONDUITS, TUBING AND FITTINGS
1. ENT.
2. RNC.
3. LFNC.
4. HDPE.
5. FITTINGS: MATCH CONDUIT.
C. METAL WIREWAYS AND AUXILIARY GUTTERS: SHEET METAL WITH SCREW COVERS.
D. NONMETALLIC WIREWAYS AND AUXILIARY GUTTERS: PVC PLASTIC.
E. SURFACE METAL RACEWAYS: METAL, GALVANIZED STEEL, WITH SNAP-ON COVERS.
F. SURFACE NONMETALLIC RACEWAYS: TWO-OR THREE-PIECE RIGID PVC.
G. TELE-POWER POLES: GALVANIZED STEEL WITH MORE BAKED-ENAMEL FINISH.
H. BOXES, ENCLOSURES, AND CABINETS
1. METAL OUTLET AND DEVICE BOXES: FERROUS ALLOY.
2. NONMETALLIC OUTLET AND DEVICE BOXES.
3. METAL FLOOR BOXES: SHEET METAL.
4. NONMETALLIC FLOOR BOXES: NON-ADJUSTABLE, RECTANGULAR.
5. LUMINAIRE OUTLET BOXES: NONADJUSTABLE, DESIGNED FOR ATTACHMENT OF LUMINAIRE WEIGHING 50LB (23KG), IC.
6. PADDLE FAN OUTLET BOXES: NONADJUSTABLE, DESIGNED FOR ATTACHMENT OF PADDLE FAN WEIGHING 70LB (32KG).
7. SMALL SHEET METAL PULL AND JUNCTION BOXES.
8. CAST-METAL ACCESS, PULL, AND JUNCTION BOXES.
9. BOX EXTENSIONS.
10. HINGED-COVER ENCLOSURES: METAL.
11. CABINETS: GALVANIZED STEEL.
I. HANDHOLES AND BOXES FOR EXTERIOR UNDERGROUND WIRING: POLYMER CONCRETE WITH POLYMER-CONCRETE FRAME AND COVER.
PROTOTYPE TESTED FOR COMPLIANCE WITH SCTE 77.
1. CONFIGURATION: OPEN BOTTOM UNLESS OTHERWISE NOTED ON PLAN.
2. WEATHERPROOF COVER.
3. COVER LEGEND: "ELECTRIC"

1.2 RACEWAY APPLICATION

A. OUTDOORS
1. EXPOSED: GRC.
2. CONCEALED ABOVEGROUND: EMT.
3. UNDERGROUND: RNC, TYPE EPC-40-PVC.
4. CONNECTION TO VIBRATING EQUIPMENT: LFMC.
5. BOXES AND ENCLOSURES: ABOVEGROUND: TYPE 3R.

B. INDOORS
1. EXPOSED, NOT SUBJECT TO PHYSICAL DAMAGE: EMT.
2. EXPOSED AND SUBJECT TO SEVERE DAMAGE: GRC.
3. CONCEALED: EMT.
4. CONNECTION TO VIBRATING EQUIPMENT: LFMC IN DAMP OR WET LOCATIONS.
5. DAMP OR WET LOCATIONS: GRC.
6. BOXES AND ENCLOSURES: TYPE 1, EXCEPT TYPE 4 NONMETALLIC IN INSTITUTIONAL AND COMMERCIAL KITCHENS AND DAMP OR WET LOCATIONS.
C. MINIMUM RACEWAY SIZE: 3/4-INCH (21-MM) TRADE SIZE.

D. RACEWAY FITTINGS COMPATIBLE WITH RACEWAYS AND SUITABLE FOR USE AND LOCATION.
1. RIGID AND INTERMEDIATE STEEL CONDUIT: THREADED RIGID STEEL CONDUIT FITTINGS.
2. PVC EXTERNALLY COATED RIGID STEEL CONDUITS: FITTINGS LISTED FOR USE WITH THIS TYPE OF CONDUIT.
3. EMT: COMPRESSION FITTINGS.
4. FLEXIBLE CONDUIT: FITTINGS LISTED FOR USE WITH FLEXIBLE CONDUIT.

260553 IDENTIFICATION FOR ELECTRICAL SYSTEMS

1.1 QUALITY ASSURANCE
A. COMPLY WITH ANSI A13.1 AND IEEE C2.
B. ARMORED AND METAL-CLAD CABLE IDENTIFICATION: SELF-ADHESIVE VINYL LABELS.
C. POWER AND CONTROL CABLE IDENTIFICATION: SELF-ADHESIVE VINYL LABELS.
D. CONDUCTOR IDENTIFICATION: COLOR-CODING CONDUCTOR TAPE.
E. FLOOR MARKING TAPE: PRESSURE-SENSITIVE VINYL TAPE.
F. UNDERGROUND-LINE WARNING TAPE: PIGMENTED POLYOLEFIN.
G. WARNING LABELS AND SIGNS
H. INSTRUCTION SIGNS: ENGRAVED LAMINATED ACRYLIC OR MELAMINE PLASTIC.
I. EQUIPMENT IDENTIFICATION LABELS: ENGRAVED, LAMINATED ACRYLIC OR MELAMINE PLASTIC.
J. SYSTEM IDENTIFICATION: COLOR BANDING FOR RACEWAYS AND CABLES. EACH COLOR BAND SHALL COMPLETELY ENCIRCLE CABLE OR CONDUIT. PLACE ADJACENT BANDS OR TWO-COLOR MARKINGS IN CONTACT, SIDE BY SIDE, LOCATE BANDS AT CHANGES IN DIRECTION, AT PENETRATIONS OF WALLS AND FLOORS, AT 120-FOOT (10-M) MAXIMUM INTERVALS IN STRAIGHT RUNS, AND AT 25-FOOT (7.5-M) MAXIMUM INTERVALS IN CONGESTED AREAS.
1. USE FOLLOWING COLORS FOR COLOR BANDS AND FOR SOLID CODING:

SYSTEM	COLOR
NORMAL POWER	ROYAL BLUE
MISCELLANEOUS COMMUNICATIONS	BROWN
FIRE ALARM	RED
TELEPHONE/COMMUNICATIONS	BLACK

AA. ACCESSIBLE RACEWAYS AND CABLES WITHIN BUILDINGS: IDENTIFY THE COVERS OF EACH JUNCTION AND PULL BOX OF THE FOLLOWING SYSTEMS WITH SELF-ADHESIVE VINYL LABELS WITH THE WIRING SYSTEM LEGEND AND SYSTEM VOLTAGE. COLOR CODE PER 3.2.D.1. SYSTEM LEGENDS SHALL BE AS FOLLOWS:
1. EMERGENCY POWER.
2. POWER.
3. UPS.

SECTION 262923 - LIGHTING CONTROL DEVICES

262726 WIRING DEVICES

A. RECEPTACLES: DUPLEX, 125V, 20A.
1. STRAIGHT BLADE, HOSPITAL GRADE ISOLATED GROUND AND TAMPER RESISTANT.
2. GFCI, NON-FEED THROUGH, HOSPITAL GRADE.
3. ISOLATED GROUND, HOSPITAL GRADE.
4. HAZARDOUS (CLASSIFIED) LOCATION RECEPTACLES.
B. CORD AND PLUG SETS RATED AND LISTED FOR EQUIPMENT SERVED AND ENVIRONMENT INSTALLED.
C. SNAP SWITCHES: 120/277V, 20A.
1. PILOT LIGHT SWITCHES.
2. KEY-OPERATED SWITCHES.
3. SINGLE-POLE, DOUBLE-THROW SWITCHES.
D. WALL PLATES
1. MATERIAL FOR FINISHED SPACES: SATIN-FINISHED STAINLESS STEEL.
2. MATERIAL FOR UNFINISHED SPACES: THERMOPLASTIC.
3. MATERIAL FOR DAMP AND WET LOCATIONS: THERMOPLASTIC.
E. POKE-THROUGH ASSEMBLIES: BELOW-FLOOR JUNCTION BOX WITH MULTI-CHANNELED, THROUGH-FLOOR RACEWAY/FIRESTOP AND DETACHABLE FLOOR SERVICE OUTLET ASSEMBLY, UL LISTING FIRE RATING EQUAL TO FLOOR ASSEMBLY.
1. SERVICE OUTLET ASSEMBLY: FLUSH TYPE.
2. SIZE: 4 INCH (100 MM).
F. PHOTOCELL
1. PROVIDED WITH NO RELAY RATED AT 120V, 50/60A.
2. SHALL BE CONNECTED TO AN OVERRIDE SWITCH.
3. DELAY OF UP TO TWO MINUTES TO PREVENT FALSE SWITCHING.
4. SHALL MEET ANSI/UL 773A.

100% CONSTRUCTION DOCUMENTS - NOT FOR CONSTRUCTION

TLC ENGINEERING FOR ARCHITECTURE
874 Dixon Blvd.
Cocoa, Florida 32922
PH: 321.636.0274
Fax: 321.639.8985
www.tlc-engineers.com
COA #15

© Copyright 2018 TLC Engineering for Architecture, Inc.

Mosquito Control Storage Facility
2865 GREENBROOKE ST., GRANT-VALKARIA, FL 32949

No.	Date	Description

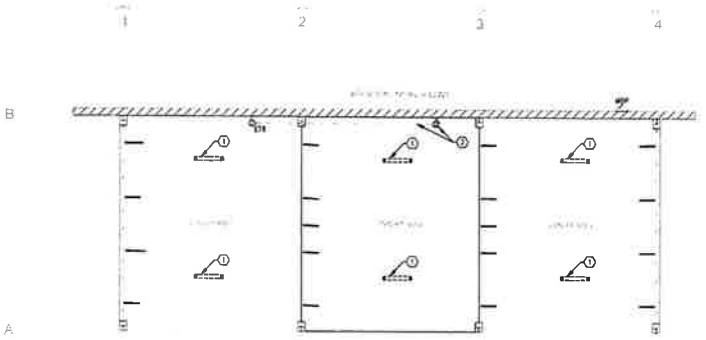
Seal

Project No: 518060
Issue Date: 08/22/18
Drawn By: JB
Approved By: SBC
Scale:

Drawing Title: ELECTRICAL SPECIFICATIONS

Drawing No: E-002

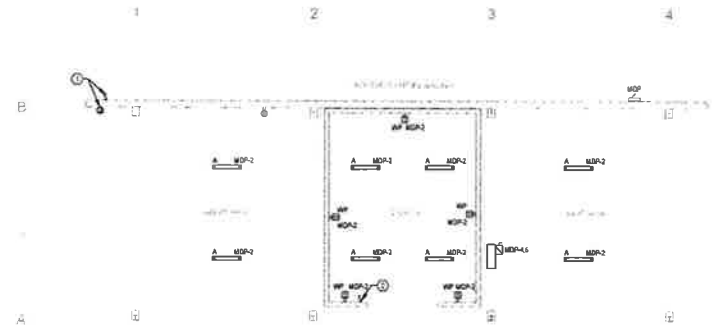
C:\Revit Local\518060-Mosquito Storage Facility_R19_Central_jbarnes.rvt
8/22/2018 9:04:23 PM



1 ELECTRICAL DEMOLITION
1/8" = 1'-0"

DEMOLITION KEYED NOTES:

1. DISCONNECT AND REMOVE EXISTING LIGHT FIXTURE. REMOVE CONDUIT AND WIRING BACK TO SOURCE.
2. DISCONNECT AND REMOVE EXISTING RECEPTACLE. REMOVE CONDUIT AND WIRING BACK TO EXISTING TO REMAIN RECEPTACLE SHOWN.



2 ELECTRICAL PROPOSED PLAN
1/8" = 1'-0"

PROPOSED KEYED NOTES:

1. NEW PHOTOCELL WITH HOA BYPASS SWITCH. WALL MOUNT PHOTOCELL NEAR TOP OF BUILDING. COORDINATE HOA SWITCH LOCATION WITH OWNER. FOR WIRING DIAGRAM REFER TO DETAIL 1 ON SHEET E-201
2. SNAP SWITCH CONTROL FOR STORAGE LIGHT FIXTURES.

TLC ENGINEERING
FOR ARCHITECTURE
874 Dixon Blvd.
Cocoa, Florida 32922
PH: 321.636.0274
Fax: 321.639.8986
www.tlc-engineers.com
COA #15
©Copyright 2018 TLC Engineering for Architecture, Inc.

Mosquito Control Storage Facility

2885 GREENBROOKE ST, GRANT-VALKARIA, FL 32949

No.	Date	Description

Seal

100% CONTRUCTION DOCUMENTS - NOT FOR CONSTRUCTION

Project No. 518080
Issue Date 08/22/18
Drawn By JB
Approved By SBC
Scale 1/8" = 1'-0"

Drawing Title
ELECTRICAL FLOOR PLANS

Drawing No.
E-101

Branch Panel: MDP

Location:
Supply From:
Mounting: Surface
Enclosure: NEMA 1

Volts: 120/240 Single
Phases: 1
Wires: 3

A.I.C. Rating: 10k
Mains Type: MCB
Mains Rating: 200 A
MCB Rating: 225 A
Neutral Rating: 100 00%

Notes:

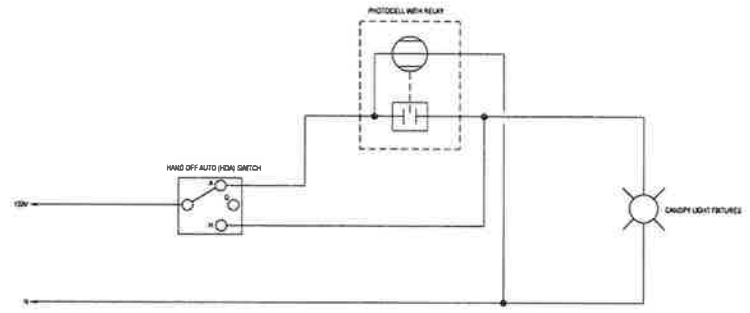
CKT	Circuit Description	No Ts	Trip	Po Es	A	B	Po Es	Trip	No Ts	Circuit Description	CKT
1	EXISTING LOAD		100 A	2	0.0 kVA	1.3 kVA			1	20 A	OUTDOOR CANOPY/STORAGE	2
3							0.0 kVA	1.1 kVA				4
5					0.0 kVA	1.1 kVA			2	20 A	HP-1	6
7	EXISTING LOAD		100 A	2			0.0 kVA	0.0 kVA	1	20 A	EXISTING LOAD	8
9	EXISTING LOAD		30 A	2	0.0 kVA	0.0 kVA			1	20 A	EXISTING LOAD	10
11							0.0 kVA	0.0 kVA				12
13	EXISTING LOAD		20 A	1	0.0 kVA	0.0 kVA			1	20 A	EXISTING LOAD	14
15	EXISTING LOAD		20 A	1			0.0 kVA	0.0 kVA	1	30 A	EXISTING LOAD	16
17	EXISTING LOAD		30 A	1	0.0 kVA	0.0 kVA			1	20 A	EXISTING LOAD	18
19	EXISTING LOAD		20 A	1			0.0 kVA	0.0 kVA	1	20 A	EXISTING LOAD	20
21	EXISTING LOAD		20 A	1	0.0 kVA	0.0 kVA						22
23	EXISTING LOAD		20 A	1			0.0 kVA	0.0 kVA	2	40 A	EXISTING LOAD	24
25	EXISTING LOAD		20 A	1	0.0 kVA	0.0 kVA						26
27	EXISTING LOAD		40 A	2			0.0 kVA	0.0 kVA	2	50 A	EXISTING LOAD	28
29					0.0 kVA	0.0 kVA			1	20 A	EXISTING LOAD	30
		Total Load:			0.0 kVA	0.0 kVA						
		Total Amps:			0 A	0 A						

Load Class/Position	Connected Load	Demand Factor	Estimated Demand	Panel Totals
HVAC	0.0 kVA	125.00%	0.0 kVA	
Lighting	0.0 kVA	125.00%	0.0 kVA	Total Conn. Load: 0.0 kVA
Receptacle	0.0 kVA	100.00%	0.0 kVA	Total Est. Demand: 0.00 kVA
				Total Conn. Current: 0 A
				Total Est. Demand Current: 0 A

Notes:
CONTRACTOR SHALL PROVIDE UPDATED PANEL SCEDULE WITH EXISTING AND NEW LOAD DESCRIPTIONS FOR EACH POLE LOCATION

LIGHTING FIXTURE SCHEDULE

TYPE	DESCRIPTION	MANUFACTURER	MODEL	VOLTAGE	REQUIRED LAMPS: TYPE	LAMP QUANTITY	VA	COMMENTS
A	4' LED LINEAR FIXTURE, 4000 LUMENS, POLYCARBONATE HOUSING, FROSTED LENS, RATED FOR OUTDOOR	LITHONIA	VAP 4000LM FST MD MVOLT GZ10 204 90CRI	120 V	LED	1	42 VA	



1 Photocell Wiring Diagram
N.T.S.

ENGINEERING
FOR ARCHITECTURE
874 Dixon Blvd.
Cocoa, Florida 32922
PH: 321.636.0274
Fax: 321.639.8986
www.tlc-engineers.com
COA #15
© Copyright 2014 TLC Engineering for Architecture, Inc.

Mosquito Control Storage Facility

2865 GREENBROOKE ST, GRANT-VALKARIA, FL 32949

No.	Date	Description

Seal

100% CONTRUCTION DOCUMENTS - NOT FOR CONSTRUCTION

Project No.	518060
Issue Date.	08/22/18
Drawn By	JB
Approved By	SBC
Scale	N.T.S.

Drawing Title
ELECTRICAL SCHEDULE AND DETAILS

Drawing No.
E-201

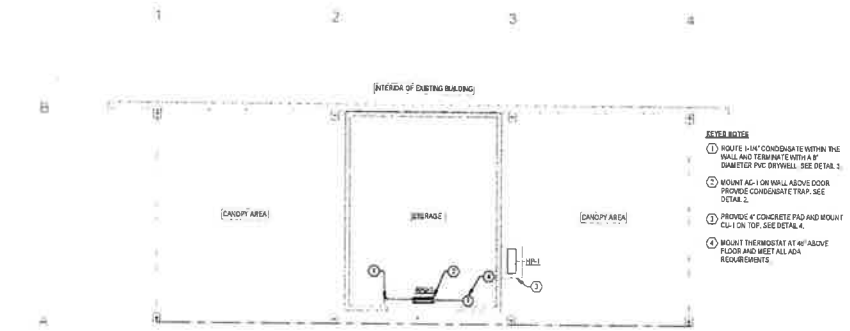
HVAC GENERAL NOTES

SYMBOL	DESCRIPTION
D30	-CONDENSATE PIPING
1	-REVISION REFERENCE
T1 / TAG	-THERMOSTAT/TEMPERATURE SENSOR
AHU-1 / TYPE	-EQUIPMENT TAG
1	-SHEET NOTE CALLOUT
AHU	-AIR HANDLING UNIT
CFM	-CFM (CUBIC FEET PER MINUTE)
FLA	-FULL LOAD AMPS
HP	-HEAT PUMP OUTDOOR UNIT
M&H	-THOUSAND BTUs PER HOUR
MCA	-MINIMUM CIRCUIT AMPS
MOCP	-MAXIMUM OVER CURRENT PROTECTION
V/PH	-VOLTS/PHASE

NOTE: SOME SYMBOLS SHOWN ON THIS LEGEND MAY NOT PERTAIN TO THIS PROJECT

HVAC GENERAL NOTES

1. CONNECTION TO EQUIPMENT SHALL BE VERIFIED WITH MANUFACTURER'S CERTIFIED DRAWINGS, TRANSITIONS TO ALL EQUIPMENT SHALL BE VERIFIED AND PROVIDED FOR EQUIPMENT FURNISHED.
2. DIMENSIONS SHALL BE FIELD-VERIFIED AND COORDINATED PRIOR TO PROCUREMENT OR FABRICATION. COORDINATE THE WORK WITH OTHER TRADES INVOLVED. FIELD MODIFICATIONS SUCH AS OFFSETS IN PIPING OR DUCTWORK (INCLUDING DIVIDED DUCTWORK) NEEDED DUE TO OBSTRUCTIONS OR INTERFERENCES SHALL BE PROVIDED AT NO ADDITIONAL COST. FOR PROJECTS INVOLVING RENOVATION, COORDINATE NEW WORK WITH EXISTING ELEMENTS SUCH AS THE BUILDING STRUCTURE AND ARCHITECTURAL FEATURES, SPRINKLER PIPING, LIGHTS, PLUMBING, AND ELECTRICAL CONDUIT.
3. LOCATE THERMOSTATS, TEMPERATURE SENSORS, HUMIDISTATS, AND HUMIDITY SENSORS AT 48" ABOVE FINISHED FLOOR UNLESS NOTED OTHERWISE. COORDINATE LOCATIONS WITH OTHER EQUIPMENT, FURNITURE, AND DOOR SWINGS.
4. ALL EQUIPMENT SHALL BE SUPPORTED AS DETAILED AND/OR SPECIFIED. PROVIDE ADDITIONAL SUPPORTS AS REQUIRED TO PROVIDE A VIBRATION-FREE, RIGID INSTALLATION.
5. REFER TO TYPICAL DETAILS FOR PIPING AND INSTALLATION OF EQUIPMENT.
6. TRAPPED CONDENSATE DRAINS FROM ALL MECHANICAL EQUIPMENT SHALL BE PROVIDED FOR PROPER DRAINAGE TO SUIT EQUIPMENT FURNISHED.
7. ALL PIPING IS SHOWN SCHEMATICALLY. PROVIDE ALL TRANSITIONS, TURNING VANES, ELBOWS, FITTINGS, ETC., TO ALLOW SMOOTH FLOWS. ALL SPLIT DUCT FITTINGS SHALL TRANSITION TO FULL SIZE OF THE SUM OF BOTH BRANCHES, UPSTREAM OF SPLIT.
8. INTERRUPTIONS TO EXISTING SERVICES SHALL BE SCHEDULED FOR TIMES OTHER THAN NORMAL OPERATING HOURS (SUCH AS NIGHTS AND WEEKENDS). SUCH INTERRUPTIONS TO SERVICES SHALL NOT BE MADE WITHOUT THE PRIOR WRITTEN CONSENT OF THE OWNER'S REPRESENTATIVE AND PROPER COORDINATION WITH OTHER TRADES. PRE-WORK SHALL BE PERFORMED TO MAKE THE SHUTDOWN PERIOD AS BRIEF AS POSSIBLE.
9. ALL EQUIPMENT, DUCTWORK, ETC., TO BE REMOVED SHALL REMAIN PROPERTY OF THE OWNER OR DISPOSED OF LEGALLY, AS DIRECTED BY OWNER.
10. MAINTAIN CLEARANCE OF A MINIMUM OF 6" BETWEEN DUCTWORK, PIPING, EQUIPMENT, ETC., AND ALL FIRE RATED AND FIRE/SMOKE RATED PARTITIONS, TO ALLOW FOR INSPECTIONS OF RATED WALLS.
11. UNLESS OTHERWISE NOTED, ALL EQUIPMENT AND VALVE DRAINS SHALL BE INDEPENDENTLY PIPED FULL SIZE TO THE NEAREST PLUMBING DRAIN.
12. SLEEVE AND SEAL ALL PIPING PENETRATIONS THROUGH BUILDING PARTITIONS. PROVIDE MANUAL AIR VENTS AT ALL HIGH POINTS IN CHILLED WATER AND HOT WATER PIPING.
13. PIPING, DUCTWORK, LEAK PROTECTION APPARATUS, OR OTHER EQUIPMENT FOREIGN TO ELECTRICAL SWITCHBOARDS, PANELBOARDS, DISTRIBUTION BOARDS, OR MOTOR CONTROL CENTERS SHALL NOT BE INSTALLED WITHIN THE REQUIRED SPACE FOR WORKING CLEARANCES OR DEDICATED SPACES OF THE ELECTRICAL EQUIPMENT, EXTENDING IN FRONT OF AND FROM FLOOR TO STRUCTURAL CEILING WITH A WIDTH AND DEPTH OF THE ELECTRICAL EQUIPMENT IN ACCORDANCE WITH NEC-110.26.



1 MECHANICAL PROPOSED PLAN
1/8" = 1'-0"

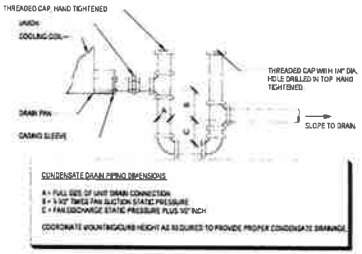
SPLIT SYSTEM AIR HANDLING UNIT SCHEDULE (INDOOR UNIT)

MARK	MANUFACTURER	MODEL NUMBER	CFM	FAN FLA	COOLING MBH	HEATING MBH	MCA
AHU-1	MITSUBISHI	PKA-A18NA	263-425	0.23	6-18	6-19	1

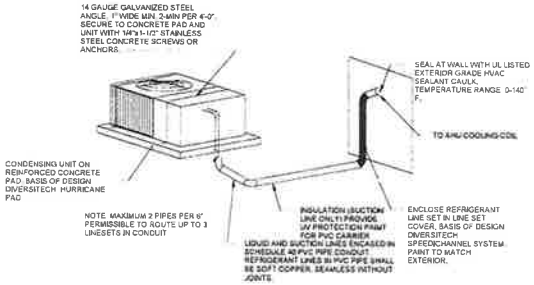
SPLIT SYSTEM OUTDOOR UNIT SCHEDULE

MARK	MODEL	TONS	REFRIGERANT	VOLTS/PHASE	SEER	HSPF	MCA	MOCP
HP-1	MITSUBISHI PUZ-A18NHA2	1.5	R410A	208/1	18.3	9.5	13	15

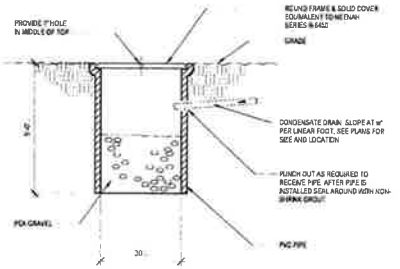
NOTES
1. PROVIDE 2" MERV 8 FILTER.
2. PROVIDE DISCONNECT SWITCH.
3. PROVIDE UNIT WITH INTEGRATED FACTORY SUPPLIED PACKAGED CONTROLLER AND PROGRAMMABLE THERMOSTAT.
4. AHU-1 TO BE WIRED AND POWERED THROUGH HP-1.



2 M-001 AHU CONDENSATE DRAIN TRAP
N.T.S.



4 M-001 REFRIGERANT PIPING
N.T.S.



3 M-001 DRYWELL DETAIL (FRENCH DRAIN)
N.T.S.

ENGINEERING
FOR ARCHITECTURE
874 Dixon Blvd.
Cocoa, Florida 32922
PH: 321.636.0274
Fax: 321.639.8986
www.tlc-engineers.com
COA #15
© Copyright 2018 TLC Engineering for Architecture, Inc.

Mosquito Control Storage Facility
2865 GREENBROOKE ST, GRANT-VALKARIA, FL 32949

No.	Date	Description

Seal

Project No.	518060
Issue Date	08/22/18
Drawn By	AWE
Approved By	JTW
Scale	As indicated
Drawing Title	MECHANICAL LEGEND AND PLAN
Drawing No.	M-001

100% CONTRUCTION DOCUMENTS - NOT FOR CONSTRUCTION

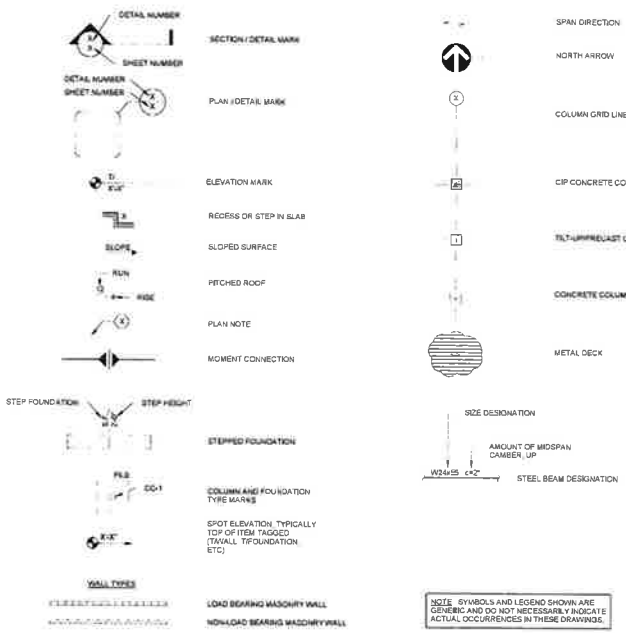
C:\Revit Local\518060-Mosquito Storage Facility_R18_5_Central_andrew.anderson@tlc-eng.com.rvt
8/22/2018 9:08:38 PM

STRUCTURAL ABBREVIATIONS

ABBREV	ABBREVIATION
ACI	AMERICAN CONCRETE INSTITUTE
ADD	ADDITIVE
ADDL	ADDITIONAL
AFF	ABOVE FINISHED FLOOR
AISC	AMERICAN INSTITUTE OF STEEL CONSTRUCTION
AISI	AMERICAN IRON AND STEEL INSTITUTE
ALT	ALTERNATE/ALTERNATIVE
ALUM	ALUMINUM
ARCH	ARCHITECTURE/ARCHITECTURAL
ASTM	AMERICAN SOCIETY OF TESTING MATERIALS
AWS	AMERICAN WELDING SOCIETY
BF	BOTTOM OF
BCX	BOTTOM CHORD EXTENSION
BLDG	BUILDING
BLK	BLOCK
BM	BEAM
BOT	BOTTOM
BP	BASE PLATE/BEARING PLATE
BRG	BEARING
BTWN	BETWEEN
C	CHANNEL
CB	CONCRETE BEAM
CC	CONCRETE COLUMN
CF	CUBIC FEET (FOOT)
CFS	COLD-FORMED STEEL
CIP	CAST IN PLACE
CJ	CONTRACTION JOINT
CL	CENTERLINE
CLR	CLEAR/CLEARANCE
CM	CONCRETE MASONRY
CMU	CONCRETE MASONRY UNIT
CO	COMPANY
COL	COLUMN
CONC	CONCRETE
CONT	CONTINUOUS
CONN	CONNECTION
CONST	CONSTRUCTION
COORD	COORDINATE
CSJ	CONSTRUCTION JOINT
CTR	CENTER
CTRD	CENTERED
CY	CUBIC YARD
DEPT	DEPARTMENT
DET	DETAIL
DIA	DIAMETER
DIAG	DIAGONAL
DIM	DIMENSION
DIST	DISTANCE
DL	DEAD LOAD
DN	DOWN
DWG	DRAWING
EA	EACH
EE	EACH END
EF	EACH FACE
EHPA	EMERGENCY HURRICANE PROTECTION AREA
EJ	EXPANSION JOINT
ELEC	ELECTRIC/ELECTRICAL
EL, ELEV	ELEVATION
ENGR	ENGINEER
EOD	EDGE OF DECK
EOR	ENGINEER OF RECORD
EQ SP	EQUAL SPACED
ES	EACH SIDE
EW	EACH WAY
EXIST	EXISTING
EXP	EXPANSION
EXT	EXTERIOR
F	FOUNDATION
FD	FLOOR DRAIN
FDN	FOUNDATION
FF	FINISHED FLOOR
FIN	FINISH
FIN GR	FINISH GRADE
FLR	FLOOR
FS	FAR SIDE
FT	FEET/FOOT
FTG	FOOTING
GA	GAUGE/GAUGE
GALV	GALVANIZED
GB	GRADE BEAM
GC	GENERAL CONTRACTOR
GEN	GENERAL
GL	GRID LINE
GS	GALVANIZED STEEL
HD	HOT DIPPED
HDG	HOT DIPPED GALVANIZED
HORIZ	HORIZONTAL
HSA	HEADED STUD ANCHOR
HSS	HOLLOW STRUCTURAL SECTION
HT	HEIGHT
I	MOMENT OF INERTIA
ID	INSIDE DIAMETER
I.F.	INSIDE FACE
IN.	INCH
INT	INTERIOR
JST	JOIST
JT	JOINT
K	KIP (1000 LB)
KLF	KIPS PER LINEAL FOOT
KSI	KIPS PER SQUARE INCH
KWY	KEYWAY

LB	POUND
LGTH	LENGTH
LL	LIVE LOAD
LLH	LONG LEG HORIZONTAL
LLV	LONG LEG VERTICAL
LONG.	LONGITUDINAL
LSL	LAMINATED STRAND LUMBER
LT WT	LIGHT WEIGHT
LVL	LAMINATED VENEER LUMBER
MATL	MATERIAL
MAX	MAXIMUM
MB	MASONRY BEAM
MC	MISCELLANEOUS CHANNEL/MASONRY COLUMN
MECH	MECHANICAL
MET	METAL
MFR	MANUFACTURER/MANUFACTURER
MID	MIDDLE
MIN	MINIMUM
MISC	MISCELLANEOUS
MO	MASONRY OPENING
MPH	MILES PER HOUR
NGVD	NATIONAL GEODETIC VERTICAL DATUM
NIC	NOT IN CONTRACT
NO.	NUMBER
NS	NEAR SIDE
NTS	NOT TO SCALE
OC	ON CENTERS
OD	OUTSIDE DIAMETER
O.F.	OUTSIDE FACE
OPNG	OPENING
OPP	OPPOSITE
OSB	ORIENTED STRAND BOARD
PC	PRECAST CONCRETE/PILE CAP
PT	POST TENSIONED
PAR	PARALLEL
PCB	PRECAST CONCRETE BEAM
PCC	PRECAST CONCRETE COLUMN
PCF	POUNDS PER CUBIC FEET
PEMB	PRE-ENGINEERED METAL BUILDING
PEN	PENETRATION
P.J.	PANEL JOINT CENTERLINE
PL	PLATE
PLF	POUNDS PER LINEAR FOOT
PLMG	PLUMBING
PLY	PLYWOOD
PREFAB	PREFABRICATED
PSF	POUNDS PER SQUARE FOOT
PSI	POUNDS PER SQUARE INCH
PSL	PARALLEL STRAND LUMBER
PT	PRESSURE TREATED
RAW	REINFORCED WITH
RD	ROOF DRAIN
REF	REFERENCE
REINF	REINFORCING
REQD	REQUIRED
REV	REVISION
RTU	ROOF TOP UNIT
SB	SOFFIT BEAM
SCHED	SCHEDULE
S.F.	SQUARE FEET
SF	STRIP FOUNDATION
SIM	SIMILAR
SPC	SPACE/SPACES
SPECS	SPECIFICATIONS
SQ	SQUARE
SS	STAINLESS STEEL
STD	STANDARD
STIFF	STIFFENER
STL	STEEL
STRUCT	STRUCTURAL
SYM	SYMMETRICAL
T/	TOP OF
TB	TIE BEAM
T&B	TOP AND BOTTOM
TCX	TOP CHORD EXTENSION
TDS	TURN DOWN SLAB
TE	THICKENED EDGE
TEMP	TEMPERATURE
TENS	TENSION
THD	THREAD/THREADED
THK	THICK
TOL	TOLERANCE
TRANS	TRANSVERSE
TS	TUBE STEEL
T.S.	THICKENED SLAB
TWF	THICKENED WALL FOUNDATION
TYP	TYPICAL
UNO	UNLESS NOTED OTHERWISE
VERT	VERTICAL
VIF	VERIFY IN FIELD
VOL	VOLUME
W	WIDE FLANGE SECTION
W/	WITH
W/O	WITHOUT
WD	WOOD
WF	WALL FOOTING
WP	WATERPROOF
W.P.	WORKING POINT
WS	WELDED STUD
WT	WEIGHT/STRUCTURAL TEE SECTION
WWF	WELDED WIRE FABRIC
@	AT DESIGNATION
#	POUNDS / REBAR SIZE NUMBER
+/-	PLUS OR MINUS
L	ANGLE
C.L.	CENTER LINE
&	AND
Sx	SECTION MODULUS
Ix	MOMENT OF INERTIA

STRUCTURAL SYMBOLS AND LEGEND



NOTE SYMBOLS AND LEGEND SHOWN ARE GENERIC AND DO NOT NECESSARILY INDICATE ACTUAL OCCURRENCES IN THESE DRAWINGS.

STRUCTURAL SHEET INDEX

SHEET #	SHEET TITLE	ISSUE: 50% CD SUBMITTAL	ISSUE: 100% CD SUBMITTAL
S-001	STRUCTURAL ABBREVIATIONS & LEGEND	■	■
S-002	STRUCTURAL NOTES	■	■
S-003	STRUCTURAL NOTES	■	■
S-004	WIND LOAD DIAGRAM	■	■
S-101	FOUNDATION PLAN	■	■
S-102	ROOF FRAMING PLAN	■	■
S-201	STRUCTURAL DETAILS	■	■
S-202	STRUCTURAL DETAILS	■	■
S-203	STRUCTURAL DETAILS	■	■
XS-101	FOUNDATION DEMOLITION PLAN	■	■
XS-102	ROOF FRAMING DEMOLITION PLAN	■	■



SITE PLAN

TLC ENGINEERING FOR ARCHITECTURE
874 Dixon Blvd.
Cocoa, Florida 32922
PH: 321.636.0274
Fax: 321.639.8986
www.tlc-engineers.com
COA #15

© Copyright 2018 TLC Engineering for Architecture, Inc.

Mosquito Control Storage Facility

2865 GREENBROOKE ST, GRANT-VALKARIA, FL 32949

No.	Date	Description

Seal

100% CONTRUCTION DOCUMENTS - NOT FOR CONSTRUCTION

Project No: 518060
Issue Date: 08/22/18
Drawn By: MTO
Approved By: CGD
Scale: As indicated
Drawing Title: STRUCTURAL ABBREVIATIONS & LEGEND
Drawing No.: S-001

C:\Revit Local\518060\Mosquito Control Storage Facility_518_R18_cgd.rvt

STRUCTURAL NOTES

1000 GENERAL NOTES

1. STRUCTURAL DRAWINGS SHALL BE USED IN CONJUNCTION WITH PROJECT SPECIFICATIONS AND ELECTRICAL DRAWINGS. CONSULT THESE DRAWINGS FOR OPENINGS, DEPRESSIONS, EQUIPMENT WEIGHTS AND LOCATIONS. EMBEDDED ITEMS AND OTHER DETAILS NOT SHOWN ON STRUCTURAL DRAWINGS.
2. DIMENSIONS AND CONDITIONS MUST BE VERIFIED IN THE FIELD. ANY DISCREPANCIES SHALL BE BROUGHT TO THE ATTENTION OF THE ENGINEER OF RECORD BEFORE PROCEEDING WITH THE AFFECTED PART OF THE WORK.
3. NO STRUCTURAL MEMBER OR COMPONENT SHALL BE CUT, NOTCHED, OR OTHERWISE ALTERED UNLESS APPROVED IN WRITING BY THE ENGINEER OF RECORD. THE CONTRACTOR SHALL BE RESPONSIBLE FOR ANY AND ALL COSTS INCURRED BY THE ENGINEER OF RECORD FOR REVIEW OF ANY SUCH DEVIATIONS.
4. DO NOT SCALE DRAWINGS.
5. THE STRUCTURE IS DESIGNED TO BE SELF-SUPPORTING AND STABLE AFTER THE BUILDING IS COMPLETE. IT IS THE CONTRACTOR'S RESPONSIBILITY TO DETERMINE ERECTION PROCEDURES AND SEQUENCE TO ENSURE SAFETY OF THE BUILDING AND ITS COMPONENTS DURING ERECTION. THIS INCLUDES THE ADDITION OF NECESSARY SHORING, SHEETING, TEMPORARY BRACING, GUYS OR TIEDOWNS.
6. DETAILS LABELED "TYPICAL DETAILS" ON THE DRAWINGS SHALL APPLY TO ALL SITUATIONS OCCURRING ON THE PROJECT THAT ARE THE SAME OR SIMILAR TO THOSE SPECIFICALLY DETAILED. THE APPLICABILITY OF THE DETAIL TO ITS LOCATION ON THE DRAWINGS CAN BE DETERMINED BY THE TITLE OF DETAIL. SUCH DETAILS SHALL APPLY WHETHER OR NOT THEY ARE REFERENCED AT EACH LOCATION. QUESTIONS REGARDING APPLICABILITY OF TYPICAL DETAILS SHALL BE DETERMINED BY THE ENGINEER OF RECORD.
7. THE GENERAL CONTRACTOR SHALL COMPARE THE ELECTRICAL AND STRUCTURAL DRAWINGS AND REPORT ANY DISCREPANCIES BETWEEN EACH SET OF DRAWINGS AND WITHIN EACH SET OF DRAWINGS TO THE ARCHITECT AND ENGINEER OF RECORD PRIOR TO THE FABRICATION AND INSTALLATION OF ANY STRUCTURAL MEMBERS.
8. THE CONTRACT STRUCTURAL DRAWINGS AND SPECIFICATIONS REPRESENT THE FINISHED STRUCTURE, AND DO NOT INDICATE THE METHOD OR MEANS OF CONSTRUCTION. THE CONTRACTOR SHALL SUPERVISE AND DIRECT THE WORK AND SHALL BE SOLELY RESPONSIBLE FOR ALL CONSTRUCTION MEANS, METHODS, PROCEDURES, TECHNIQUES, SEQUENCE AND SAFETY. THE ENGINEER DOES NOT HAVE CONTROL OR CHARGE OF, AND SHALL NOT BE RESPONSIBLE FOR, CONSTRUCTION MEANS, METHODS, TECHNIQUES, SEQUENCES, OR PROCEDURES, FOR SAFETY PRECAUTIONS AND PROGRAMS IN CONNECTION WITH THE WORK, FOR THE ACTS OR OMISSION OF THE CONTRACTOR, SUBCONTRACTOR OR ANY OTHER PERSONS PERFORMING ANY OF THE WORK, OR FOR THE FAILURE OF ANY OF THEM TO CARRY OUT THE WORK IN ACCORDANCE WITH THE CONTRACT DOCUMENTS.
9. THE STRUCTURAL ENGINEER'S OBLIGATIONS TO REVIEW SHOP DRAWINGS AND OTHER SUBMITTALS AND TO RETURN THEM IN A TIMELY MANNER ARE CONDITIONED UPON THE PRIOR REVIEW AND APPROVAL OF THE SHOP DRAWINGS OR SUBMITTALS BY THE CONTRACTOR AS REQUIRED IN THE CONSTRUCTION CONTRACT AND THE CONTRACTOR'S SUBMITTAL OF THE SHOP DRAWINGS AND OTHER SUBMITTALS IN ACCORDANCE WITH A WRITTEN SCHEDULE DISTRIBUTED IN ADVANCE TO THE ENGINEER IDENTIFYING THE DATES FOR THE SUBMITTAL OF THE VARIOUS SHOP DRAWINGS AND SUBMITTALS.
10. PERIODIC SITE OBSERVATION BY FIELD REPRESENTATIVES OF TLC ENGINEERING FOR ARCHITECTURE IS SOLELY FOR THE PURPOSE OF DETERMINING IF THE WORK OF THE CONTRACTOR IS PROCEEDING IN GENERAL ACCORDANCE WITH THE STRUCTURAL CONTRACT DOCUMENTS. THIS LIMITED SITE OBSERVATION SHALL NOT BE CONSTRUED AS EXHAUSTIVE OR CONTINUOUS TO CHECK THE QUALITY OR QUANTITY OF THE WORK.
11. ALL STRUCTURES REQUIRE PERIODIC MAINTENANCE TO EXCEED LIFE SPAN AND TO ENSURE STRUCTURAL INTEGRITY FROM EXPOSURE TO THE ENVIRONMENT. A PLANNED PROGRAM OF MAINTENANCE SHALL BE ESTABLISHED BY THE OWNER. THIS PROGRAM SHALL INCLUDE ITEMS SUCH AS, BUT NOT LIMITED TO, PAINTING OF STRUCTURAL STEEL, PROTECTIVE COATINGS FOR CONCRETE, SEALANTS, CAULKED JOINTS, EXPANSION JOINTS, CONTROL JOINTS, SPALLS AND CRACKS IN CONCRETE, AND PRESSURE WASHING OF EXPOSED STRUCTURAL ELEMENTS EXPOSED TO SALT ENVIRONMENT OR OTHER HARSH CHEMICALS.
12. STRUCTURAL ENGINEER OF RECORD IS NOT RESPONSIBLE FOR THE DESIGN SYSTEMS NOT SHOWN IN THE STRUCTURAL DOCUMENTS. SUCH SYSTEMS SHALL BE DESIGNED, FURNISHED AND INSTALLED AS REQUIRED BY OTHER PORTIONS OF THE CONTRACT DOCUMENTS.
13. IN THE PROFESSIONAL OPINION OF TLC ENGINEERING FOR ARCHITECTURE, INC., THE STRUCTURAL CONTRACT DOCUMENTS FOR THIS PROJECT HAVE BEEN PREPARED IN ACCORDANCE WITH THE DESIGN CRITERIA AS SET FORTH IN THE FLORIDA BUILDING CODE (FBC), 2017 EDITION.
14. NO PROVISIONS HAVE BEEN MADE FOR VERTICAL OR HORIZONTAL EXPANSION EXCEPT AS SHOWN ON CONTRACT DOCUMENTS.
15. FINISH FLOOR ELEVATION (FIRST FLOOR) OF 0'-0" IS USED AS A REFERENCE ELEVATION.
16. THE USE OF REPRODUCTIONS OF THESE CONTRACT DOCUMENTS AND USE OF CAD FILES BY ANY CONTRACTOR, SUBCONTRACTOR, ERECTOR, FABRICATOR OR MATERIAL SUPPLIER IN LIEU OF PREPARATION OF SHOP DRAWINGS IS PROHIBITED UNLESS PRIOR WRITTEN APPROVAL IS OBTAINED FROM ENGINEER OF RECORD.

1060 DESIGN LOADS

1. THE STRUCTURAL SYSTEM FOR THIS BUILDING HAS BEEN DESIGNED IN ACCORDANCE WITH THE FLORIDA BUILDING CODE, 2017 EDITION AND AS SUPPLEMENTED BY LOCAL AMENDMENTS.
2. THE FOLLOWING SUPERIMPOSED LOADINGS HAVE BEEN UTILIZED:

2.1 DEAD LOADS

ROOF STRUCTURE	15 PSF
MEP LOADS	5 PSF
COLLATERAL LOADS	10 PSF
8" CMU NON-LOAD BEARING PARTITIONS	35 PSF

2.2 LIVE LOADS

ROOF	20 PSF
FLOOR (HEAVY STORAGE)	250 PSF

2.3 WIND LOADS PER FLORIDA BUILDING CODE, SECTION 1609.

SEE SHEET S-005 FOR COMPONENTS AND CLADDING PRESSURES

ULTIMATE DESIGN WIND SPEED, V_{ult}	160 MPH (3 SEC. GUST)
NOMINAL DESIGN WIND SPEED, V_{asd}	124 MPH (3 SEC. GUST)
RISK CATEGORY	II
EXPOSURE	C

1330 SHOP DRAWING REVIEW

1. SHOP DRAWINGS SHALL ADEQUATELY DEPICT THE STRUCTURAL ELEMENTS AND CONNECTIONS SHOWN ON THE CONTRACT DOCUMENTS. SHOP DRAWINGS WILL BE REVIEWED FOR GENERAL COMPLIANCE WITH THE DESIGN INTENT OF THE CONTRACT DOCUMENTS ONLY. IT SHALL BE THE RESPONSIBILITY OF THE CONTRACTOR TO VERIFY COMPLIANCE WITH THE CONTRACT DOCUMENTS AS TO QUANTITY, LENGTH, ELEVATIONS, DIMENSIONS, ETC. REVIEW OF SUBMITTALS AND SHOP DRAWINGS DOES NOT RELIEVE THE CONTRACTOR OF FULL RESPONSIBILITY FOR ERRORS AND OMISSIONS ASSOCIATED WITH THE PREPARATION OF THE SHOP DRAWINGS.
2. SHOP DRAWINGS SHALL BE REVIEWED BY THE CONTRACTOR AND MARKED "APPROVED" PRIOR TO SUBMITTAL TO THE ARCHITECT/ENGINEER. NON-CONFORMING DRAWING SUBMITTALS WILL BE RETURNED WITHOUT REVIEW.
3. SHOP DRAWING SUBMITTALS SHALL INCLUDE, AT A MINIMUM: ONE GOOD QUALITY REPRODUCIBLE AND THREE SETS OF BLUEPRINTS. ONE SET OF PRINTS WILL BE RETAINED BY THE ENGINEER OF RECORD, ONE BY THE ARCHITECT, ONE BY THE LOCAL BUILDING DEPARTMENT (WHERE REQUIRED) AND THE CONTRACTOR SHALL MAKE PRINTS FROM THE REPRODUCIBLE AS REQUIRED FOR DISTRIBUTION.
4. THE CONTRACT DOCUMENTS WILL GOVERN OVER THE SHOP DRAWINGS UNLESS OTHERWISE SPECIFIED IN WRITING BY THE ENGINEER OF RECORD.
5. CHANGES AND ADDITIONS MADE ON RE-SUBMITTALS SHALL BE CLEARLY FLAGGED AND NOTED. THE PURPOSE OF THE RE-SUBMITTALS SHALL BE CLEARLY NOTED ON THE LETTER OF TRANSMITTAL. ARCHITECT/ENGINEER OF RECORD REVIEW WILL BE LIMITED TO THOSE ITEMS CAUSING THE RE-SUBMITTAL. CONTRACTOR IS RESPONSIBLE FOR COSTS CAUSED BY MULTIPLE RE-SUBMITTALS (MORE THAN ONE) AT ARCHITECT/ENGINEER'S CURRENT HOURLY RATES.

1331 SHOP DRAWINGS FOR SPECIALTY ENGINEERED PRODUCTS

1. THE FOLLOWING SYSTEMS AND COMPONENTS AS A MINIMUM REQUIRE FABRICATION AND ERECTION DRAWINGS PREPARED BY A DELEGATED ENGINEER:
   A. PRE-ENGINEERED METAL BUILDING COMPONENTS OR ASSEMBLIES
   B. METAL ROOF DECK ASSEMBLIES
2. SUBMITTALS SHALL CLEARLY IDENTIFY THE SPECIFIC PROJECT AND APPLICABLE CODES. LIST THE DESIGN CRITERIA, AND SHOW ALL DETAILS AND DRAWINGS NECESSARY FOR PROPER FABRICATION AND INSTALLATION. SHOP DRAWINGS AND CALCULATIONS SHALL IDENTIFY SPECIFIC PRODUCT UTILIZED. GENERIC PRODUCTS WILL NOT BE ACCEPTED.
3. SHOP DRAWINGS AND CALCULATIONS SHALL BE PREPARED UNDER THE DIRECT SUPERVISION AND CONTROL OF THE DELEGATED ENGINEER.
4. SHOP DRAWINGS AND CALCULATIONS SHALL BE SIGNED AND SEALED BY AN ENGINEER REGISTERED IN THE STATE OF FLORIDA. COMPUTER PRINTOUTS ARE AN ACCEPTABLE SUBSTITUTE FOR MANUAL COMPUTATIONS PROVIDING THEY ARE ACCOMPANIED BY SUFFICIENT DESCRIPTIVE INFORMATION TO PERMIT THEIR PROPER EVALUATION. SUCH DESCRIPTIVE INFORMATION SHALL BE SIGNED AND SEALED BY AN ENGINEER REGISTERED IN THE STATE OF FLORIDA AS AN INDICATION THAT HE/SHE HAS ACCEPTED RESPONSIBILITY FOR THE RESULTS. THE STRUCTURAL ENGINEER WILL RETAIN ONE SIGNED AND SEALED SET FOR THEIR RECORDS.
5. DRAWINGS PREPARED SOLELY TO SERVE AS A GUIDE FOR FABRICATION AND INSTALLATION (SUCH AS REINFORCING STEEL, SHOP DRAWINGS OR STRUCTURAL STEEL ERECTION DRAWINGS) AND REQUIRING NO ENGINEERING, DO NOT REQUIRE THE SEAL OF A DELEGATED ENGINEER.
6. CATALOG INFORMATION ON STANDARD PRODUCTS DOES NOT REQUIRE THE SEAL OF A DELEGATED ENGINEER.
7. REVIEW BY THE STRUCTURAL ENGINEER OF RECORD OF SUBMITTALS IS LIMITED TO VERIFYING THE FOLLOWING:
   A. THAT THE SPECIFIED STRUCTURAL SUBMITTALS HAVE BEEN FURNISHED.
   B. THAT THE STRUCTURAL SUBMITTALS HAVE BEEN SIGNED AND SEALED BY THE DELEGATED ENGINEER.
   C. THAT THE DELEGATED ENGINEER HAS UNDERSTOOD THE DESIGN INTENT AND HAS USED THE SPECIFIED STRUCTURAL CRITERIA. NO DETAILED CHECK OF CALCULATIONS WILL BE MADE.
   D. THAT THE CONFIGURATION SET FORTH IN THE STRUCTURAL SUBMITTALS IS CONSISTENT WITH THE CONTRACT DOCUMENTS. NO DETAILED CHECK OF DIMENSIONS OR QUANTITIES WILL BE MADE.
8. SUBMITTALS NOT MEETING THE ABOVE CRITERIA WILL NOT BE REVIEWED AND WILL BE RETURNED.

1333 SUBMITTALS

1. ALL SHOP DRAWINGS MUST BE REVIEWED AND STAMPED APPROVED BY THE GENERAL CONTRACTOR PRIOR TO SUBMITTAL.
2. THE GENERAL CONTRACTOR SHALL SUBMIT FOR ENGINEER REVIEW SHOP DRAWINGS FOR THE FOLLOWING ITEMS:
   - ITEMS MARKED (D) SHALL HAVE SHOP DRAWINGS SEALED BY A PROFESSIONAL ENGINEER REGISTERED IN THE STATE OF FLORIDA.
   - ITEMS MARKED (R) SHALL BE SUBMITTED FOR ENGINEERS RECORD ONLY.
   A. STRUCTURAL STEEL
   B. REINFORCING STEEL
   C. CONCRETE MIX DESIGNS
   D. CONSTRUCTION JOINT LOCATIONS IN STRUCTURAL FLOORS
   E. PRE-ENGINEERED METAL BUILDING COMPONENTS (D)
   F. TEMPORARY WALL BRACING (D)
   G. METAL ROOF DECK ASSEMBLIES (D)
3. MANUFACTURER'S LITERATURE, SUBMIT TWO COPIES OF MANUFACTURER'S LITERATURE FOR ALL MATERIALS AND PRODUCTS USED IN CONSTRUCTION ON THE PROJECT.

1334 REQUEST FOR INTERPRETATION (RFI)

1. RFI SHALL ORIGINATE WITH CONTRACTOR AND SHALL BE SUBMITTED IN THE FORM SPECIFIED WITHIN CONTRACT DOCUMENTS. RFI SHALL BE SUBMITTED IN A PROMPT MANNER AS TO AVOID DELAYS IN CONTRACTORS WORK.
2. RFI SHALL BE SUBMITTED AS SPECIFIED WITHIN THE CONTRACT DOCUMENTS AND SHALL BE FORWARDED TO THE ENGINEER VIA THE ARCHITECT OR DIRECTLY TO THE ENGINEER BY THE CONTRACTOR WHEN APPROVED BY THE ARCHITECT.
3. ENGINEER SHALL TAKE UP TO 5 BUSINESS DAYS TO REVIEW AND RETURN RFI'S. HOWEVER, THE ENGINEER WILL ATTEMPT TO EXPEDITE THE REVIEW OF ALL RFI'S WITHIN A REASONABLE TIME FRAME.
4. RFI RESPONSES ARE NOT INTENDED TO AUTHORIZE ANY INCREASE IN CONSTRUCTION COST, SCHEDULE OR TIME EXTENSIONS, OR CONSTRUCTION IN CONFLICT WITH ANY APPLICABLE CODES OR SPECIFIED DESIGN STANDARDS. IT IS THE RESPONSIBILITY OF THE CONTRACTOR TO NOTIFY THE DESIGN TEAM IMMEDIATELY OF ANY PERCEIVED SCOPE, SCHEDULE, OR COST IMPACTS OR ADJUSTMENTS. IF CONTRACTOR REQUESTS ANY ADDITIONAL COST, INCREASE IN SCHEDULE OR ADJUSTMENT IN SCOPE, THE CONTRACTOR SHALL NOT PROCEED WITH ADDITIONAL WORK UNTIL APPROVED IN WRITING BY THE CONSTRUCTION ADMINISTRATOR.

2210 DEMOLITION NOTES

1. THE CONTRACTOR IS REQUIRED TO PROVIDE ALL TEMPORARY SCAFFOLDING, PLATFORMS, BARRICADES, RAILINGS, SCREENS, ETC. NECESSARY TO PROTECT EXISTING FACILITIES, STRUCTURES AND THE PUBLIC DURING DEMOLITION AND ERECTION OF THE NEW CONSTRUCTION, AS WELL AS FOR JOB SAFETY. JOB SAFETY, CONSTRUCTION AND DEMOLITION PROCEDURES ARE THE SOLE RESPONSIBILITY OF THE CONTRACTOR. CONTRACTOR IS REQUIRED TO TAKE ALL PRECAUTIONS TO MINIMIZE VIBRATION, NOISE, DUST AND DEBRIS IN ALL AREAS ADJACENT TO AREAS OF DEMOLITION.
2. THE CONTRACTOR IS REQUIRED TO COORDINATE WITH THE OWNER FOR THE TEMPORARY SUSPENSION OF USE OF ANY FACILITY OR PORTION THEREOF, AND THE ASSOCIATED BARRICADING REQUIREMENTS WITHIN A MINIMUM OF 7 DAYS PRIOR TO COMMENCING WORK.
3. THE CONTRACTOR IS REQUIRED TO PERFORM HIS WORK IN A MANNER WHICH WILL NOT CONFLICT WITH ANY OPERATION, WHICH IS TO REMAIN FUNCTIONAL DURING THE COURSE OF THE PROJECT, UNTIL SUCH OPERATION IS SCHEDULED TO BE SHUT DOWN.
4. THE CONTRACTOR IS REQUIRED TO COORDINATE WITH OWNER FOR THE TEMPORARY SUSPENSION OF USE OF ANY UTILITY SYSTEM, A MINIMUM OF 3 DAYS PRIOR TO COMMENCING WORK.
5. AT ALL LOCATIONS WHERE NEW CONSTRUCTION WILL INTERFACE WITH EXISTING ELEMENTS, CUT THROUGH EXISTING STRUCTURE IN STRAIGHT AND TRUE LINES TO INSURE A NEAT INTERFACE.
6. AT ALL LOCATIONS WHERE THE DEMOLITION OF A CONCRETE MEMBER LEAVES THE ENDS OF REINFORCING STEEL EXPOSED, PROVIDE THE FOLLOWING:
   A. CHIP CONCRETE FROM AROUND THE STEEL TO A DEPTH OF 1".
   B. CUT OFF REINFORCING STEEL NOT LESS THAN 3/8" BELOW THE CONCRETE SURFACE.
   C. FILL THE CAVITY FLUSH WITH A HIGH MODULUS GEL EPOXY. SEE SPECIFICATION FOR ACCEPTED MANUFACTURERS.
7. BEFORE DEMOLISHING ANY STRUCTURAL ELEMENT, INSTALL ALL REQUIRED TEMPORARY AND/OR PERMANENT BRACING AND SUPPORTS.
8. PROVIDE TEMPORARY CLOSURE OF ALL ROOF FASCIA, WALL AND OTHER OPENINGS TO PROTECT BUILDING FROM EXPOSURE TO UNDESIRABLE ELEMENTS UNTIL NEW CONSTRUCTION IS WEATHERPROOFED, AT WHICH TIME SUCH TEMPORARY CONSTRUCTION SHALL BE REMOVED. ALL TEMPORARY EXTERIOR WALLS THAT ARE SUBJECT TO WIND LOADS ARE TO BE DESIGNED BY A DELEGATED ENGINEER.
9. UPON COMPLETION OF NEW CONSTRUCTION UNDER EACH PHASE, ALL DEMOLISHED AREAS SHALL BE RESTORED TO ACCEPTABLE USAGE ACCORDING TO THE CONTRACT DOCUMENTS AS DETERMINED BY THE A/E.
10. REMOVE COMPLETELY FROM THE SITE AND LEGALLY DISPOSE ALL DEBRIS GENERATED BY THE DEMOLITION WORK AS THE WORK PROGRESSES. STOCKPILING OF DEBRIS AND BURNING OF DEBRIS ON THE PREMISES IS STRICTLY PROHIBITED.

2220 EXISTING STRUCTURE

1. INFORMATION SHOWN FOR THE EXISTING STRUCTURE ON THESE DRAWINGS WAS PROVIDED BY FIELD OBSERVATION. NO EXISTING STRUCTURE DRAWINGS WERE MADE AVAILABLE TO THE ENGINEER OF RECORD.
2. WORK SHOWN ON THESE DRAWINGS ASSUMES THAT THE ORIGINAL CONSTRUCTION WAS PERFORMED IN ACCORDANCE WITH THE ORIGINAL DRAWINGS AND APPLICABLE CODES IN EFFECT AT THE TIME OF CONSTRUCTION. IT SHALL BE THE RESPONSIBILITY OF THE CONTRACTOR TO VERIFY THE CONDITIONS RELATING TO THE EXISTING STRUCTURE AND TO NOTIFY THE ENGINEER IMMEDIATELY OF ANY DISCREPANCIES OR CONFLICTS.

2300 FOUNDATIONS - W/O SOIL REPORTS

1. IN THE ABSENCE OF ANY GEOTECHNICAL RECOMMENDATIONS, THE FOUNDATIONS ARE DESIGNED FOR A PRESUMPTIVE ALLOWABLE SOIL BEARING PRESSURE OF 2,000 PSF VERTICAL AND 150 PSF LATERAL WITH A COEFFICIENT OF FRICTION OF 0.25 ON COMPACTED FILL.
2. PRESUMPTIVE SOIL CONDITIONS ARE IN ACCORDANCE WITH TABLE 1806.2 OF THE (2017 FLORIDA BUILDING CODE) FOR FOUNDATIONS BEARING ON SAND.
3. IN THE ABSENCE OF ANY GEOTECHNICAL RECOMMENDATIONS, NO WARRANTIES, EXPRESSED OR IMPLIED ARE MADE BY TLC FOR THE PERFORMANCE OF THE FOUNDATION.
4. AT A MINIMUM, SITE PREPARATION WORK SHALL INCLUDE:
   A. ALL FILL SHALL BE CLEAN SAND AND FREE OF ORGANIC MATERIALS. COMPACT FILL IN 12 INCH (UNCOMPACTED THICKNESS) LIFTS TO A MINIMUM OF 95% OF THE MODIFIED PROCTOR MAXIMUM DRY DENSITY VALUE.
   B. EXCAVATIONS FOR FOUNDATIONS SHALL BE COMPACTED TO 95% FOR A DEPTH OF AT LEAST 2 FEET BELOW THE BOTTOM OF THE FOUNDATION.
   C. DEWATERING MAY BE REQUIRED TO ACHIEVE THE REQUIRED COMPACTION VALUES, AND IF USED, SHOULD DRAW DOWN THE WATER LEVEL TO AT LEAST 2 FEET BELOW THE BOTTOM OF THE EXCAVATION.
5. SLABS ON GRADE SHALL BE PLACED OVER A 10 MIL, CLASS "A" VAPOR BARRIER. VAPOR BARRIER SHALL BE LAPPED A MINIMUM OF 6", OR AS RECOMMENDED BY THE MANUFACTURER (WHICHEVER IS GREATER) AND TAPED AT ALL JOINTS. ALL PUNCTURES IN THE VAPOR RETARDER SHALL BE REPAIRED PER MANUFACTURER'S WRITTEN INSTRUCTIONS. ALL PENETRATIONS THROUGH THE VAPOR RETARDER (COLUMNS, PLUMBING, CONDUITS, ETC) SHALL BE SEALED PER MANUFACTURER'S WRITTEN INSTRUCTIONS. VAPOR RETARDER SHALL BE CONTINUOUS UNDER WALL FOUNDATIONS OR SEALED TO EXTERIOR WALLS PER MANUFACTURER'S WRITTEN INSTRUCTIONS.

3302 CONCRETE

1. SHALL BE PER AN APPROVED MIX DESIGN PROPORTIONED TO ACHIEVE A STRENGTH AT 28 DAYS AS LISTED BELOW WITH A PLASTIC AND WORKABLE MIX:

CONCRETE STRUCTURE TYPE	COMPRESSIVE STRENGTH	SLUMP	MAX. AGGREGATE	MAX W/C RATIO
SLABS ON GRADE/FOUNDATIONS	4000 PSI	4-6"	3/4"	0.45
BEAMS	4000 PSI	4-6"	3/4"	0.45

2. CONCRETE SHALL BE PLACED AND CURED ACCORDING TO ACI STANDARDS AND SPECIFICATIONS.
3. SUBMIT PROPOSED MIX DESIGN WITH RECENT FIELD CYLINDER OR LAB TESTS FOR REVIEW PRIOR TO USE. MIX SHALL BE UNIQUELY IDENTIFIED BY MIX NUMBER OR OTHER POSITIVE IDENTIFICATION. MIX SHALL MEET THE REQUIREMENTS OF ASTM C33 FOR COARSE AGGREGATE.
4. CONCRETE SHALL COMPLY WITH THE REQUIREMENTS OF ASTM STANDARD C94 FOR MEASURING, MIXING, TRANSPORTING, ETC. CONCRETE TICKETS SHALL BE TIME STAMPED WHEN CONCRETE IS BATCHED.
5. THE MAXIMUM TIME ALLOWED FROM THE TIME THE MIXING WATER IS ADDED UNTIL IT IS DEPOSITED IN ITS FINAL POSITION SHALL NOT EXCEED ONE AND ONE HALF (1-1/2) HOURS. IF FOR ANY REASON THERE IS A LONGER DELAY THAN THAT STATED ABOVE, THE CONCRETE SHALL BE DISCARDED. IT SHALL BE THE RESPONSIBILITY OF THE TESTING LAB TO NOTIFY THE OWNER'S REPRESENTATIVE AND THE CONTRACTOR OF ANY NONCOMPLIANCE WITH THE ABOVE.
6. SLABS SHALL BE CURED USING A DISSIPATING CURING COMPOUND MEETING ASTM STANDARD C309 TYPE 1-CLASS D AND SHALL HAVE A FUGITIVE DYE. THE COMPOUND SHALL BE PLACED AS SOON AS THE FINISHING IS COMPLETED OR AS SOON AS THE WATER HAS LEFT THE UNFINISHED CONCRETE. SCUFFED OR BROKEN AREAS IN THE CURING MEMBRANE SHALL BE RECOATED DAILY.
7. CALCIUM CHLORIDES SHALL NOT BE UTILIZED. OTHER ADMIXTURES MAY BE USED ONLY WITH THE APPROVAL OF THE ENGINEER.
8. CONCRETE MIX DESIGNS SHALL INCLUDE A WRITTEN DESCRIPTION INDICATING WHERE EACH PARTICULAR MIX IS TO BE PLACED WITHIN THE STRUCTURE.
9. CONDUITS, PIPES AND SLEEVES SHALL BE PLACED AND SPACED IN ACCORDANCE WITH ACI 318, 6.3
10. CONCRETE DESIGN MIX SUBMITTALS SHALL INCLUDE TESTED, STATISTICAL BACK-UP DATA AS PER CHAPTER 5 OF ACI 318.

3310 REINFORCING STEEL

1. SHALL BE ASTM A615 GRADE 60 DEFORMED BARS, FREE FROM OIL, SCALE AND RUST AND PLACED IN ACCORDANCE WITH THE TYPICAL BENDING DIAGRAM AND PLACING DETAILS OF ACI STANDARDS AND SPECIFICATIONS.
2. PROVIDE CONCRETE COVER OVER PRIMARY REINFORCEMENT, TIES, AND STIRRUPS, AS FOLLOWS, UNLESS OTHERWISE NOTED:

LOCATION AND CONDITION	MINIMUM COVER
A. CONCRETE CAST AGAINST AND PERMANENTLY EXPOSED TO EARTH	ALL BARS 3"
B. CONCRETE EXPOSED TO EARTH OR WEATHER	#6 OR GREATER 2"
C. CONCRETE NOT EXPOSED TO WEATHER OR IN CONTACT WITH GROUND	
1. SLABS, WALLS, AND JOISTS	#11 OR SMALLER 3/4"
2. BEAMS AND COLUMNS	ALL SIZES 1.5"

3. SECURE APPROVAL OF SHOP DRAWINGS PRIOR TO COMMENCING FABRICATION.
4. PROVIDE STANDARD HOOKS AT DISCONTINUOUS ENDS OF ALL TOP BARS.
5. WHERE REINFORCING IS SHOWN CONTINUOUS, SPLICE BOTTOM BARS OVER SUPPORTS AND TOP BARS AT CENTER OF SPAN. ALL OTHER LAP SPLICES SHALL BE IN ACCORDANCE WITH SPLICE TABLES AND DETAILS SHOWN ON DRAWINGS.
6. PROVIDE DOWELS INTO FOOTINGS TO MATCH VERTICAL BARS WITH CLASS B TENSION LAP SPLICES, U.N.O.
7. LENGTH OF LAP SPLICES AND BAR EMBEDMENT SHALL BE AS SHOWN IN THE SCHEDULE, UNLESS OTHERWISE NOTED.
8. WHERE HOOKS ARE SHOWN ON THE PLANS OR DETAILS, HOOKS SHALL BE DETAILED TO EXTEND DEEP ENOUGH INTO SUPPORTING STRUCTURE TO DEVELOP THE FULL STRENGTH OF THE HOOKED BAR. PROVIDE ADDITIONAL TIES OR STIRRUPS IN SUPPORTING STRUCTURE AS REQUIRED TO SATISFY ACI 318 HOOK DEVELOPMENT, CONFINEMENT, AND ANCHORAGE CRITERIA.

3400 CONCRETE TESTING

1. AN INDEPENDENT TESTING LABORATORY SHALL PERFORM THE FOLLOWING TESTS ON CAST IN PLACE CONCRETE:
   A. ASTM C143 - "STANDARD TEST METHOD FOR SLUMP OF PORTLAND CEMENT CONCRETE."
   B. ASTM C39 - "STANDARD TEST METHOD FOR COMPRESSIVE STRENGTH OF CYLINDRICAL CONCRETE SPECIMENS." A SEPARATE TEST SHALL BE CONDUCTED FOR EACH CLASS. FOR EVERY 50 CUBIC YARDS (OR FRACTION THEREOF), PLACED PER DAY. REQUIRED LAB CURED CYLINDER QUANTITIES AND TEST AGE AS FOLLOWS:
      2 AT 7 DAYS
      2 AT 28 DAYS
      ONE ADDITIONAL RESERVE CYLINDER TO BE TESTED UNDER THE DIRECTION OF THE ENGINEER, IF REQUIRED. IF 28-DAY STRENGTH IS ACHIEVED, THE ADDITIONAL CYLINDER(S) MAY BE DISCARDED.

4810 MASONRY WALLS

1. ALL MASONRY CONSTRUCTION SHALL CONFORM TO ACI 530/ASCE 5/TMS 402 "BUILDING CODE REQUIREMENTS FOR MASONRY STRUCTURES" AND ACI 530.1/ASCE 6/TMS 602 "SPECIFICATION FOR MASONRY STRUCTURES", LATEST EDITION.
2. MASONRY UNITS SHALL MEET ASTM C-90 FOR HOLLOW LOAD BEARING TYPE MASONRY WITH UNIT STRENGTH OF 2200 PSI ON THE NET AREA (f'm = 2000 PSI). MORTAR SHALL BE TYPE "M" OR "S" AND MEET ASTM C-270.
3. GROUT SHALL BE 3000 PSI MINIMUM COMPRESSIVE STRENGTH AND MEET ASTM C-476 AND HAVE A SLUMP BETWEEN 8" AND 11" WITH WATER C/M RATIO OF 0.55 MAXIMUM AND WITH 3/8" MAXIMUM AGGREGATE.
4. PROVIDE HOOKED DOWELS IN FOUNDATIONS FOR VERTICAL REINFORCING ABOVE. LAP SPLICES TO BE 48 BAR DIAMETERS (U.N.O.).
5. BLOCK CELLS SHALL BE GROUT FILLED WITH VERTICAL REINFORCING BARS AT CORNERS, INTERSECTIONS, EACH SIDE OF OPENINGS AND AS SHOWN ON THE DRAWINGS.
6. DOWELS SHALL BE USED TO PROVIDE CONTINUITY INTO THE STRUCTURE ABOVE AND/OR BELOW, UNLESS NOTED OTHERWISE.
7. USE METAL LATH, MORTAR OR SPECIAL UNITS TO CONFINE CONCRETE AND GROUT TO AREA AS REQUIRED.
8. MASONRY SHALL BE LAID IN RUNNING BOND PATTERN UNLESS NOTED OTHERWISE. AT FILLED CELLS LAY UNITS WITH FULL BED JOINTS AROUND CELLS.
9. PROVIDE 8 GAGE GALVANIZED HORIZONTAL JOINT REINFORCING (OUR OWN) OR ENGINEER APPROVED SUBSTITUTION AT ALTERNATE BLOCK COURSES. LADDER TYPE IS RECOMMENDED WITH REINFORCED FILLED CELLS. PROVIDE PREFABRICATED "TEE" OR CORNER SECTIONS AT WALL INTERSECTIONS.
10. CONTROL JOINTS SHALL BE CONSTRUCTED IN CONCRETE MASONRY CONSTRUCTION AT A MAXIMUM HORIZONTAL SPACING BETWEEN JOINTS OF 25'-0" AND NOT MORE THAN 12'-6" FROM CORNERS. SEE ARCHITECTURAL DRAWINGS FOR EXACT LOCATIONS. HORIZONTAL WALL REINFORCING SHALL BE STOPPED EACH SIDE OF CONTROL JOINTS.
11. SUBMIT PROPOSED GROUT MIX DESIGNS FOR REVIEW PRIOR TO USE. MIX NUMBER OR OTHER POSITIVE IDENTIFICATION SHALL UNIQUELY IDENTIFY MIX.
12. USE OF SUPERPLASTICIZER IS PROHIBITED.
13. CELLS TO BE GROUT FILLED SHALL HAVE VERTICAL ALIGNMENT SUFFICIENT TO MAINTAIN A CLEAR UNOBSTRUCTED, CONTINUOUS VERTICAL GROUT SPACE.
14. CLEANOUT OPENINGS SHALL BE PROVIDED AT THE BOTTOM OF CELLS TO BE GROUT FILLED IN EACH POUR IN EXCESS OF 5 FEET IN HEIGHT, AFTER INSPECTION AND BEFORE GROUTING. THE REBAR SHALL BE TIED AT THE CLEANOUTS AND THE CLEANOUTS SHALL BE SEALED.
15. ANY OVERHANGING MORTAR OR OTHER OBSTRUCTION OR DEBRIS SHALL BE REMOVED FROM THE INSIDES OF SUCH CELLS/WALLS.
16. VERTICAL REINFORCEMENT SHALL BE HELD IN POSITION AT TOP AND BOTTOM AND AT INTERVALS NOT EXCEEDING 192 BAR DIAMETERS.
17. CELLS CONTAINING REINFORCEMENT SHALL BE FILLED SOLELY WITH GROUT. SAMPLE AND TEST GROUT PER ASTM C1019.
18. GROUT SHALL BE POURED IN LIFTS OF 4 FEET MAXIMUM HEIGHT. GROUT SHALL BE CONSOLIDATED AT TIME OF PLACING BY VIBRATING AND RECONSOLIDATED LATER BY VIBRATING BEFORE PLASTICITY IS LOST.
19. WHEN TOTAL GROUT POUR EXCEEDS 5 FEET IN HEIGHT, (HIGH LIFT GROUTING) THE GROUT SHALL BE PLACED IN 4-FOOT LIFTS WITH A MINIMUM OF A 30 M

5400 STRUCTURAL COLD-FORMED STEEL (CFS) FRAMING

1. ALL COLD FORMED STEEL FRAMING SHALL CONFORM TO THE AISI/COF/SAA/EPEC 2016 NORTH AMERICAN SPECIFICATION FOR THE DESIGN OF COLD-FORMED STEEL STRUCTURAL MEMBERS WITH SUPPLEMENT NO. 2, THE AISI MANUAL COLD-FORMED STEEL DESIGN (2013 EDITION), AISI CODE OF STANDARD PRACTICE FOR COLD-FORMED STEEL STRUCTURAL FRAMING (2015 EDITION), AISI/COF/ECP-2015 STANDARD FOR COLD-FORMED STEEL FRAMING - GENERAL PROVISIONS (2015 EDITION) AND COLD-FORMED STEEL ENGINEERS INSTITUTE (CFSEI) PUBLICATIONS, AS MODIFIED OR CLARIFIED HEREIN.
2. STEEL JOIST MEMBERS SHALL BE OF TYPE SHOWN ON THE DRAWINGS AND SPECIFICATIONS CONFORMING TO ASTM A-446 GRADE C WITH HOT DIPPED GALVANIZED COATING CONFORMING TO ASTM...
3. MINIMUM STEEL GRADES (FY): 12 GA (97 MILS), 14 GA (68 MILS); 16 GA (54 MILS) STUDS AND TRACK 50 KSI 18 GA (43 MILS), 20 GA (33 MILS) STUDS AND TRACK 33 KSI.
4. STRUCTURAL LIGHT GAGE CFS FRAMING AND THEIR CONNECTIONS SHALL BE AS DEPICTED ON THE STRUCTURAL PLANS AND DETAILS.
5. ATTACHMENTS, CLOSURES, HARDWARE ETC., SHALL BE AS SHOWN AND/OR IN ACCORDANCE WITH THE MANUFACTURERS RECOMMENDATIONS.
6. SUBMIT PROPOSED LIGHT GAGE CFS MANUFACTURERS DATA AND LOAD TABLES FOR REVIEW.
7. TOLERANCES TO COMPLY WITH ASTM C955.
8. WELDING TO COMPLY WITH COLD-FORMED STEEL ENGINEERS INSTITUTE TECH NOTE 360S-11 - WELDING COLD-FORMED STEEL.
9. REPAIR DAMAGED OR UNCOATED GALVANIZED COATINGS PER ASTM A780.
10. FRAMING MEMBERS SHALL BE CUT SQUARELY OR AT AN ANGLE AS REQUIRED TO FIT SQUARELY AGAINST ABUTTING MEMBERS. MEMBERS SHALL BE HELD FIRMLY IN PLACE UNTIL PROPERLY JOINED.
11. JOINING OF STRUCTURAL MEMBERS SHALL BE MADE WITH SELF-DRILLING SCREWS OR WELDING.
12. WIRE TYING OF FRAMING MEMBERS IN STRUCTURAL APPLICATIONS SHALL NOT BE PERMITTED.
13. ATTACHMENT OF COLLATERAL MATERIALS TO STEEL MEMBERS SHALL BE MADE WITH SELF-DRILLING SCREWS OR HARDENED SCREW SHANK NAILS.
14. LATERAL BRACING SHALL BE PROVIDED BY USE OF PLYWOOD SHEATHING, GYPSUM SHEATHING, OR BY HORIZONTAL STRAPS OR COLD-ROLLED CHANNELS. BRACING SHALL CONFORM TO SECTION D3 OF THE AISI SPECIFICATIONS.
15. LIGHT GAGE FRAMING CONNECTORS SPECIFIED BY PART NUMBER OR MODEL NAME ARE STANDARD CONNECTORS FABRICATED BY THE STEEL NETWORK (TSN), RALEIGH, N.C., 866-474-4676. CONNECTORS SHALL BE INSTALLED PER THE REQUIREMENTS OF THE LIGHT STEEL FRAMING CONNECTIONS CATALOG (LATEST EDITION) BY THE STEEL NETWORK USING THE NUMBER/SIZE OF FASTENERS SHOWN IN THESE DRAWINGS. WHERE NUMBER/SIZE IS NOT SHOWN IN THESE DRAWINGS, USE THE FASTENERS SPECIFIED IN THE CATALOG TO OBTAIN THE MAXIMUM CAPACITY OF THE SPECIFIED CONNECTOR. SUBSTITUTION OF GENERIC BENT PLATE, LIGHT GAGE CONNECTORS IS NOT ALLOWED WITHOUT DESIGN CALCULATIONS SHOWING EQUAL OR BETTER CAPACITY TO THE SPECIFIED TSN CONNECTOR, PREPARED AND SIGNED AND SEALED BY A FLORIDA REGISTERED ENGINEER EXPERIENCED IN LIGHT GAGE STEEL CONNECTION DESIGN.

TLC ENGINEERING
FOR ARCHITECTURE
874 Dixon Blvd.
Cocoa, Florida 32922
PH: 321.636.0274
Fax: 321.639.8986
www.tlc-engineers.com
COA #15

© Copyright 2018 TLC Engineering for Architecture, Inc.

Mosquito Control Storage Facility

2885 GREENBROOKE ST, GRANT-VALKARIA, FL 32948

No.	Date	Description

Seal

100% CONTRUCTION DOCUMENTS - NOT FOR CONSTRUCTION

Project No.	518060
Issue Date	08/22/18
Drawn By	RYS
Approved By	CGD
Scale	

Drawing Title

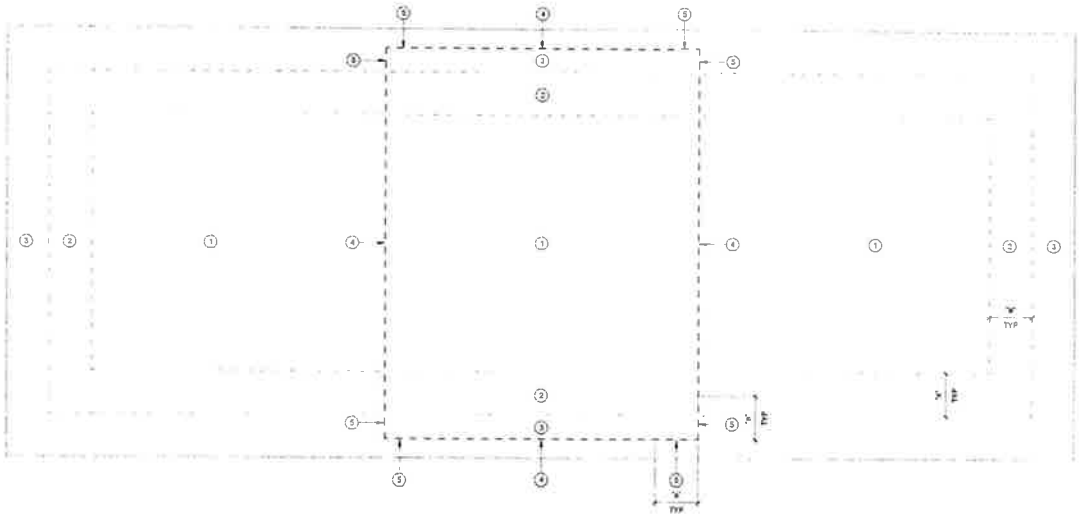
STRUCTURAL NOTES

Drawing No.

S-003

C:\Revit Local\518060-Mosquito Control Storage Facility_STR_R18_cabutcher.rvt

8/24/2018 9:48:27 PM



1 WIND LOAD DIAGRAM
1/4" = 1'-0"

NOMINAL C&C WIND PRESSURES (ASCE 7-10)									
BUILDING	a (FT)	VuE (MPH)	Vasd (MPH)	A (SF)	ZONE 1 (PSF)	ZONE 2 (PSF)	ZONE 3 (PSF)	ZONE 4 (PSF)	ZONE 5 (PSF)
MAIN	3'-0"	160	124	≤10	+13.2 -30.9	+20.8 -46.5	+26.4 -62.6	+30.6 -33.2	+30.6 -40.9
				20	+13.2 -30.9	+20.8 -46.5	+23.8 -46.5	+28.3 -31.8	+29.3 -38.1
				50	+13.2 -30.9	+13.2 -30.5	+13.2 -30.9	+27.5 -30.2	+27.5 -34.8
				100+	+13.2 -30.9	+13.2 -30.9	+13.2 -30.9	+26.1 -29.7	+26.1 -31.8

NOMINAL C&C WIND PRESSURE PLAN NOTES:

1. PRESSURES SHOWN ABOVE ARE NOMINAL COMPONENTS AND CLADDING PRESSURES, CONVERTED FROM ULTIMATE PRESSURES USING A 0.6 MULTIPLIER FACTOR. NO FURTHER REDUCTION IS ALLOWED.

   A - INDICATES TRIBUTARY AREA IN S.F.
   a - INDICATES END ZONE WIDTH IN FT.
   VuE - INDICATES ULTIMATE DESIGN WIND SPEED IN MPH
   Vasd - INDICATES NOMINAL DESIGN WIND SPEED IN MPH

2. GROSS PRESSURES ARE FOR JOISTS, WINDOWS, DOORS, VENEER, LIGHT GAGE METAL FRAMING, METAL DECK ATTACHMENTS, ROOFING, ROOFING ACCESSORIES AND OTHER BUILDING COMPONENTS AND CLADDING.

3. GROSS PRESSURES SHALL BE LINEARLY INTERPOLATED FOR (A) NOT SHOWN IN TABLE.

4. POSITIVE PRESSURES INDICATE PRESSURES ACTING TOWARD A PROJECTED SURFACE. NEGATIVE PRESSURES INDICATE PRESSURES ACTING AWAY FROM A PROJECTED SURFACE.

5. ROOF AND ZONES (1) THRU (3)

6. WALL ZONES (4) AND (5)

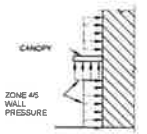
7. NET DESIGN ROOF PRESSURES SHALL BE CALCULATED USING THE SELFWEIGHT (DEAD LOAD) OF THE MATERIALS. HOWEVER, THE MAXIMUM REDUCTION OF WIND UPLIFT PRESSURES SHALL BE LIMITED TO THE SELF WEIGHT OF THE ROOF SYSTEM PLUS 3 PSF FOR SUPERIMPOSED DEAD LOADS.

8. INTERNAL PRESSURE COEFFICIENT FOR ENCLOSED BUILDING EQUALS +0.18 AND -0.18
   INTERNAL PRESSURE COEFFICIENT FOR OPEN STRUCTURE EQUALS +/- 0.00

9. AT ALCOVES AND CANOPIES, THE TOTAL UPLIFT PRESSURE ON THE ALCOVE SOFFIT OR CANOPY SHALL EQUAL THE WALL PRESSURE IN THAT AREA.



SECTION AT ALCOVE



SECTION AT CANOPY

ENGINEERING
FOR ARCHITECTURE
874 Dixon Blvd.
Cocoa, Florida 32922
PH: 321.636.0274
Fax: 321.639.9866
www.tlc-engineers.com
COA #15
© Copyright 2018 TLC Engineering for Architecture, Inc.

Mosquito Control Storage Facility

2865 GREENBROOKE ST, GRANT-VALKARIA, FL 32949

No.	Date	Description

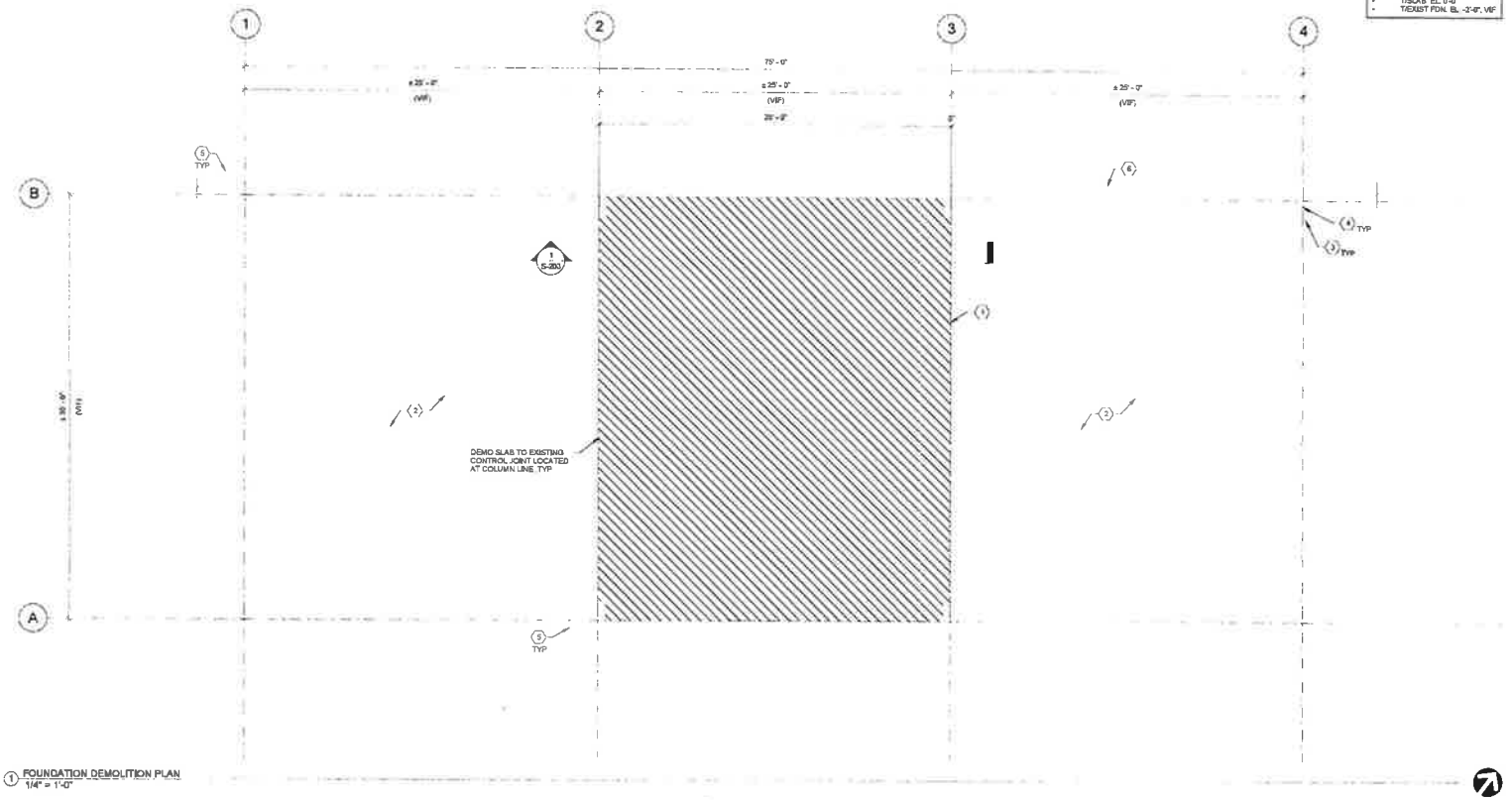
Seal

100% CONTRUCTION DOCUMENTS - NOT FOR CONSTRUCTION

Project No 518060
Issue Date 08/22/18
Drawn By RYS
Approved By CGD
Scale As indicated

Drawing Title
WIND LOAD DIAGRAM

Drawing No
S-004



1 FOUNDATION DEMOLITION PLAN
1/4" = 1'-0"

FOUNDATION DEMOLITION PLAN NOTES:

1. INDICATES APPROXIMATE EXTENTS OF EXISTING CONCRETE SLAB ON GRADE TO BE REMOVED.
2. EXISTING CONCRETE SLAB ON GRADE TO REMAIN.
3. EXISTING PEDESTAL TO REMAIN.
4. EXISTING PRE-ENGINEERED METAL BUILDING COLUMN TO REMAIN.
5. EXISTING COLUMN FOUNDATION TO REMAIN.
6. EXISTING BUILDING TO REMAIN.

ELEVATIONS
- TSLAB EL. 0'-0"
- T/EXIST FDN. EL. -2'-0", VIF

NOTE
1. CONTRACTOR SHALL PROVIDE TEMPORARY BRACING FOR ALL EXISTING FRAMING TO REMAIN AS REQUIRED.
2. DEMOLITION SHOULD BE PERFORMED IN A MANNER THAT MAINTAINS NORMAL OPERATIONS OF ADJACENT FACILITY.
3. CLEAN ALL EXISTING STRUCTURAL STEEL BEAMS, GIRDERS, COLUMNS, END PLATES, STIFFENERS, AND BASE PLATES TO REMAIN OF EXISTING SCALE RUST WITH HAND TOOLS IN ACCORDANCE WITH SSPC-LEVEL SP-3.
4. REPLACE ALL CORRODED AND/OR DAMAGED FASTENERS, WASHERS, HARDWARE, AND ACCESSORIES WITH HOT-DIP GALVANIZED FASTENERS AND ACCESSORIES OF SAME SIZE AS EXISTING. ALL STRUCTURAL BOLTS TO BE A-325-N.
5. COAT BASE PLATES, ANCHOR BOLTS, AND COLUMN WITH COAL-TAR EPOXY COATING FROM TOP OF CONCRETE PEDESTAL TO 1'-0" ABOVE TOP OF BASE PLATE.
6. PRIME ALL EXISTING STRUCTURAL STEEL TO REMAIN WITH RUST-OLEUM® RUST-PRIME 1000 HYBRID EPOXY PRIMER, OR APPROVED EQUAL. PRIMER TO BE APPLIED IN ACCORDANCE WITH MANUFACTURERS WRITTEN INSTRUCTIONS TO A MINIMUM DRY FILM THICKNESS (DFT) OF 1.5 MILS.
7. APPLY RUST-OLEUM METALMAX STM ACRYLIC ENAMEL, OR APPROVED EQUAL, TOP COAT TO ALL EXISTING STRUCTURAL STEEL. TOP COAT TO BE APPLIED IN ACCORDANCE WITH MANUFACTURERS WRITTEN INSTRUCTIONS TO A MINIMUM DFT OF 2.0 MILS. OWNER TO REVIEW AND APPROVE TOP COAT COLOR.

TLC ENGINEERING FOR ARCHITECTURE
874 Dixon Blvd.
Cocoa, Florida 32922
PH: 321.636.0274
Fax: 321.639.8986
www.tlc-engineers.com
COA #15

© Copyright 2018 TLC Engineering for Architecture, Inc.

Mosquito Control Storage Facility

2885 GREENBROOKE ST. GRANT-VALKARIA, FL 32948

No.	Date	Description

Seal

100% CONSTRUCTION DOCUMENTS - NOT FOR CONSTRUCTION

Project No.	518060
Issue Date	08/22/18
Drawn By	MTO
Approved By	CGD
Scale	As Indicated

Drawing Title
FOUNDATION DEMOLITION PLAN

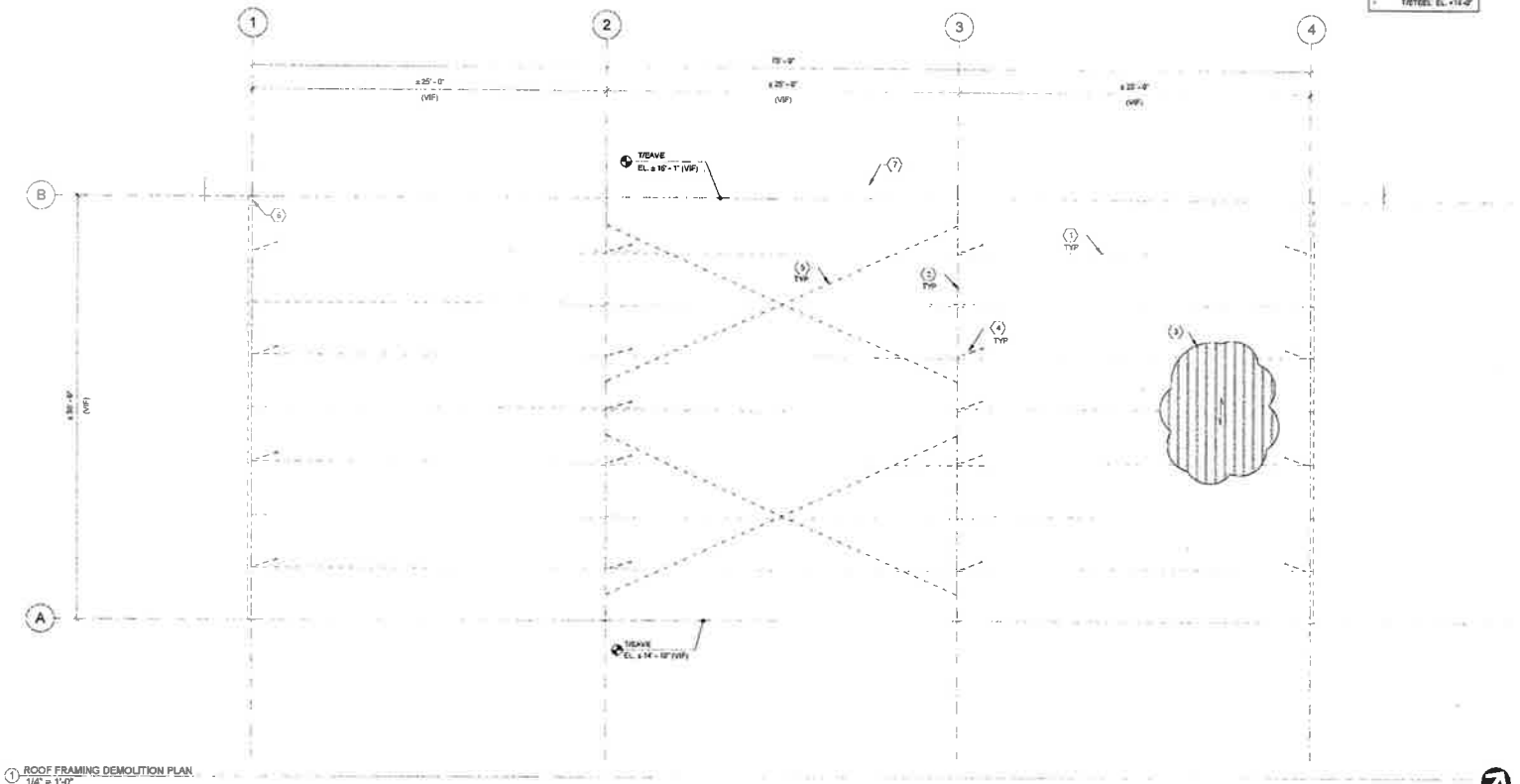
Drawing No.
XS-101

C:\Revit Local\518060\Mosquito Control Storage Facility_STR_R18_cgdo3wpn.rvt
8/22/2018 9:48:34 PM

ROOF FRAMING DEMOLITION PLAN NOTES

1. EXISTING CORRODED 8" PRE-ENGINEERED ROOF PURLINS TO BE REMOVED.
2. EXISTING PRE-ENGINEERED STEEL BEAMS TO REMAIN.
3. EXISTING PRE-ENGINEERED ROOF DECK TO BE REMOVED.
4. EXISTING CORRODED L4x3x1/4 ANGLE BRACES AND CONNECTIONS TO BE REMOVED.
5. EXISTING CORRODED 1/2"Ø STEEL CABLES TO BE REMOVED.
6. EXISTING PRE-ENGINEERED METAL COLUMN TO REMAIN.
7. EXISTING BUILDING TO REMAIN.

ELEVATIONS
T/STEEL EL. +14'-0"



1 ROOF FRAMING DEMOLITION PLAN
1/4" = 1'-0"

NOTE
1. REMOVE AND DISPOSE OF ALL EXISTING CORRODED ROOF DECK, PURLINS, FASTENERS AND ACCESSORIES SHOWN ON PLAN.
2. CONTRACTOR SHALL PROVIDE TEMPORARY BRACING FOR ALL EXISTING FRAMING TO REMAIN AS REQUIRED.
3. DEMOLITION SHOULD BE PERFORMED IN A MANNER THAT MAINTAINS NORMAL OPERATIONS OF ADJACENT FACILITY.
4. SALVAGE AND STORE ON SITE EXISTING GUTTER SYSTEM. REINSTALLED TO MATCH EXISTING CONDITION AFTER NEW FRAMING IS COMPLETE.
5. CLEAN ALL EXISTING STRUCTURAL STEEL BEAMS, GIRDERS, COLUMNS, END PLATES, STIFFENERS, AND BASE PLATES TO REMAIN OF EXISTING SCALE/RUST WITH HAND TOOLS IN ACCORDANCE WITH SSPC LEVEL SP-3.
6. REPLACE ALL CORRODED AND/OR DAMAGED FASTENERS, WASHERS, HARDWARE, AND ACCESSORIES WITH HOT-DIP GALVANIZED FASTENERS AND ACCESSORIES OF SAME SIZE AS EXISTING. ALL STRUCTURAL BOLTS TO BE A-325 N.
7. PRIME ALL EXISTING STRUCTURAL STEEL TO REMAIN WITH RUST-OLEUM ROC-PRIME 1000 HYBRID EPOXY PRIMER, OR APPROVED EQUAL. PRIMER TO BE APPLIED IN ACCORDANCE WITH MANUFACTURERS WRITTEN INSTRUCTIONS TO A MINIMUM DRY FILM THICKNESS (DFT) OF 1.5 MILS.
8. APPLY RUST-OLEUM METALMAX DTM ACRYLIC ENAMEL, OR APPROVED EQUAL, TOP COAT TO ALL EXISTING STRUCTURAL STEEL. TOP COAT TO BE APPLIED IN ACCORDANCE WITH MANUFACTURERS WRITTEN INSTRUCTIONS TO A MINIMUM DFT OF 2.0 MILS. OWNER TO REVIEW AND APPROVE TOP COAT COLOR.

ENGINEERING
FOR ARCHITECTURE
874 Dixon Blvd.
Cocoa, Florida 32922
PH: 321.636.0274
Fax: 321.639.8986
www.tlc-engineers.com
COA #15

© Copyright 2018 TLC Engineering for Architecture, Inc.

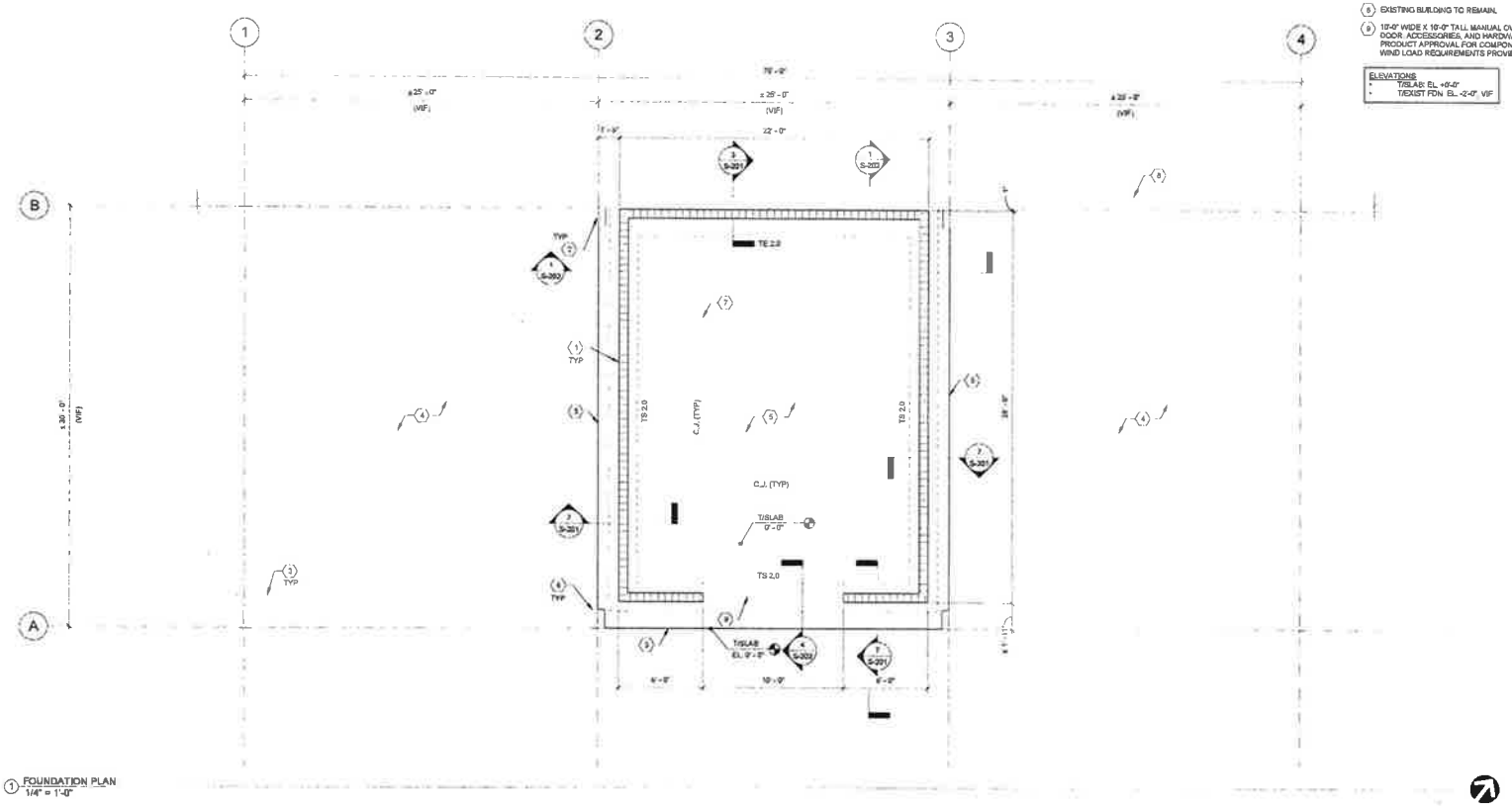
Mosquito Control Storage Facility

2865 GREENBROOKE ST, GRANT-VALKARIA, FL 32949

No.	Date	Description

100% CONTRUCTION DOCUMENTS - NOT FOR CONSTRUCTION

Project No. 518060
Issue Date. 08/22/18
Drawn By MTO
Approved By CGD
Scale As indicated
Drawing Title
ROOF FRAMING DEMOLITION PLAN
Drawing No.
XS-102



1 FOUNDATION PLAN
1/4" = 1'-0"

FOUNDATION PLAN NOTES

1. (IIIII) INDICATES 8" CONCRETE MASONRY UNIT (CMU) WALLS REINFORCED WITH #5 BARS AT 40" O.C. AND AT WALL TERMINATIONS, INTERSECTIONS, AND JAMBS IN GROUT FILLED CELLS.
2. EXISTING PRE-ENGINEERED METAL BUILDING COLUMN.
3. EXISTING PRE-ENGINEERED CANOPY FOUNDATION.
4. EXISTING SLAB ON GRADE.
5. NEW 6" CONCRETE SLAB ON GRADE ON 10 MIL CLASS A VAPOR BARRIER AND COMPACTED FILL REINFORCED W/ #4 BARS AT 16" O.C. SUPPORTED ON CHAIRS.
6. EXISTING PRE-ENGINEERED CANOPY PEDESTAL.
7. C.J. INDICATES SAWCUT CRACK CONTROL JOINT. FOR TYPICAL DETAIL S05-201.
8. EXISTING BUILDING TO REMAIN.
9. 10'-0" WIDE X 10'-0" TALL MANUAL OVERHEAD ROLLUP DOOR. ACCESSORIES, AND HARDWARE WITH FLORIDA PRODUCT APPROVAL FOR COMPONENT AND CLADDING WIND LOAD REQUIREMENTS PROVIDED ON S-004.

ELEVATIONS
- T/SLAB: EL. +0'-0"
- T/EXIST FDN. EL. -2'-0", VIF

TLC ENGINEERING FOR ARCHITECTURE
874 Dixon Blvd.
Cocoa, Florida 32922
PH: 321.636.0274
Fax: 321.639.8986
www.tlc-engineers.com
COA #15

© Copyright 2018 TLC Engineering for Architecture, Inc.

Mosquito Control Storage Facility

2865 GREENBROOKE ST, GRANT-VALKARIA, FL 32948

No.	Date	Description

Seal

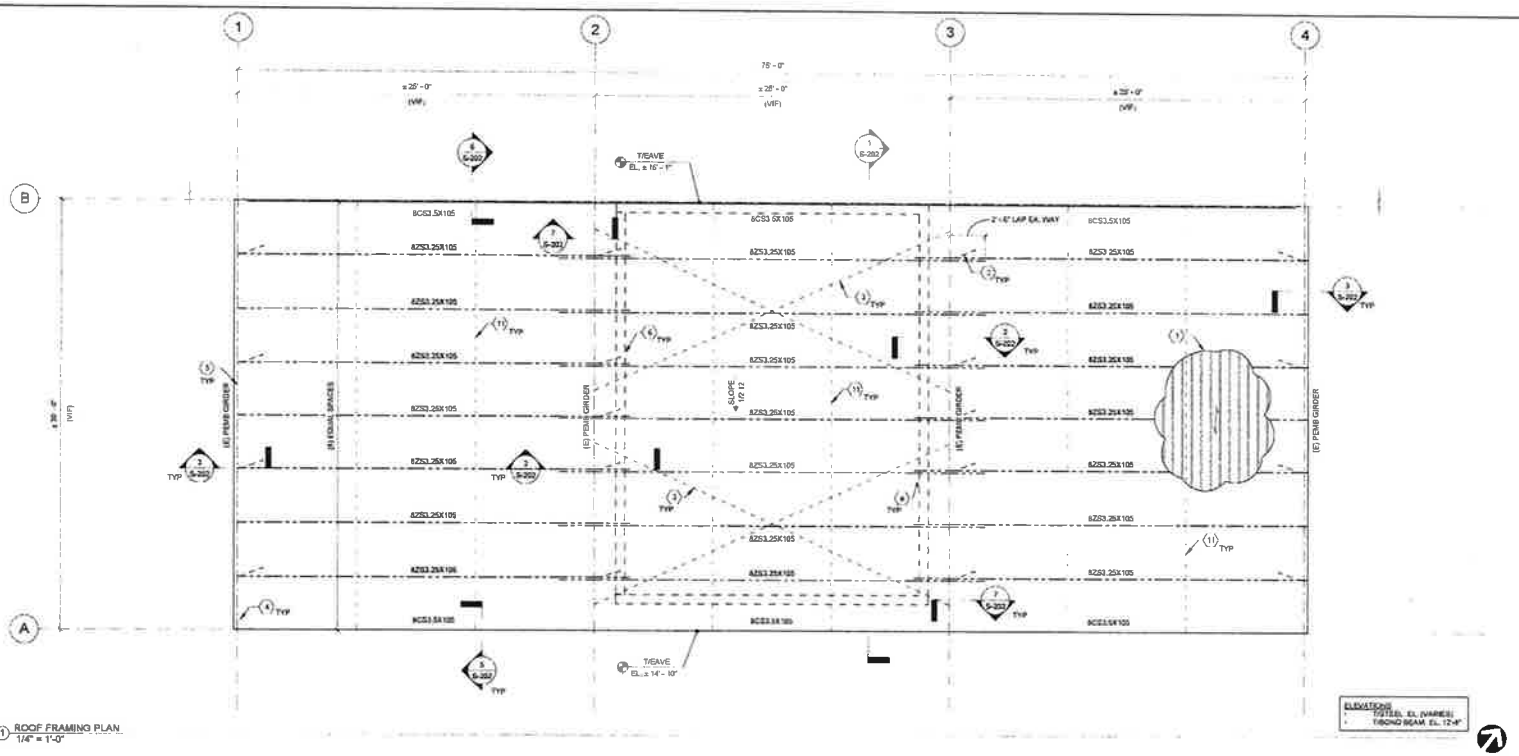
100% CONTRUCTION DOCUMENTS - NOT FOR CONSTRUCTION

Project No.	518060
Issue Date	08/22/18
Drawn By	MTO
Approved By	CGD
Scale	As indicated

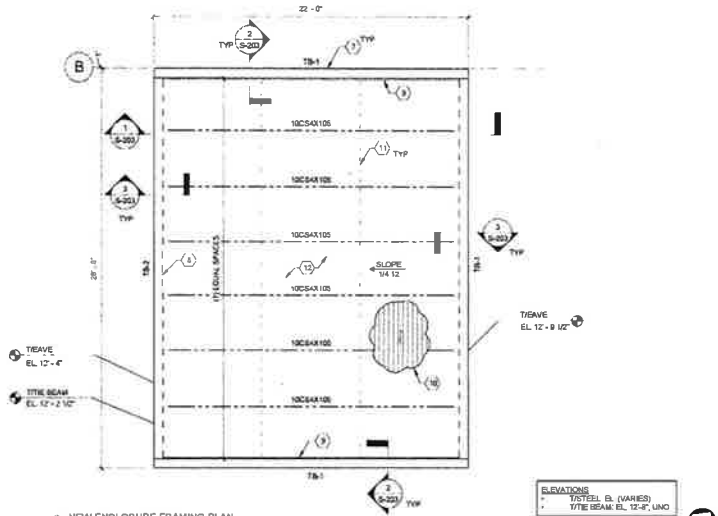
Drawing Title
FOUNDATION PLAN

Drawing No.
S-101

8/24/2018 3:46:29 PM C:\Revit Local\518060-Mosquito Control Storage Facility_STR_R18_mtoadmin.rvt



1 ROOF FRAMING PLAN
1/4" = 1'-0"



2 NEW ENCLOSURE FRAMING PLAN
1/4" = 1'-0"

ROOF FRAMING PLAN NOTES

1. PRE-ENGINEERED NUCOR CLASSIC GALVALUME UNINSULATED METAL ROOF PANEL, OR APPROVED EQUAL, FASTENED TO ROOF PURLINS PER S/S-202.
2. L1 1/2"x1 1/2"x 1/8" HOT-DIP GALVANIZED BOTTOM CHORD BRACE ANGLE.
3. 1/2"Ø 7-19 GALVANIZED WIRE ROPE.
4. EXISTING PRE-ENGINEERED METAL BUILDING COLUMN.
5. EXISTING PRE-ENGINEERED METAL BUILDING GIRDER.
6. MASONRY WALL BELOW. REFER TO FOUNDATION PLAN FOR REINFORCING.
7. TB-1 INDICATES CONT 8"X 24" CIP CONCRETE TIE BEAM. REFER TO SECTION S/S-202 FOR REINFORCING.
8. TB-2 INDICATES CONT 8"X 16" 1C" CIP LIGNCRETE TIE BEAM. REFER TO SECTION S/S-202 FOR REINFORCING.
9. L-4x4x3/8 DECK SUPPORT ANGLE. REFER TO S/S-203.
10. 1 1/2" 20 GA VULCRAFT TYPE B G90 GALVANIZED METAL ROOF DECK FASTENED TO CFS JOIST PER 10/S-202.
11. CONTINUOUS SIMPSON TB54 BRIDGING ATTACHED TO CFS JOIST W/ (2) #10 SELF DRILLING SCREWS. LOCATE CONTINUOUS LINES OF BRIDGING AT SPAN THIRD POINTS.
12. PROVIDE FULLY ADHERED MODIFIED BITUMINOUS ROOFING OVER PROTECTION BOARD ON 4" RIGID INSULATION ON METAL DECK. ROOFING ASSEMBLY TO BE FASTENED TO UNDERLYING STRUCTURAL METAL DECK IN ACCORDANCE WITH MANUFACTURERS WRITTEN INSTRUCTIONS TO SATISFY THE COMPONENT AND CLADDING WIND PRESSURES PROVIDED ON S-604.

NOTE
1. EAVE ELEVATIONS AND ROOF SLOPE TO MATCH ORIGINAL.
2. CLEAN ALL EXISTING STEEL BEAMS AND COLUMNS.
3. REINSTALL SALVAGED GUTTER SYSTEM.
4. ALL ROOF PURLINS, EAVE STRUTS, AND OTHER COLD-FORMED METAL FRAMING TO BE G90 GALVANIZED.
5. ALL STRUCTURAL STEEL, FASTENERS, HARDWARE, AND ACCESSORIES TO BE HOT-DIP GALVANIZED.

TLC ENGINEERING FOR ARCHITECTURE
874 Dixon Blvd.
Cocoa, Florida 32922
PH: 321.636.0274
Fax: 321.639.8986
www.tlc-engineers.com
COA #15

© Copyright 2018 TLC Engineering for Architecture, Inc.

Mosquito Control Storage Facility

2865 GREENBROOKE ST, GRANT-VALKARIA, FL 32949

No.	Date	Description

Seal

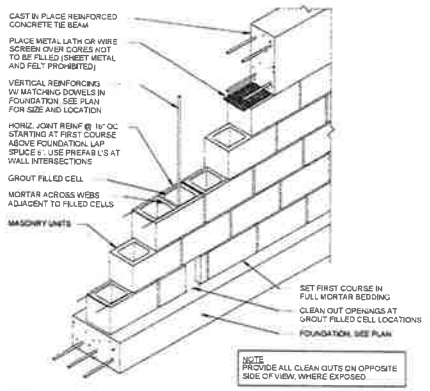
100% CONTRUCTION DOCUMENTS - NOT FOR CONSTRUCTION

Project No.	518060
Issue Date.	08/22/18
Drawn By	MTO
Approved By	CGD
Scale	As indicated

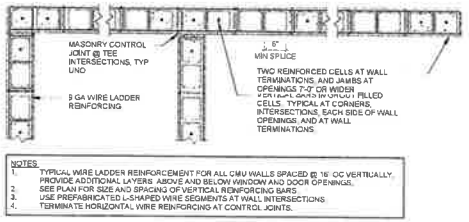
Drawing Title
ROOF FRAMING PLAN

Drawing No.
S-102

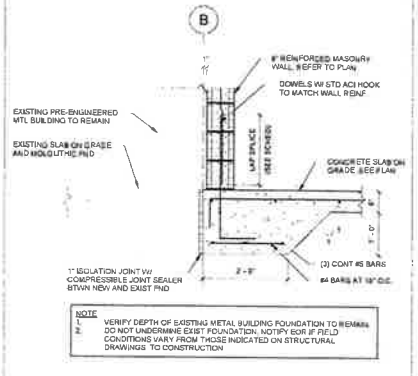
C:\Revit Local\518060 Mosquito Control Storage Facility_STR_R19_mtocalyle.rvt
8/21/2018 2:46:30 PM



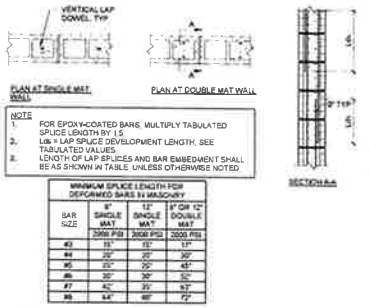
1 TYPICAL MASONRY WALL CONSTRUCTION
3/4" = 1'-0"



2 TYPICAL HORIZONTAL WALL REINFORCING / VERTICAL CORNER REINFORCING
3/4" = 1'-0"



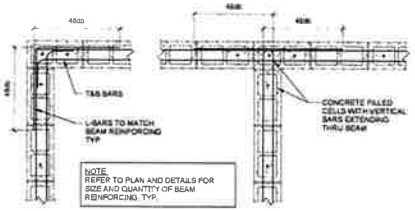
3 THICKENED SLAB EDGE (TEX.X) DETAIL
3/4" = 1'-0"



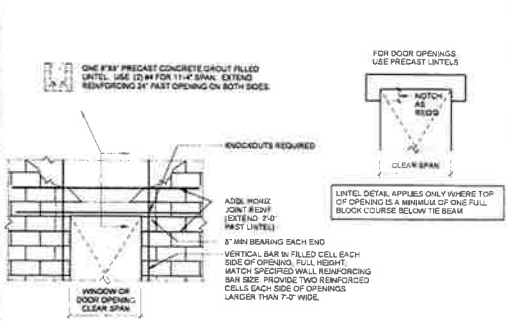
MINIMUM SPLICE LENGTH FOR DEFORMED BARS IN MASONRY

BAR SIZE	8" SINGLE MAT 2000 PSI	12" SINGLE MAT 2000 PSI	8" OR 12" DOUBLE MAT 2000 PSI
#3	15"	15"	17"
#4	20"	20"	30"
#5	25"	30"	45"
#6	30"	30"	52"
#7	42"	35"	63"
#8	54"	46"	72"

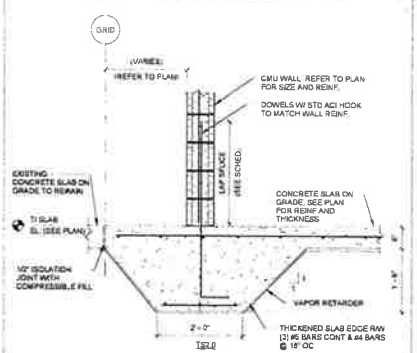
4 TYPICAL MASONRY LAP SPLICE DETAIL
3/4" = 1'-0"



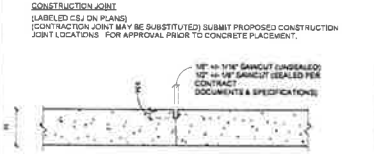
5 TYPICAL BOND BEAM AND CORNER REINFORCING
3/4" = 1'-0"



6 TYPICAL MASONRY WALL OPENING LINTEL DETAIL
3/4" = 1'-0"



7 THICKENED SLAB (TSX.X) DETAIL
3/4" = 1'-0"

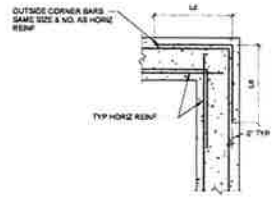


8 TYPICAL SLAB ON GRADE CONTROL JOINTS
3/4" = 1'-0"

TLC ENGINEERING FOR ARCHITECTURE
874 Dixon Blvd.
Cocoa, Florida 32922
PH: 321.636.0274
Fax: 321.639.8985
www.tlcengineers.com
COA #15
© Copyright 2018 TLC Engineering for Architecture, Inc.

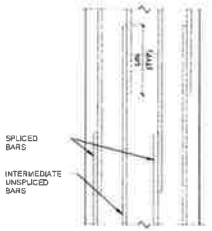
Mosquito Control Storage Facility
2865 GREENBROOKE ST, GRANT-VALKARIA, FL 32949

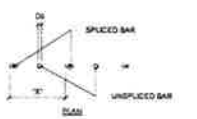
No.	Date	Description



CORNERS

9 TYPICAL HORIZ. REINF. AT CORNERS OF THICKENED EDGES AND CONC TIE BEAMS
3/4" = 1'-0"





NOTE
S= X + Ds WHERE
S= CLEAR BAR SPACING TO BE USED FOR DETERMINATION OF SPLICE LENGTH CATEGORY.
X= CLEAR DISTANCE BETWEEN ADJACENT SPLICED BARS.
Ds= DIAMETER OF INTERMEDIATE UNSPLICED BARS.
Ld= LAP SPLICE DEVELOPMENT LENGTH SEE TABULATED VALUES

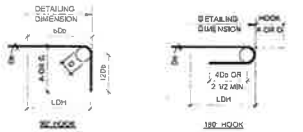
LENGTH OF LAP SPLICES AND BAR EMBEDMENT SHALL BE AS SHOWN IN TABLE UNLESS OTHERWISE NOTED

MIN SPLICE LENGTH FOR DEFORMED BARS

	BAR SIZE	4000 PSI CLASS B
f'c=12"	#3	20"
	#4	25"
	#5	32"
	#6	38"
	#7	55"
	#8	63"
	#9	71"
	#10	80"
	#11	88"
	#14	106"
	#18	141"

NOTE
1. WHERE DEPTH OF FRESH CONCRETE BELOW SPLICED REINF BARS IS GREATER THAN 12" MULTIPLY TABULATED SPLICE LENGTH BY 1.3.
2. "Db" IS BAR DIAMETER.
3. FOR ALL "KEIRP" SPLICES UTILIZE CLASS "B" SPLICE U.N.O. ON PLANS OR DETAILS.

10 TYPICAL CONCRETE LAP SPLICE SCHEDULE
3/4" = 1'-0"



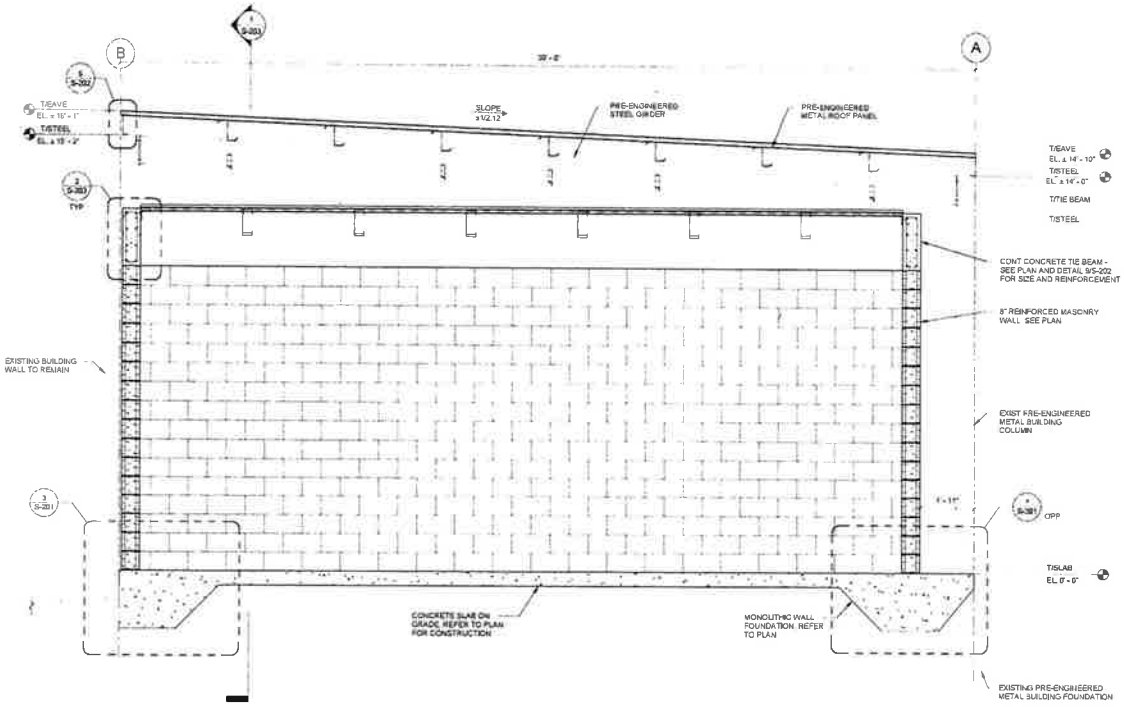
RECOMMENDED END HOOKS, ALL GRADES

BARS SIZE	F'c = 4000 PSI FINISHED BEND DIAMETER D (IN.)	180° HOOKS A OR G, (IN.)	J (IN.)	90° HOOK A OR G, (IN.)	F'c = 4000 PSI LDH
#2	2 1/4	5	4	6	8
#4	3	6	4	8	10
#5	4 1/2	7	5	10	12
#6	2 1/2	8	6	12	15
#7	5 1/4	10	7	14	17
#8	6	11	8	16	19
#9	9 1/2	15	11 3/4	19	22
#10	10 3/4	17	13 1/4	22	24
#11	12	18	14 3/4	24	27
#14	16 1/4	27	21 3/4	31	34
#18	24	36	29 1/2	41	43

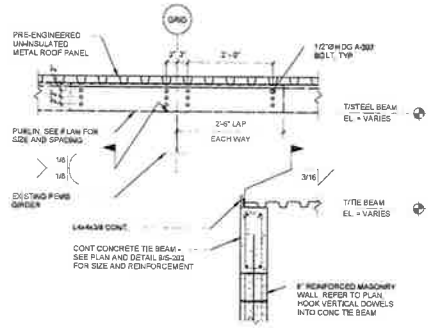
11 TYPICAL CONCRETE END HOOK SCHEDULE
3/4" = 1'-0"

100% CONTRUCTION DOCUMENTS - NOT FOR CONSTRUCTION

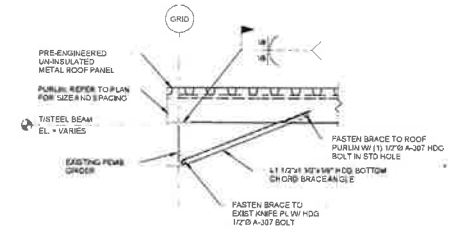
Project No. 518060
Issue Date 06/22/18
Drawn By MTO
Approved By CGD
Scale 3/4" = 1'-0"
Drawing Title STRUCTURAL DETAILS
Drawing No S-201



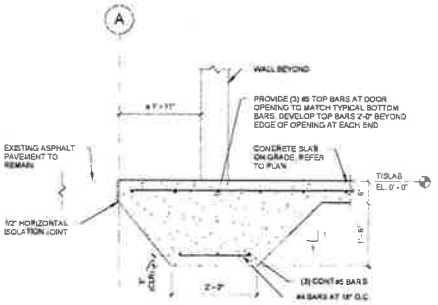
1 BUILDING SECTION
1/2" = 1'-0"



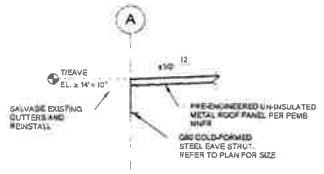
2 TYPICAL DETAIL ROOF PURLIN TO EXIST PEMB GIRDER
3/4" = 1'-0"



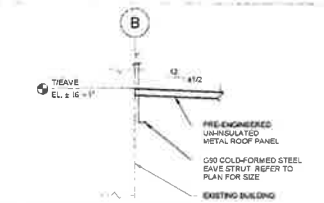
3 TYPICAL DETAIL AT UPLIFT BRACING
3/4" = 1'-0"



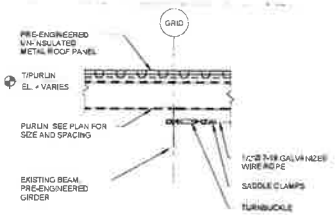
4 THICKENED SLAB (TSX.X) AT OH DOOR
3/4" = 1'-0"



5 TYPICAL DETAIL LOW EAVE STRUT W/ GUTTER
3/4" = 1'-0"



6 TYPICAL DETAIL HIGH EAVE AT EXIST BLDG
3/4" = 1'-0"

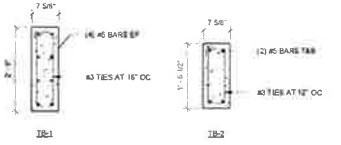


7 STEEL DETAIL
3/4" = 1'-0"



NOTE
1. ALL FASTENERS TO BE NUCOR H1030 SELF-DRILLING SCREWS, OR APPROVED EQUAL. FIELD DRILLING AT LAPPED OR NESTED PURLIN CONDITIONS MAY BE REQUIRED. REFER TO FASTENER MNFR INSTALLATION INSTRUCTIONS FOR ADDITIONAL INFORMATION.
2. PROVIDE CONT 3/32" X 1/2" MASTIC TAPE (NUCOR MASTIC MK H3010) BETWEEN SURFACES AT SIDE LAP CONNECTIONS. PROVIDE (3) NUCOR H1030 SCREWS, OR APPROVED, AT SIDELAP CONNECTIONS.

8 PRE-ENGINEERED ROOF DECK FASTENING PATTERN
3/4" = 1'-0"



9 TYPICAL CONCRETE TIE BEAM DETAIL
3/4" = 1'-0"



NOTE
1. ALL FASTENERS TO BE HILTI S-MD 12-24 x 3-5/8 M HWHS SCREWS, OR APPROVED EQUAL. FIELD DRILLING AT LAPPED OR NESTED PURLIN CONDITIONS MAY BE REQUIRED. REFER TO FASTENER MNFR INSTALLATION INSTRUCTIONS FOR ADDITIONAL INFORMATION.
2. PROVIDE HILTI S-SLC 01 M HWH SIDE LAP CONNECTORS SPACED AT 36" O.C. MAX AT SIDE LAP CONNECTIONS.

10 ROOF DECK TO CFS JOISTS FASTENING PATTERN
1" = 1'-0"

ENGINEERING
FOR ARCHITECTURE
874 Dixon Blvd.
Cocoa, Florida 32922
PH: 321.636.0274
Fax: 321.639.8986
www.tlc-engineers.com
COA #15
© Copyright 2018 TLC Engineering for Architecture, Inc.

Mosquito Control Storage Facility
2865 GREENBROOKE ST, GRANT-VALKARIA, FL 32948

No.	Date	Description

Seal

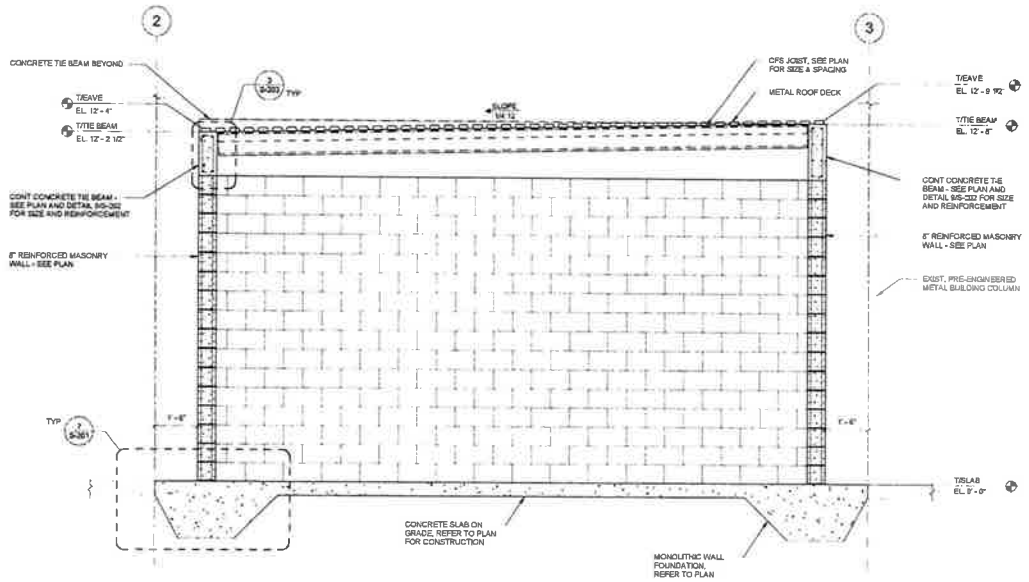
100% CONSTRUCTION DOCUMENTS - NOT FOR CONSTRUCTION

Project No.	518060
Issue Date	05/22/18
Drawn By	MTO
Approved By	CGD
Scale	As indicated

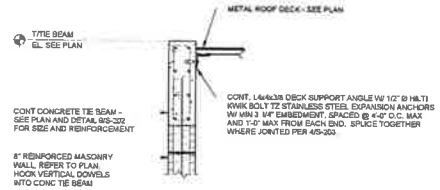
Drawing Title
STRUCTURAL DETAILS

Drawing No.
S-202

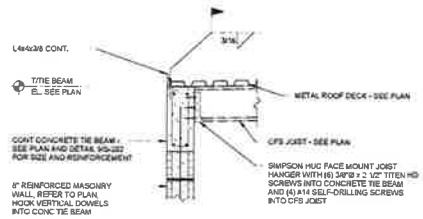
C:\Revit Local\518060-Mosquito Control Storage Facility_R18_mtoduplin.rvt
5/21/2018 3:48:33 PM



1 BUILDING SECTION
1/2" = 1'-0"

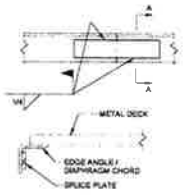


2 TYPICAL ROOF DECK SUPPORT ANGLE AT TIE BEAM
3/4" = 1'-0"



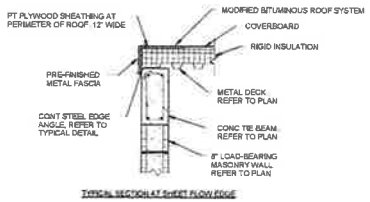
3 TYPICAL COLD-FORMED STEEL JOIST TO TIE BEAM DETAIL
3/4" = 1'-0"

EDGE ANGLE & DIAPHRAGM CHORD SPLICES	
ANGLE	PLATE DIM.
L4x4x3/8	1/2"x2 1/2"x'Y'-0"

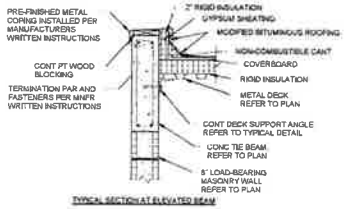


SECTION A-A

4 TYPICAL DIAPHRAGM CHORD SPLICE
1 1/2" = 1'-0"



TYPICAL SECTION AT SHEET FLOW EDGE



TYPICAL SECTION AT ELEVATED BEAM

5 TYPICAL ROOFING DETAILS
3/4" = 1'-0"

TLC ENGINEERING FOR ARCHITECTURE
874 Dixon Blvd.
Cocoa, Florida 32922
PH: 321.636.0274
Fax: 321.639.8886
www.tlc-engineers.com
COA #15
© Copyright 2018 TLC Engineering for Architecture Inc.

Mosquito Control Storage Facility

2865 GREENBROOKE ST, GRANT-VALKARIA, FL 32949

No.	Date	Description

Seal

100% CONSTRUCTION DOCUMENTS - NOT FOR CONSTRUCTION

Project No.	518060
Issue Date	06/22/18
Drawn By	RYS
Approved By	CGD
Scale	As indicated

Drawing Title
STRUCTURAL DETAILS

Drawing No.
S-203

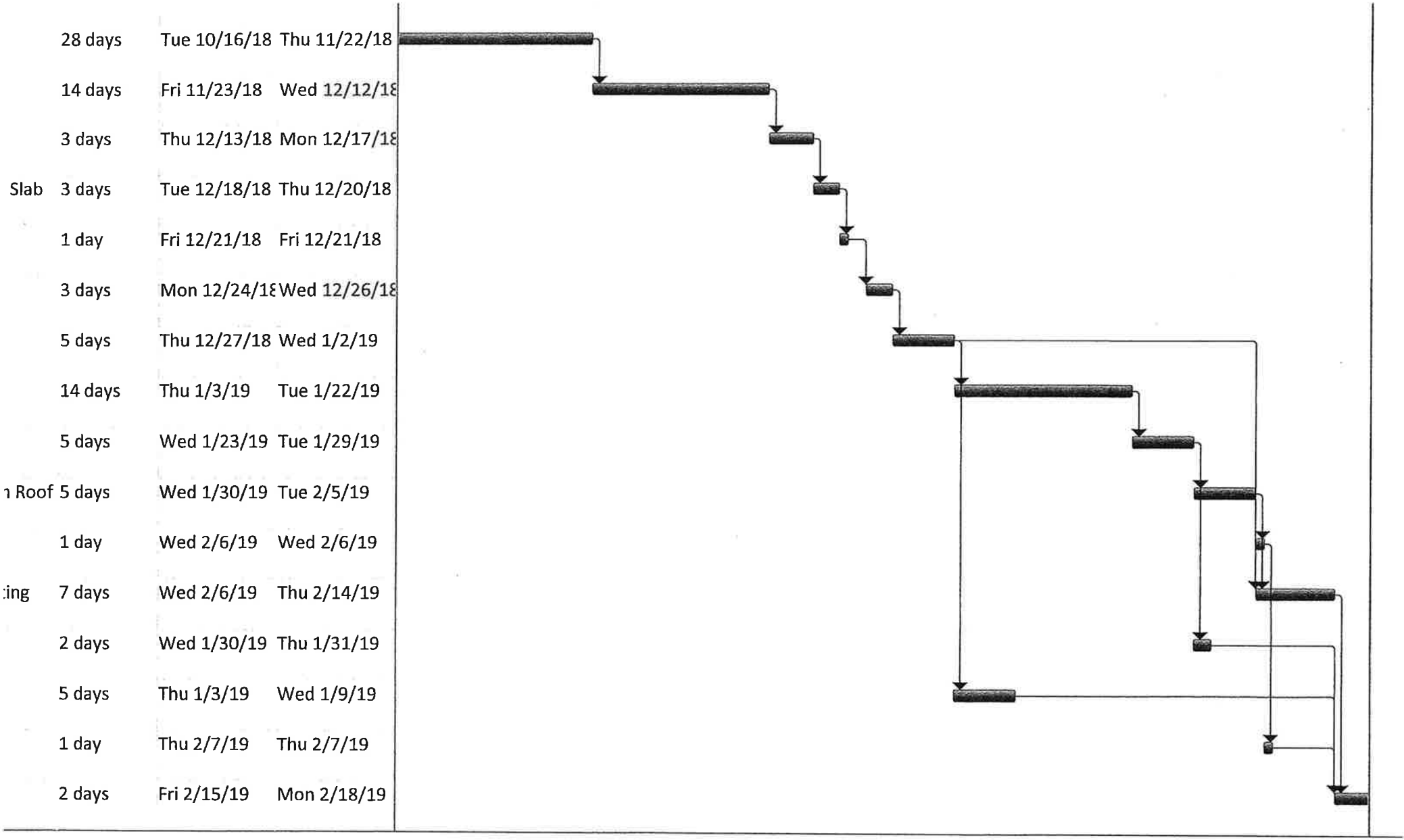
C:\Revit Local\518060-Mosquito Control Storage Facility_R19_cbeckwyn.rvt
6/22/2018 7:56:34 PM

ATTACHMENT "E"

CONSTRUCTION MANAGER'S
PRELIMINARY CONSTRUCTION SCHEDULE

Attached

	28 days	Tue 10/16/18	Thu 11/22/18
	14 days	Fri 11/23/18	Wed 12/12/18
	3 days	Thu 12/13/18	Mon 12/17/18
Slab	3 days	Tue 12/18/18	Thu 12/20/18
	1 day	Fri 12/21/18	Fri 12/21/18
	3 days	Mon 12/24/18	Wed 12/26/18
	5 days	Thu 12/27/18	Wed 1/2/19
	14 days	Thu 1/3/19	Tue 1/22/19
	5 days	Wed 1/23/19	Tue 1/29/19
ı Roof	5 days	Wed 1/30/19	Tue 2/5/19
	1 day	Wed 2/6/19	Wed 2/6/19
:ing	7 days	Wed 2/6/19	Thu 2/14/19
	2 days	Wed 1/30/19	Thu 1/31/19
	5 days	Thu 1/3/19	Wed 1/9/19
	1 day	Thu 2/7/19	Thu 2/7/19
	2 days	Fri 2/15/19	Mon 2/18/19



Project Summary Inactive Milestone Manual Summary Rollup Deadline

ATTACHMENT "F"

ORDINANCE 98-37

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. (a) Potential lump sum bidders responding to a request for qualifications are required to submit information required by this article and as identified in the RFQ

package. A committee identified in the RFQ package will determine whether a potential bidder is qualified and responsive as defined in this article.

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

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

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

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

(d) At the completion of each competitively awarded County construction project, the County department which administered the construction contract shall

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

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

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

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

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

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

   - County evaluations of the performance on County projects;

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

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

4. The County Manager will establish committees which may debar a contractor, contractor's key personnel, contractor's surety, subcontractor and subcontractor's key personnel, or any entity which key personnel are later employed or retained by in a supervisory position, from bidding on any County project under the circumstances enumerated below. The decision to disbar is

discretionary, the seriousness of the offense and all mitigating factors should be considered in making the decision to disbar. The notice of debarment shall state the time when such debarment will be lifted, if ever, and the contractor's right to appeal such debarment to the Board of County Commissioners under the Board's regular agenda. The Board reserves the power to waive or lift any committee imposed suspension or debarment.

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

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

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

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

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

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

Section 3: Severability: If any provision of this ordinance is held to be illegal or invalid,

the other provisions shall remain in full force and effect.

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

ATTACHMENT "G"

PUBLIC CONSTRUCTION PAYMENT BOND

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

THE CONDITIONS OF THIS BOND are that if Principal:

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

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

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

Witness:

_____

_____
Principal Seal

Its: _____
Title

Witness:

_____

_____
Surety Seal

Its: _____
Title

ATTACHMENT "H"

PUBLIC CONSTRUCTION PERFORMANCE BOND

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

THE CONDITIONS OF THIS BOND are that if Principal:

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

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

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

Witness:

_____

_____
Principal Seal

Its: _____
Title

Witness:

_____

_____
Surety Seal

Its: _____
Title

ATTACHMENT "I"

CONSTRUCTION MANAGER'S
GUARANTEED MAXIMUM PRICE

ATTACH HERE

Project No 1800240200
BC Mosquito Control Storage Facility

Revision 2
Estimate Type: 100% Documents Estimate Status: Submitted
9/7/2018

Item Description	Qty	Unit	Unit Price	Extended Amount
CSI Division 0 - General Conditions				
Superintendent	320	hrs	30.00	9,600.00
Superintendent Vehicle	2	months	600.00	1,200.00
Fuel	8	weeks	100.00	800.00
Superintendent Phone	2	months	30.00	60.00
CSI Division 0 - General Conditions Total				**11,660.00**
CSI Division 1 - General Requirements				
Engineering and testing Concrete and compaction testing	1	allowance	1,500.00	1,500.00
CSI Division 1 - General Requirements Total				**1,500.00**
CSI Division 2 - Existing Conditions				
Demolition Subcontractor Sawcut and remove existing concrete slab	750	allowance	5.00	3,750.00
CSI Division 2 - Existing Conditions Total				**3,750.00**
CSI Division 3 - Concrete				
Cast-in-Place Concrete Subcontractor Pour new footings and sab	1	ls	34,852.00	34,852.00
Cast-in-Place Concrete Subcontractor (In BCP above) Grade and compact below new slab	1	included	0.00	0.00
Cast-in-Place Concrete Subcontractor Concrete housekeeping pad and fence around mini split condenser	1	allowance	950.00	950.00
CSI Division 3 - Concrete Total				**35,802.00**
CSI Division 4 - Masonry				
Unit Masonry Subcontractor (In BCP above) Block and tie beams - Included with concrete	1	included	0.00	0.00
CSI Division 4 - Masonry Total				**0.00**
CSI Division 5 - Metals				
Demolition Subcontractor Remove canopy roof sheets, perlins, steel cables and angle braces - included with structural steel	1	included	0.00	0.00
Structural Steel Subcontractor New structural steel for building roof and canopy	1	ls	80,700.00	80,700.00

Item Description	Qty	Unit	Unit Price	Extended Amount
Structural Steel Subcontractor	1	included	0.00	0.00
New Masonry enclosure metal roof structure and 20 ga. metal deck - Included with structural steel				
CSI Division 5 - Metals Total				**80,700.00**
CSI Division 7 - Thermal and Moisture Protections				
Membrane Roofing Subcontractor	616	included	0.00	0.00
Modified bitumen room - included with structural steel				
CSI Division 7 - Thermal and Moisture Protections Total				**0.00**
CSI Division 8 - Openings				
Specialty Doors and Frames Subcontractor	1	allowance	4,175.00	4,175.00
10' x 10' manual roll-up door				
CSI Division 8 - Openings Total				**4,175.00**
CSI Division 9 - Finishes				
Painting and Coatings Subcontractor	1	ls	27,460.00	27,460.00
Cleaning, surface prep, and painting of existing corroded steel surfaces□and painting of all block				
CSI Division 9 - Finishes Total				**27,460.00**
CSI Division 22 - Plumbing				
Plumbing Subcontractor	1	allowance	0.00	0.00
Relocation of existing emergency shower and compressed air line is by the County				
CSI Division 22 - Plumbing Total				**0.00**
CSI Division 23 - HVAC				
HVAC Subcontractor	1	ls	9,885.00	9,885.00
New mini-split system				
HVAC Subcontractor (in HVAC)	1	included		0.00
Dry well - Included above				
CSI Division 23 - HVAC Total				**9,885.00**
CSI Division 26 - Electrical				
Electrical Subcontractor	1	allowance	5,000.00	5,000.00
Lighting and receptacles				
CSI Division 26 - Electrical Total				**5,000.00**
CSI Division 31 - Earthwork				
Soil Treatment Subcontractor	1	allowance	250.00	250.00
Termite treatment excluded from Concrete sub scope of work - minimum charge				
CSI Division 31 - Earthwork Total				**250.00**
Subtotal				**180,182.00**

Notes

Estimated Cost Subtotal	180,182.00
General Liability @ 0.20%	360.36
Professional Liability @ 0.00%	0.00
Subtotal	180,542.36
Overhead @ 1.33%	2,400.00
Subtotal	182,942.36
Fee @ 10.00%	18,294.24

Item Description	Qty	Unit	Unit Price	Extended Amount
			Subtotal	201,236.60
			Contingency	0.00
			Pre-construction/Design	0.00
			Subtotal	201,236.60
			Bond @ 1.00%	2,012.37
			Total	203,248.97

ATTACHMENT "J"

CERTIFICATE OF SUBSTANTIAL COMPLETION

(Insert Form Here)

CERTIFICATE OF SUBSTANTIAL COMPLETION

AIA DOCUMENT G704

Owner	☐
Architect	☐
Contractor	☐
Field	☐
Other	☐

PROJECT:
(Name & Address)

PROJECT NO:

CONTRACT FOR:
CONTRACT DATE:

TO OWNER:
Brevard County Board of County Commissioners
Facilities Department/Facilities Engineering & Construction
2725 Judge Fran Jamieson Way, Building "A"
Viera, Florida 32940

TO CONTRACTOR:
(Name & Address)

DATE OF ISSUANCE:

PROJECT OR DESIGNATED PORTION SHALL INCLUDE:

Repair, replace and upgrade the fire alarm system to meet minimum requirements in order to provide adequate protection of County assets and comply with all codes at the County Service Complex – Titusville (9 Buildings).

The work performed under this contract has been reviewed and found, to the Architect=s best knowledge, information and belief, to be substantially complete. Substantial Completion is the stage in the progress of the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use.

In accordance with Florida Statute 255.40, the Owner requires that the Contractor certify that to the best of his/her knowledge and ability no asbestos-containing materials and/or supplies have been purchased and/or installed on this Project. By signing below, the Contractor acknowledges this.

The date of Substantial Completion of the Project or portion thereof designated above is hereby established as _____,

which is also the date of commencement of applicable warranties required by the Contract Documents, except as stated below:

A list of items to be completed or corrected is attached hereto. The failure to include any items on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

Engineer	By	Date

The Contractor will complete or correct the Work on the list of items attached hereto within _____ days from the above date of Substantial Completion.

Contractor	By	Date

The Owner accepts the Work or designated portion thereof as substantially complete and will assume full possession thereof at 8:00 a.m. (time) on June 25, 2004 (date).

Brevard County B.O.C.C. Facilities Engineering & Construction Owner	By:	Date

The responsibilities of the Owner and the Contractor for security, maintenance, heat, utilities, damage to the Work and insurance shall be as follows:

(Note B Owner=s and Contractor=s legal and insurance counsel should determine and review insurance requirements and coverage.)

ATTACHMENT "K"

CERTIFICATE OF FINAL COMPLETION

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

CERTIFICATE OF ARCHITECT/ENGINEER

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

A/E Firm Name: _____ By: _____

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

THROUGH THE SUBSTANTIAL COMPLETION PHASE

1. Notice to Proceed (N.T.P.)
2. Time Specified in Original Contract for Substantial Completion (S.C.)
3. Extension Granted By Change Orders (Days Between Original Contract S.C. and Final Contract S.C.)
4. Total Days Allowable to Substantial Completion (Add Lines 2 and 3)
5. Project Substantially Completed as Certified by A/E (Total Days from NTP through Date Certified by A/E)
6. Substantial Completion Overrun (Subtract Line 4 from 5 and Enter Overrun)

THROUGH THE FINAL COMPLETION PHASE

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

Architect: _____ Date: _____

Project Manager: _____ Date: _____

Facilities Construction Manager: _____ Date: _____

ATTACHMENT "L"

ALLOWABLE COSTS, OVERHEAD

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

ATTACHMENT "M"
(Direct Cost Items)
GENERAL CONDITIONS

SUPERINTENDENT

JOB SITE SECRETARY/CLERK

QUALITY CONTROL

SURVEY

PERMITS

IMPACT/CONNECTION FEES

CONSTRUCTION DRAWINGS/SPECS

PROGRESS PHOTOGRAPHS *(IF REQUESTED BY THE OWNER)*

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

SPECIAL SECURITY *(IF REQUESTED BY THE OWNER)*

PAYMENT & PERFORMANCE BONDS

BUILDERS RISK INSURANCE

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

TEMPORARY UTILITIES *(AS APPROVED BY THE OWNER)*

TEMPORARY JOBSITE FENCING *(INITIAL INSTALLATION ONLY)*

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

ATTACHMENT "N"

CERTIFICATE FOR PAYMENT

(INSERT FORM HERE)

APPLICATION AND CERTIFICATE FOR PAYMENT *AIA DOCUMENT G702*

(Instructions on reverse side) PAGE ONE OF PAGES

TO (OWNER):

PROJECT:

APPLICATION NO:

Distribution to:
☐ OWNER
☐ ARCHITECT
☐ CONTRACTOR
☐
☐

PERIOD TO:

FROM (CONTRACTOR):

VIA (ARCHITECT):

ARCHITECT'S PROJECT NO:

CONTRACT FOR:

CONTRACT DATE:

CONTRACTOR'S APPLICATION FOR PAYMENT

CHANGE ORDER SUMMARY			
Change Orders approved in previous months by Owner		ADDITIONS	DEDUCTIONS
TOTAL			
Approved this Month			
Number	Date Approved		
TOTALS			
Net change by Change Orders			

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

CONTRACTOR:

By: _____ Date: _____

Application is made for Payment, as shown below, in connection with the Contract. **Continuation Sheet, AIA Document G703,** is attached.

1. **ORIGINAL CONTRACT SUM** ..... $ _____
2. **Net change by Change Orders** ..... $ _____
3. **CONTRACT SUM TO DATE** (Line 1 ± 2) ..... $ _____
4. **TOTAL COMPLETED & STORED TO DATE** ..... $ _____
   (Column G on G703)
5. **RETAINAGE:**
   a. ____ % of Completed Work $ _____
   (Column D + E on G703)
   b. ____ % of Stored Material $ _____
   (Column F on G703)
   Total Retainage (Line 5a + 5b or Total in Column I of G703) ..... $ _____
6. **TOTAL EARNED LESS RETAINAGE** ..... $ _____
   (Line 4 less Line 5 Total)
7. **LESS PREVIOUS CERTIFICATES FOR PAYMENT** (Line 6 from prior Certificate) ..... $ _____
8. **CURRENT PAYMENT DUE** ..... $ _____
9. **BALANCE TO FINISH, PLUS RETAINAGE** ..... $ _____
   (Line 3 less Line 6)

State of: County of:
Subscribed and sworn to before me this day of ,19
Notary Public:
My Commission expires:

ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising the above application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED ..... $ _____

(Attach explanation if amount certified differs from the amount applied for.)

ARCHITECT:

By: _____ Date: _____

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

AIA DOCUMENT G702 • APPLICATION AND CERTIFICATE FOR PAYMENT • MAY 1983 EDITION • AIA® • © 1983
THE AMERICAN INSTITUTE OF ARCHITECTS, 1735 NEW YORK AVENUE, N.W., WASHINGTON, D.C. 20006

CONTINUATION SHEET

AIA DOCUMENT G703 (Instructions on reverse side) PAGE OF PAGES

AIA Document G702, APPLICATION AND CERTIFICATE FOR PAYMENT, containing Contractor's signed Certification is attached.

In tabulations below, amounts are stated to the nearest dollar.

Use Column I on Contracts where variable retainage for line items may apply.

APPLICATION NUMBER:
APPLICATION DATE:
PERIOD TO:
ARCHITECT'S PROJECT NO:

A	B	C	D	E	F	G		H	I
ITEM NO.	DESCRIPTION OF WORK	SCHEDULED VALUE	WORK COMPLETED		MATERIALS PRESENTLY STORED (NOT IN D OR E)	TOTAL COMPLETED AND STORED TO DATE (D + E + F)	% (G ÷ C)	BALANCE TO FINISH (C – G)	RETAINAGE
			FROM PREVIOUS APPLICATION (D + E)	THIS PERIOD					

ATTACHMENT "O"

VENDOR AFFIDAVIT REGARDING SCRUTINIZED COMPANY LIST

Pursuant to § 287.135(2), Florida Statutes, a company is ineligible to, and may not, bid on, submit a proposal for, or enter into or renew a contract with an agency or local government entity for goods or services of $1 million or more if at the time of bidding or submitting a proposal for a new contract or renewal of an existing contract, the company: (1) is on the Scrutinized Companies that Boycott Israel List, created pursuant to s. 215.4725, or is engaged in a boycott of Israel; (2) is on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to s. 215.473; or (3) is engaged in business operations in Cuba or Syria.

If the bidder or contractor is found to have falsified the attached affidavit, the Board of County Commissioners of Brevard County may terminate the contract or reject the bid.

STATE OF FLORIDA
COUNTY OF Brevard

BEFORE ME, the undersigned authority, personally appeared Samuel W. Heard, who, being by me first duly sworn, made the following statement:

1. The Business address of Heard Construction, Inc. (name of bidder or contractor) is P.O. Box 540218, Merritt Island, FL 32954.

2. My relationship to Heard Construction, Inc. (name of bidder or contractor) is CEO (relationship such as sole proprietor, partner, president, vice president).

3. I understand that "Boycott of Israel" has the same meaning as defined in §215.4725, Florida Statutes, and means refusing to deal, terminating business activities, or taking other actions to limit commercial relations with Israel, or persons or entities doing business in Israel or in Israeli-controlled territories, in a discriminatory manner. A statement by a company that it is participating in a boycott of Israel, or that it has initiated a boycott in response to a request for a boycott of Israel or in compliance with, or in furtherance of, calls for a boycott of Israel, may be considered by the State Board of Administration to be evidence that a company is participating in a boycott of Israel. The term does not include restrictive trade practices or boycotts fostered or imposed by foreign countries against Israel.

4. I understand that "business operations" means, for purposes specifically related to Cuba or Syria, engaging in commerce in any form in Cuba or Syria, including, but not limited to, acquiring, developing, maintaining, owning, selling, possessing,

leasing, or operating equipment, facilities, personnel, products, services, personal property, real property, military equipment, or any other apparatus of business or commerce.

5. Heard Construction, Inc. (name of the bidder or contractor) is not on the Scrutinized Companies that Boycott Israel List, created pursuant to s. 215.4725, Florida Statutes, or is engaged in a boycott of Israel.

6. Heard Construction, Inc. (name of the bidder or contractor) is not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to s. 215.473, Florida Statutes.

7. Heard Construction, Inc. (name of the bidder or contractor) is not engaged in business operations in Cuba or Syria.

Signature

Sworn to and subscribed before me in the state and county first mentioned above on the 19 day of November, 20 18.

Notary Public

(affix seal)

Notary Public State of Florida
Melissa Ann Warren
My Commission GG 204528
Expires 07/10/2022

My commission expires: 7/10/2022

ATTACHMENT "P"

PUBLIC ENTITY CRIME ACKNOWLEDGMENT

A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid/quote/proposal on a contract to provide goods or services to a public entity, may not submit a bid/quote/proposal on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids/quotes/proposals on leases of rental property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for Category Two ($15,000) for a period of thirty six (36) months from the date of being placed on the convicted vendor list.

NON-COLLUSION AFFIDAVIT OF PRIME BIDDER

State of Florida
County of Brevard
Samuel W. Heard, being duly sworn, deposes and says that:

(1) Affiant is CEO of Heard Construction, Inc., the Bidder that has submitted a bid/quote/proposal;

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

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

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

(5) The price or prices negotiated for the bid/quote/proposal are fair and proper and are not tainted by any collusion, conspiracy, connivance, or unlawful agreement

on the part of the Bidder or any of its agents, representatives, owners, employees, or parties of interest, including affiant.

Signature

Chief Executive Officer
Title

Subscribed and sworn to before me this 19 day of November, 2018.

Notary Public

Notary Public State of Florida
Melissa Ann Warren
My Commission GG 204528
Expires 07/10/2022

My Commission expires: 7/10/2022

ATTACHMENT "Q"

MINORITY EMPLOYMENT INFORMATION

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

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

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

   Company Name:
   Signature: _____ Date: _____

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

   Company Name: Heard Construction, Inc.
   Signature: _____ Date: 11-19-2018

Company Name: Heard Construction, Inc.

Company Address: P.O. Box 5402148, Merritt Island, FL 32954-0218

Company Telephone: 321-452-5494

Signature: _____ Printed Signature: Samuel W. Heard

AGREEMENT
BETWEEN OWNER AND CONSTRUCTION MANAGER

THIS AGREEMENT made the 18th day of April in the year Two Thousand Sixteen between the **BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS**, a political subdivision of the State of Florida whose address is 2725 Judge Fran Jamieson Way, Viera, Florida 32940 (hereinafter referred to as "Owner"), and Ivey's Construction whose address is 4060 N. Courtenay Parkway, Merritt Island, Florida, 32953 (hereinafter referred to as "Construction Manager"), a company licensed to do business in the State of Florida.

ARTICLE 1

THE CONSTRUCTION TEAM AND EXTENT OF AGREEMENT

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

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

The specific representatives of the Construction Team are shown in **Attachment "A"** attached.

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

1.3 Definitions:

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

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

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

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

Construction Manager – Ivey's Construction

Architect/Engineer – Bussen-Mayer Engineering

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

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

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

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

Substantial Completion - the point in the construction where all essential elements of the Project are sufficiently complete in conformance with the Contract, that the OWNER has both the occupancy of the Project, as evidenced by a Certificate of Occupancy issued by the governmental authority with

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

1.4 Extent of Agreement - This Agreement for Construction Management services between the Owner and the Construction Manager for the construction of exterior amenities to the Veteran's Memorial Park supersedes any prior negotiations, representations or agreements. All items will be completed per Bussen-Mayer's engineered drawings and all Owner acquired permits. The drawings, specifications and other descriptive documents defining the work to be included under this construction contract are identified in **Attachments "D" and "I"**. The Construction Manager shall obtain from the Owner three (3) sets of signed, sealed and dated drawings, specifications and other documents upon which the GMP is based; shall acknowledge on the face of each document of each set that it is the set upon which he based his GMP; and shall send one (1) set of the documents to the Project Director along with his GMP proposal, while keeping one (1) set for himself and returning one (1) set to the Architect/Engineer.

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

ARTICLE 2

CONSTRUCTION MANAGER'S RESPONSIBILITIES

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

2.1 PRE-CONSTRUCTION PHASE

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

2.1.2 Consultation - Construction Manager will provide Design Disciplines Construction Documents Plans and Specifications review at all design milestones and a final constructability review. The review at each milestone will identify areas of

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

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

2.1.3 Preliminary Project Schedule - Construction Manager has prepared a Preliminary Project Schedule, a copy of which is attached as **Attachment "E"**. Construction Manager shall coordinate and integrate the Preliminary Project Schedule with the services and activities of Owner, Architect and Construction Manager. The Construction Manager shall provide current scheduling information and provide direction and coordination regarding milestones, beginning and finishing dates, responsibilities for performance and the relationships of the Construction Manager's work to the work of his subcontractors and suppliers to enable them to perform their respective tasks so that the development of construction progresses in a smooth and efficient manner in conformance with the overall Total Project Schedule. The schedule shall include all phases of construction work, material supplies, long lead procurement, approval of shop drawings, change orders in progress, schedules for change orders, and performance of testing requirements. The Construction Manager shall advise the Owner, its representatives and the Architect/Engineer of their required participation in any meeting or inspection giving each at least one (1) week notice unless such notice is made impossible by conditions beyond the Construction Manager's control. The Construction Manager shall hold jobsite meetings at least once each week with the Construction Team and at least once each week with the subcontractors and the Architect/Engineer field representatives, and Owner or more frequently as required by work progress, to review progress, discuss problems and their solutions and coordinate future work with all subcontractors.

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

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

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

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

2.1.8 Separate Contracts Planning - The Construction Manager shall review the design with the Architect/Engineer and make recommendations to the Owner and to the Architect/Engineer with respect to dividing the work in such manner as will permit the Construction Manager to take bids and award separate construction subcontracts on the current schedule while the design is being completed. The Construction Manager shall take into consideration such factors as natural and practical lines of severability, sequencing, effectiveness, access and availability

constraints, total time for completion, construction market conditions, availability of labor and materials, community relations and any other factors pertinent to saving time and cost by overlapping design and construction that are authorized by the Owner.

2.2 CONSTRUCTION PHASE

2.2.1 Interfacing -

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

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

2.2.2 Solicitation of Bids

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

(2) As part of such preparation, the Construction Manager shall review the specifications and drawings prepared by the Architect/Engineer. Ambiguities, conflicts or lack of clarity of language, use of illegally restrictive requirements, and any other defects in the specifications or in the drawings noted by the Construction Manager shall be brought to the attention of the Project Director and Architect/Engineer in written form.

(3) For each separate subcontractor or construction trade contract used in this project, the Construction Manager shall, unless waived by the Owner, conduct a pre-bid conference with prospective bidders, the Architect/Engineer and Project Director. In the event questions are raised which require an interpretation of the bidding documents or otherwise indicate a need for clarification or correction of the invitation, the Construction Manager shall transmit these to the Architect/Engineer and upon receiving clarification or correction in writing shall prepare an addendum to the bidding document, and issue same to all of the prospective bidders.

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

2.2.3 Bonds - For those projects where the cost will exceed $100,000.00, in accordance with the provisions of Section 255.05, Florida Statutes, the Construction Manager shall provide to the Owner, on forms furnished by the Owner (**Attachment "G" and "H"**), certified copies of the recorded 100% Public Construction Performance Bond and 100% Public Construction Payment Bond each in an amount not less than the total construction cost (GMP) as defined in Article 9 and inclusive of the construction fee. *Payment and Performance Bonds shall be recorded (by the Construction Manager) in the official record of the County in which the project is located.* The Contractor must provide a copy of the bond(s) to all subcontractors and notify them of deadlines to make claims under the bonds.

2.2.4 Quality Control - The Construction Manager shall develop and maintain a program, acceptable to the Owner and Architect/Engineer, to assure quality control of the construction (*this may include personnel if approved by the Owner*). The Construction Manager shall have a qualified and competent Superintendent

to supervise the work of all Subcontractors providing instructions to each when their work does not conform to the requirements of the plans and specifications and shall continue to exert influence and control over each Subcontractor to ensure that corrections are made in a timely manner so as to not affect the efficient progress of the work. Should disagreement occur between the Construction Manager and Architect/Engineer over acceptability of work and conformance with the requirements of the specifications and plans, the Owner shall be the final judge of performance and acceptability.

2.3 Guaranteed Maximum Price (GMP) and Contract Time

2.3.1 Construction Manager acknowledges and agrees the 100% Construction Drawings from Bussen-Mayer Engineering dated September 10, 2015. (and attached to this Agreement) are sufficient enough to propose a Guaranteed Maximum Price (GMP) to the County, which is the total not to exceed sum of the Construction Manager's Fee and the Cost of the Project. Accordingly, the Guaranteed Maximum Price (GMP) is hereby established at $312,297.00. The final approved GMP spreadsheet is hereby attached as Attachment "I" to and shall become a part of this Agreement between Owner and Construction Manager.

2.3.2 The Cost of the Work shall include Construction Manager's contingency, a sum agreed to by all parties for the Manager's use to cover costs arising from unforeseen conditions in the project. Construction Manager's contingency is hereby established as a separate line item of $0.00 within the Guaranteed Maximum Price.

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

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

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

.3 The Preliminary Construction Schedule (**Attachment "E"**). As reflected in said Schedule, Construction Manager is to achieve Substantial Completion of the Work shall be achieved no later than July 29, 2016. Final Completion shall be achieved by August 30, 2016..

2.3.4 Included within the Guaranteed Maximum Price is the Construction Manager's fee. The Construction Manager's Fee is hereby established as $26,954.00 for services provided in this Agreement. The sum of the Cost of the Project and the

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

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

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

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

2.4 Construction Phase

2.4.1 General

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

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

2.4.1.3 Construction Manager's Staff - The Construction Manager shall maintain sufficient off-site support staff, and competent full time staff at the Project site authorized to act on behalf of the Construction Manager and to coordinate, inspect and provide general direction of the work and progress of the subcontractors, and the Construction Manager shall provide no less than those personnel during the respective phases of construction. The Construction Manager shall not change any of those designated persons unless mutually agreed to by the Owner and Construction Manager. In such case, the Owner shall have the right of approval of the qualifications of replacement personnel. Such approval will not be reasonably withheld.

2.4.1.3.1 The Construction Manager shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during the progress of the work. The superintendent shall represent the

Construction Manager and all communications given to the superintendent shall be as binding as if given to the Construction Manager.

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

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

2.4.2 Administration

2.4.2.1 Those portions of the Project that Construction Manager does not customarily perform with Construction Manager's own personnel shall be performed under subcontracts or by other appropriate written agreements with Construction Manager. Construction Manager shall obtain bids from subcontractors and from suppliers of materials or equipment fabricated to a special design for the Project from the list previously reviewed and, after analyzing such bids, shall deliver such bids to the Owner and Architect for review and comment. Based upon that review and comment, Construction Manager shall then determine, subject to the reasonable objection of Architect or Owner, which bids will be accepted. Construction Manager shall not be required to contract with anyone to whom Construction Manager has reasonable objection. Notwithstanding anything herein to the contrary, Construction Manager covenants and agrees that it shall competitively bid all subcontracts. Further, with respect to all such subcontracts, Construction Manager covenants and agrees that it shall select and contract with the lowest, responsive and qualified bidder, unless otherwise consented to in writing by Owner.

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

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

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

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

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

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

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

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

2.7 Weather Protection - The Construction Manager will be responsible to ascertain what temporary enclosures, if any, of building areas should be provided for and may be provided as a practical matter, in order to assure orderly progress of the work in periods when extreme weather conditions are likely to be experienced. All costs associated with this shall be the responsibility of the Construction Manager.

2.8 Job Site Requirements

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

a. Maintain a log of daily activities, including manpower records, weather, delays, major decisions, etc. and require the same of subcontractors
b. Maintain a directory of companies on the Project with names, addresses, telephone numbers, emergency telephone numbers and fax numbers of key personnel.
c. Establish and enforce job rules governing parking, clean-up, use of facilities and worker discipline.
d. Provide labor relations management for a harmonious, productive Project.
e. Provide a safety program for the Project to meet OSHA requirements. Monitor for Subcontractor compliance without relieving them of responsibilities to perform work in accordance with the best acceptable practice.
f. Provide a quality control program.
g. Miscellaneous office supplies that support the construction efforts which are consumed by his own forces.

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

(1) Job Meetings - Hold weekly progress and coordination meetings to provide for an easy flowing Project. Implement procedures and assure timely submittals, expedite processing approvals and return of shop drawings, samples, etc. Coordinate and expedite critical ordering and

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

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

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

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

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

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

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

(6) Reports and Project Site Documents - Record the progress of the Project. Submit written progress reports to the Owner and the Architect/Engineer including information on the Subcontractor's work, and the percentage of completion. Keep a daily log available to the Owner, the Architect/Engineer and the Permitting Authority inspectors.

(7) Substantial Completion - The Construction Manager shall secure the Certificate of Occupancy and notify the Owner and Architect/Engineer, in writing, that the Project will be ready for inspection to determine if it is substantially complete and ready for inspection on or after a specific date, which date shall be stated in the notice. The notice shall be given at least seven (7) calendar days in advance of said date. Inspection and testing shall take place at time(s) mutually agreeable to the Construction

Manager, Architect/Engineer and Owner. The inspection will be conducted jointly between the Architect/Engineer, Owner and Construction Manager's representative. The inspection shall determine if substantial completion has been accomplished and the Architect/Engineer shall produce a Certificate of Substantial Completion (**Attachment "J"**) and a written list of unfinished Work and defective work, commonly referred to as a "Punch List", which must be finished and corrected to obtain final completion.

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

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

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

The Construction Manager shall secure and transmit to the Architect/Engineer all required guarantees, affidavits, releases, bonds and waivers, manuals, record drawings, and maintenance books as part of final completion (in triplicate) unless stated otherwise in the Project specifications.

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

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

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

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

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

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

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

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

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

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

(13) Warranty - Where any work is performed by the Construction Manager's own forces or by Subcontractors under contract with the Construction Manager, the Construction Manager shall warrant that all materials and equipment included in such Work will be new except where indicated otherwise in Contract Documents, and that such Work will be of good quality, free from improper workmanship and defective materials and in conformance with the Drawings and Specifications. With respect to the same Work, the Construction Manager further agrees to correct all work found by the Owner to be defective in material and workmanship or not in conformance with the Drawings and Specifications for a period of one (1) year from the Date of Final Completion or as may be set forth with respect to specific warranties contained in the trade sections of the Specifications. The Construction Manager shall collect and deliver to the Owner any specific written warranties given by others as required by the Contract Documents. **Also, the Construction Manager shall conduct, jointly with the Owner and the Architect/Engineer, a warranty inspection nine (9) months after the date of Owner Occupancy. This warranty inspection will be scheduled by a representative of the Owner**.

ARTICLE 3

OWNER'S RESPONSIBILITIES

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

3.2 Owner's Representative/Project Director - The Owner shall designate a representative who shall be fully acquainted with the Project and shall define the lines of Owner authority to approve Project Construction Budgets, and changes in Project. The Owner's representative shall render decisions promptly and furnish information expeditiously.

3.3 Architect and Engineer's Agreement - The Owner shall retain an Architect/Engineer for design and to prepare construction documents for the Project. The Architect/Engineer's services, duties and responsibilities are described in the Agreement between the Owner and the Architect/Engineer, a copy of which will be furnished to the Construction Manager upon request.

3.4 Approvals and Easements - The Owner shall pay for necessary approvals, easements, assessments and charges required for the construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

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

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

3.7 Cost of Surveys & Reports - The services, information, surveys and reports required by the above paragraphs shall be furnished with reasonable promptness in accordance with the approved schedule at the Owner's expense, and the Construction Manager shall be entitled to rely upon the accuracy and completeness thereof.

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

3.9 Funding - The Owner shall furnish, in accordance with the established schedule, reasonable evidence satisfactory to the Construction Manager that sufficient funds will be available and committed for the cost of each part of the Project.

3.10 Lines of Communication - The Owner and Architect/Engineer shall communicate with the Subcontractors or Suppliers only through the Construction Manager while such method of communication is effective in maintaining Project schedules and quality.

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

3.12 Permitting & Code Inspections - The Owner recognizes and coordinates with the Permitting Authority and expects the Construction Manager to do the same.

ARTICLE 4

PERMITTING AND INSPECTION

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

Waste fees will also be paid by the Owner. Copies of all permits shall be submitted to the Owner.

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

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

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

ARTICLE 5

SUBCONTRACTS

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

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

5.3 Required Subcontractor and Subcontract Conditions.

5.3.1 Subcontractual Relations - By an appropriate written agreement, the Construction Manager shall require each Subcontractor to the extent of the work to be performed by the Subcontractor, to be bound to the Construction Manager by the terms of the Contract Documents, and to assume toward the Construction Manager all the obligations and responsibilities which the Construction Manager by this Agreement, assumes toward the Owner and the Architect/Engineer. Said agreements shall preserve and protect the rights of the Owner and

Architect/Engineer under the Contract Documents with respect to the work to be performed by the Subcontractor so that the subcontracting thereof will not prejudice such rights. Where appropriate, the Construction Manager shall require each Subcontractor to enter into similar agreements with his Subcontractor's Subcontractor.
The Construction Manager shall make available to each proposed Subcontractor, prior to the execution of the Subcontract, copies of the Contract Documents to which the Subcontractor will be bound by this Article 5.3 and identify to the Subcontractor any terms and conditions of the proposed Subcontract which may be at variance with the Contract Documents. Each Subcontractor shall similarly make copies of such Documents available to his Sub-subcontractor.

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

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

(3) All subcontracts shall provide:

a. LIMITATION OF REMEDY - NO DAMAGES FOR DELAY
That the Subcontractor's exclusive remedy for delays in the performance of the contract caused by events beyond its control, including delays claimed to be caused by the Owner or Architect/Engineer or attributable to the Owner or Architect/Engineer and including claims based on breach of contract or negligence, shall be an extension of its contract time.

In the event of a change in the work the Subcontractor's claim for adjustments in the contract sum are limited exclusively to its actual cost for such change, plus, no more than five percent (5%) for profit, and five percent (5%) for overhead.

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

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

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

ARTICLE 6

SCHEDULE, TIME OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

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

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

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

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

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

ARTICLE 7

GUARANTEED MAXIMUM PRICE FOR CONSTRUCTION

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

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

7.3 At the time of execution of the contract, the Construction Manager will verify the time schedule for activities and work which is adopted by the Construction Team and used to determine the Construction Manager's cost of work. Surplus funds from bids received below the applicable line items, including line items within the General Conditions, in the GMP will be set aside for contingency. Construction contingency funds will be used for the purpose of defraying the expenses due to unforeseen circumstances relating to construction. The Construction Manager will be required to furnish documentation evidencing expenditures charged to this contingency prior to the release of funds by the Owner. Documentation for use of the Contingency shall be determined by the Construction Team. The Architect/Owner shall verify and approve the actual costs.

If bids are received above the applicable line item in the GMP the deficiency will be taken from the contingency via an approved Authorization to Initiate Work/GMP Realignment form; however, such events shall not be cause to increase the GMP. If bids are not received for a portion of the work at or below the applicable line item amount in the GMP, the Construction Manager reserves

the right to perform that portion of the work or negotiate for its performance for the specified line item lump sum amount or less.

ARTICLE 8

CONSTRUCTION MANAGER'S FEE

8.1 In consideration of the performance of the contract, the Owner agrees to pay the Construction Manager as compensation for his services fees as set forth in Subparagraphs 8.1.2 and 8.1.3. subject to the retainage specified in 8.1.1 below.

8.1.1 Construction Phase Fee - Prior to commencement of the Construction Phase, the Owner will direct the Construction Manager in writing to proceed into the Construction Phase. The Owner retains the right to review the need and effectiveness of any employee or employees assigned by the Construction Manager, should the Project Director question the need for the employee or employees. A percentage of the agreed upon Construction Phase Fee shall be paid monthly based on percentage (%) of work completed, less retainage, in accordance with subsection 12.1 below. The Construction Manager's first monthly Certificate for Payment shall be submitted no earlier than thirty (30) days following the issuance of the Notice to Proceed, and the final monthly payment shall be paid only when construction of the Project is finally completed, all original, final release of liens are received, closeout documentation has been submitted and occupancy of the Project accepted by the Owner. If construction is authorized only for a part of the Project, the fee paid shall be proportionate to the amount of work authorized by the Owner.

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

(a) The Construction Manager shall be paid an additional fee subject to negotiation if the Construction Manager is placed in charge of reconstruction of an insured or uninsured loss excluding any condition that may have been caused from negligent acts by the Construction Manager, subcontractors or others for whose acts the Construction Manager is responsible.

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

(a) Corporate costs including expenses and overhead and profit related to this project by the Construction Manager's principal and branch offices.

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

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

ARTICLE 9

COST OF THE PROJECT

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

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

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

(1) Labor wages paid for the on-site Project Superintendent directly responsible for the operation and supervision of the project, clerical and Quality Control personnel (as opposed to wages paid to management or

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

(2) Payments due to Subcontractors from the Construction Manager or made by the Construction Manager to Subcontractors for their work performed pursuant to contract under this Agreement.

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

(4) Sales, use, gross receipts or similar taxes related to allowable direct costs of the Project imposed by a governmental authority, and for which the Construction Manager is liable. No costs shall be paid by the Owner to the Construction Manager for any expenses made necessary to correct defective workmanship or to correct any work not in conformance with the Plans and Specifications or to correct any deficiency or damage caused by negligent acts by the Construction Manager.

(5) If approved by the Owner, the Construction Manager, when qualified, may self-perform all or a portion of the work for any item listed on the estimate or GMP breakdown where it is deemed advantageous due to schedule or economic benefit for the direct cost of the work.

(6) Legal costs reasonably and properly resulting from prosecution of the Project for the Owner, including handling claims for changes by subcontractors and vendors, subject to the following limitations:

(a) The Owner approved incurring such costs in advance, which approval shall not be unreasonably denied; and
(b) The legal costs were not incurred as result of the Construction Manager's own negligence or default.

(7) Costs for such temporary facilities during construction, as approved by the Owner, including temporary water, heat, power, sanitary facilities, telephones, radios and computers with software.

9.3 Allowances

Within the GMP, there may be specific items which the Construction Manager and Owner have agreed to include as allowances in the estimates until such time as the cost and schedule impact of these items can be more specifically

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

9.4 Public Records Law and Audit Requirements

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

All records or documents created by Construction Manager or provided to Construction Manager by the County in connection with the activities or services provided by Construction Manager under the terms of this agreement, are public records and Construction Manager agrees to comply with any request for such public records or documents made in accordance with section 119.07 Florida Statutes.

Records, documents, books and accounts ordinarily and necessarily required for the performance of this Contract shall be kept, maintained and open to inspection by the Owner, Owner's representative, and members of the public during regular business hours.

The Construction Manager shall provide the public with access to public records on the same terms and conditions that the public agency provides the records and at a cost that does not exceed the cost provided for in Florida Statute Chapter 119 or as otherwise provided by law (see also County Administrative Order, AO-47).

The Construction Manager shall also ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.

No reports, data, programs or other materials produced, in whole or in part for the benefit and use of the County, under this Contract shall be subject

to copyright by Construction Manager in the United States or any other country.

The Construction Manager shall meet all requirements for retaining public records and shall transfer, at no cost, to the Owner/County all public records in possession of the Construction Manager upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the Owner/County in a format that is compatible with the information technology systems of the Owner/County.

Failure to comply with the provisions of this Section 9.4, shall result in the Owner taking enforcement action against the Construction Manager including the cost to the Owner for gaining the Construction Manager's compliance which will include, but are not limited to, the gross hourly rate of the Owner's employee(s) contacts to the Construction Manager to obtain compliance with this section, litigation filing fees and attorney's fees.

ARTICLE 10

CHANGES IN THE PROJECT

10.1 Change Orders - The Owner, without invalidating this Agreement, may order Changes in the Project within the general scope of this Agreement consisting of additions, deletions or other revisions which may cause an increase or decrease in the GMP, and/or the Construction Completion Date. All changes in the Project GMP or Construction Completion Date not covered by an authorized contingency, as described in Article 7.3 must be authorized by a written Change Order or Construction Change Directive, and signed by the Owner, Architect and Construction Manager before the change is implemented. It shall be the Owner's discretion as to whether each change order requires the A/E signature. **Maximum allowable mark-up on any change order is 5% Profit, 5% Overhead, and a 2% Bond.**

10.1.1 A Construction Change Directive is a change directive signed by the Project Director and the County Manager directing an addition, deletion, or revision in the scope of work and/or schedule. The Construction Change Directive is necessary when no Agreement exists among the Architect/Engineer of record, Brevard County and the Construction Manager on the dollar amount of a necessary change in the scope of work and/or an extension of time to the construction contract. The Construction Change Directive is used (1) when an unsafe, hazardous or other similar condition exists, (2) when failure to achieve prompt resolution of the change will result in a demobilization of the Construction Manager, its subcontractors and/or agents, (3) when failure to achieve prompt

resolution will result in additional cost, and/or a significant delay in completing the project. A Construction Change Directive does not change the contract price or the contract time, but is evidence that the parties expect that the change will be incorporated in a subsequently issued Change Order or be covered by an authorized contingency.

10.1.2 A Change Order is a written order to the Construction Manager signed by the Owner, Architect, and Construction Manager, issued after the execution of this Agreement, authorizing a change in the Project and/or an adjustment in the construction authorization, the Construction Manager's fee, or the Construction Completion date. Each adjustment in the GMP resulting from a change order shall be documented clearly to separate the amount attributable to the cost of the change in the Project from the original cost of the Project.

10.1.3 The increase or decrease in the Guaranteed Maximum Price resulting from Change Orders in the Project shall be determined by one of the following ways:

(1) by mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation by the Architect/Engineer and Owner;
(2) by unit prices stated in the Agreement or subsequently agreed upon;
(3) by cost as defined in Article 9 plus a mutually acceptable fixed or percentage fee; or
(4) by the method provided in Subparagraph 10.1.4.

10.1.4 If none of the methods set forth in Clause 10.1.3 is agreed upon, the Construction Manager, provided he receives a written order signed by the Owner, shall promptly proceed with the work required by the Construction Change Directive involved. The cost of such work shall then be determined on the basis of the reasonable expenditures and savings of those performing the work attributed to the change. However, in the event a Change Order is issued under these conditions, the Architect/Engineer will establish an estimated cost of the work and the Construction Manager shall not perform any work whose cost exceeds that estimate without prior written approval by the Owner. In such case, and also under Article 10.1.3 above, the Construction Manager shall keep and present, in such forms as the Owner may prescribe, an itemized accounting together with appropriate supporting data of the increase in the Cost of the Project as outlined in Article 9. The amount of decrease in the Guaranteed Maximum Price to be allowed by the Construction Manager to the Owner for any deletion or change which results in a net decrease in cost will be the amount of the actual net decrease in the Cost of the Project and the Construction Manager's fee subject to the limits set forth in Article 7.

10.1.5 If unit prices are stated in the Agreement or subsequently agreed upon and if the quantities originally contemplated are so changed in a proposed Change Order that application of the agreed unit prices to the quantities of Work proposed will cause substantial inequity to the Owner or the Construction Manager, the applicable unit prices and Guaranteed Maximum Price shall be equitably adjusted.

10.1.6 Should the Construction Manager or his contracted subcontractors encounter:

(1) concealed conditions in the performance of the Work below the surface of the ground; or
(2) concealed or unknown conditions in an existing structure be at variance with the conditions indicated by the Drawings, Specifications, or Owner furnished information; or
(3) unknown physical conditions below the surface of the ground; or
(4) concealed or unknown conditions in an existing structure of an unusual nature;

differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Agreement, then the Guaranteed Maximum Price and the Construction Completion date shall be equitably adjusted by Change Order upon a request for Change Order in accordance with Article 10.2. and Article 11.

Upon discovery of concealed or unknown conditions, the Construction Manager shall notify the Owner and Architect/Engineer within twenty four (24) hours of discovery, and not proceed with Work until such notice has been given and a response is issued by the Owner. The Architect/Engineer will evaluate the alleged unknown or concealed condition and, if warranted, recommend to the Owner that the GMP and schedule be increased or decreased accordingly. No claim under this Article may be made unless notice, as herein provided, is given prior to Work being performed. No equitable adjustment shall be permitted if this notice provision is not complied with.

Within ten (10) calendar days of submitting its Notice, the Construction Manager shall submit to the Owner its Request for Change Order, which shall include a written statement of all details of the claim, including a description of the work affected. Within thirty (30) days from Notice, the Construction Manager shall submit detailed schedule impact and detailed cost analysis indicating quantities, unit prices, etc.

10.1.7 The Construction Manager shall review any Owner directed change and shall respond in writing within seven (7) calendar days after receipt of the

proposed change (or such other reasonable time as the Owner may direct), stating the effect of the proposed change upon the Construction Manager's Work, including any increase or decrease in the contract time or price. The Construction Manager shall furnish to the Owner an itemized breakdown of the quantities and prices used in computing the change in Contract price.

The Owner and Architect/Engineer shall review the Construction Manager's proposal and respond to the Construction Manager within seven (7) calendar days of receipt. If a change to the Contract price and time for performance are agreed upon, both parties shall sign the Change Order. Changes to the Contract time and/or price shall be effective when signed by both parties. It shall be the Owner's discretion as to whether each change order requires the A/E signature.

10.2 **Claims for Additional Cost or Time**

All claims for additional cost or time shall be made by request for a change order submitted as provided in Article 16.

10.2.1 If the Construction Manager is delayed at any time in the progress of the work by any act or neglect of the Owner or the Architect or of any employee of either or by any separate Construction Manager employed by the Owner or by any changes ordered in the work by labor disputes, fire, or unusual delay in transportation, unavoidable casualties or any causes beyond the Construction Manager's control or by delay authorized by the Owner pending resolution or disputes, and such delay extends the completion date, the Substantial Completion shall be extended by Change Order for such reasonable time as the Construction Team may determine.

10.2.2 All change orders must indicate that the Contract Time for Completion is not changed or is either increased or decreased by a specific number of days. The previous Time for Completion and, if there is one, the new Time for Completion must be stated. The Construction Manager must provide written justification for an extension of the Time for Completion to the Architect/Engineer and to the Owner. The written justification must demonstrate an anticipated actual increase in the time required to complete the Work beyond that allowed by the Contract as adjusted by prior change orders or amendments to the Contract, not just an increase or decrease in the time needed to complete some portion of the total Work. No increase to the Time for Completion shall be allowed unless the additional or changed Work increases the length of the critical path. Approved increases in time required to complete the Work shall be added to the Time for Completion. Decreases in time as a result of the change order shall be demonstrated by a decrease in the critical path of the Work if CPM scheduling is properly used and updated by the Construction Manager. If no CPM is used the Owner shall determine the appropriate

decrease by the best means possible. Approved decreases in the time needed to complete the Work shall be deducted from the Contract completion date. The change to time and Contract price allowed by each change order shall include all time and monetary impacts of the change, whether the change order is considered alone or with all other changes during the course of the project. Failure to include a change to time and Contract price in a change order shall waive any change to the time and Contract price unless the parties mutually agree in writing to postpone a determination of the change to time and price resulting from the change order. Such a determination may be postponed not more than forty five (45) days to give the Construction Manager an opportunity to demonstrate a change in the time and price needed to complete the Work.

Only delays which are determined to extend the critical path for the schedule for constructing the Project will result in a time extension. Neither the Owner nor the Construction Manager shall be considered to own the schedule float time.

10.3 Minor Changes in the Project (Realignment of Work)
The Owner and/or Architect/Engineer will have authority to order minor changes in the Project not involving an adjustment in the Guaranteed Maximum Price or an extension of the Construction Completion Date and not inconsistent with the intent of the Drawings and Specifications. Such changes shall be affected by written order. Documentation of changes shall be determined by the Construction Team, and included in the Project Manual. Changes shall be approved by the Project Director, Architect/Engineer. It shall be the Owner's discretion as to whether a Realignment of Work requires the A/E signature. All changes or realignments of work performed within the Guaranteed Maximum Price will not include overhead, profit or General Condition additional costs, since costs are absorbed within the Guaranteed Maximum Price (GMP).

10.4 In any emergency affecting the safety of persons or property, the Construction Manager shall act at his discretion, to prevent threatened damage, injury or loss. Any increase in the Guaranteed Maximum Price or extension of time claimed by the Construction Manager on account of emergency work shall be determined as provided in Article 10.

ARTICLE 11

DISCOUNTS

11.1 All discounts for prompt payment shall accrue to the Owner to the extent the Cost of the Project is paid directly by the Owner or from a fund made available by the Owner to the Construction Manager for such payments.

To the extent the Cost of the Project is paid with funds of the Construction Manager, all cash discounts shall accrue to the Construction Manager. All trade discounts, rebates and refunds, and all returns from sale of surplus materials and equipment, shall be credited to the Cost of the Project.

ARTICLE 12

PAYMENTS TO THE CONSTRUCTION MANAGER

12.1 Monthly Statements - The Construction Manager shall submit to the Owner a sworn statement along with the Certificate for Payment, showing in detail all monies paid out, cost accumulated or costs incurred on account of the Cost of the Project during the previous period and the amount of the Construction Manager's fees due as provided in Article 8. This data shall be attached to the Certificate for Payment Form shown in **Attachment "N"**, and shall include, but not be limited, to the following:

- Daily Reports;
- Updated Project Schedule;
- Daily Red line As-Builts review;
- Provide a billing report with each payment application that shows a breakdown of costs incurred by line item. This report should correspond with the amounts being charged on the Schedule of Values.
- Provide backup copies of all invoices that the County is being billed for, including vendor invoices, payments to subcontractors, cell phone statements, insurance, petty cash receipts, etc. These invoices should be coded by the line item that they correspond to on the billing report and Schedule of Values.
- Provide backup copies and documentation of all costs incurred under General Conditions.
- Provide backup copies of all payroll that details which labor amounts were paid to whom on a weekly basis.
- Provide copies of all subcontractor agreements.
  * The amounts charged on the Payment Application must be accurate and correspond with the total dollar amount of backup provided by the Construction Manager.

Payment by the Owner to the Construction Manager of the statement amount shall be made in accordance with Florida Statute 218.735.

Ten percent of each payment shall be held by the OWNER as retainage until 50-percent completion of such Project, which shall be deemed to have occurred when 50% of the GMP, as increased or decreased from time to time, has been expended. At that time, the retainage shall be reduced to 5% and the Construction Manager shall be entitled to request payment or release of up to

50% of the previously withheld retainage amounts, provided the retainage is not the subject of a good faith dispute, the subject of a claim brought pursuant to s. 255.05, Florida Statutes or otherwise the subject of a claim or demand by the OWNER.

Owner may refuse to certify payment and withhold a Certificate for Payment in whole or in part, in accordance with subsection(s) above, to such extent as may be reasonably necessary to protect the Owner from loss because of:

(1) defective work not remedied;
(2) third party claims filed or reasonable evidence indicating probably filing of such claims;
(3) failure of Construction Manager to make payments properly to subcontractors, consultants, or for labor, materials or equipment;
(4) evidence that the Project cannot be completed for the unpaid balance of the GMP, as adjusted;
(5) evidence that the Work will not be completed by the Scheduled Completion Date, as adjusted, and that the unpaid balance would not be adequate to cover the liquidated damages for the anticipated delay;
(6) failure to carry out the Work of the Project in accordance with the Contract Documents; or

If the Owner is unwilling to certify payment in the amount of the Application for Payment submitted by the Construction Manager, Owner will provide Construction Manager with written reasons for its refusal, within three (3) calendar days. If Construction Manager and Owner cannot agree on a revised amount, Owner will, within one (1) day of the aforesaid notification, promptly issue a Certificate for Payment as to the undisputed amount with respect to which Owner concurs.

12.2 Final Payment - Final payment constituting the unpaid balance of the Cost of the Project and the Construction Manager's fee, shall be due and payable in accordance with Florida Statutes after an *acceptable* Certificate of Final Completion has been issued **and all contractual closeout obligations have been met by the Construction Manager**. Before issuance of final payment, the Construction Manager, subcontractors and agents shall submit original, sworn, notarized statements that all payrolls, material bills, and other indebtness connected with the Project have been paid or otherwise satisfied, warranty information is complete, Final As-Builts in AutoCad format acceptable to the Owner, have been submitted and instruction and documentation for the Owner's operating and maintenance personnel is complete.

12.3 Payments for Materials and Equipment - Payments will be made for material and equipment not incorporated in the work but insured, itemized, delivered and suitably stored at the site or another location subject to prior approval and acceptance by the Owner on each occasion.

12.4 Withholding Payments to Subcontractors - The Construction Manager shall not withhold payments to Subcontractors if such payments have been made to the Construction Manager. Should this occur for any reason, the Construction Manager shall immediately return such monies to the Owner, adjusting pay requests and project bookkeeping, as required.

ARTICLE 13

INSURANCE, INDEMNITY WAIVER OF SUBROGATION

13.1 (1) Indemnification - The Construction Manager agrees to indemnify and hold harmless the County and their employees from all claims, losses and expenses, arising out of or resulting from the performance of the products or services to be contracted, provided such claim, damage, loss or expense (1) is attributable to bodily injury, sickness, disease, death or personal injury, or to property damage, including loss of use resulting therefrom, (but not loss of use for which liquidated damages are assessed under the Agreement) and (2) is caused in whole or in part by any negligent act or omission of the Construction Manager, any subcontractor, any of their employees and/or agents in the performance of this contract. The Construction Manager agrees that it will pay the costs of the County's legal defense, including fees of attorneys as may be selected by the County, and shall defend, satisfy, and pay any judgments which may be rendered against the County in connection with the above hold harmless agreement. The Construction Manager acknowledges specific consideration has been received for this hold harmless/indemnification provision.

(2) The Owner shall cause any other Construction Manager who may have a contract with the Owner to perform construction or installation work in the area where work will be performed under this Agreement, to agree to indemnify the Owner and the Construction Manager and hold them harmless from all claims for bodily injury and property damage (other than property insured under Paragraph 13.2(3)) that may arise from the Construction Manager's operations.

Loss Deductible Clause - Brevard County Board of County Commissioners shall be exempt from, and in no way liable for, any sums of money which may represent a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of the Construction Manager and/or Subcontractor providing such insurance.

13.2 Insurance

(1) The Construction Manager shall not commence any construction work in connection with this Agreement until the Construction Manager has obtained all of the following types of insurance and such insurance certificate(s) have been submitted to the Owner and have been approved by the Owner, nor shall the Construction Manager allow any Subcontractor to commence work on his subcontract until all insurance required of the Subcontractor has been so obtained and approved. All insurance policies shall be with insurers qualified and doing business in the State of Florida.

a. Worker's Compensation - Provide Worker's Compensation Insurance on behalf of all employees who are to provide a service for this project, as required under Florida Laws.

b. Commercial General Liability - Including but not limited to bodily injury, property damage and personal injury with limits of not less than $1,000,000.00 combined single limit per occurrence, including products and completed operations, to include:

1. "XCU" (Explosion, Collapse, Underground Damage) - The Construction Manager's Liability Policy shall provide "XCU" coverage.

2. Broad Form Property Damage Coverage, Products and Completed Operations Coverage - The Construction Manager's Liability Policy shall include Broad Form Property Damage Coverage, Products and Completed Operations Coverages.

3. Contractual Liability Work Contracts - The Construction Manager's Liability Policy shall include Contractual Liability Coverage designed to protect the Construction Manager for contractual liabilities assumed by the Construction Manager in the performance of this Agreement.

c. Automobile Liability - Including bodily injury, property damage liability for all vehicles owned, hired, leased and non-owned with limits of not less than $1,000,000.00 combined single limit, per accident.

d. Performance and Payment Bonds - With limits of not less than 100% of the total construction cost of this project. Payment and Performance Bond shall be recorded in the official record of the County in which the project is located. These bonds shall remain in effect at least until one (1) year after the date when the final payment is approved. Any bonding company submitting a Bid Bond, Performance Bond or Payment Bond to Brevard County

must be licensed to transact a fidelity and surety business in the State of Florida, and hold a Certificate of Authority from the Secretary of the Treasury under Act of Congress, approved by July 30, 1947 (U.S.C. 613), and approved by Brevard County. Acceptable surety companies shall be licensed to do business in Florida and shall have an A.M. Best Rating of "A-" and financial size V or higher.

e. Builder's Risk Coverage - The Construction Manager shall take out and maintain during the life of this Agreement a "Builder's Risk Policy" completed value form as a cost of the Project, issued to provide coverages on an "all risk" basis including theft. This coverage shall not be lapsed or canceled because of partial occupancy by the Owner prior to final acceptance of the Project.

The Construction Manager shall require each of his Subcontractors to procure and maintain insurance during the life of the respective subcontracts.

(2) Certificate of Insurance - The Owner shall be furnished proof of coverage of Insurance as follows:

Certificate(s) of Insurance will be furnished to the Owner within five (5) days of Notice to Proceed. These shall be completed and signed by the authorized Resident Agent, and shall be dated and show:

(1) The name of the insured Construction Manager, the specific job by name and job number, the name of the insurer, the number of the policy, its effective date, and its termination date.

(2) The General Liability and Auto Liability certificates of insurance shall indicate that the policies have been endorsed to cover the County as an additional insured to the extent of liability assumed by the Construction Manager under this Agreement, and that these policies may not be canceled or modified without thirty (30) days prior written notice to the County.

(3) The insurance coverages enumerated above constitute the minimum requirements and shall in no way lessen or limit the liability of the Construction Manager under the terms of the Contract.

*Certificates of Insurance shall be submitted to the Owner within five (5) days of Notice to Proceed, and no work shall commence on site until all submitted Certificates of Insurance are acceptable to the Owner.

13.3 Waiver of Subrogation

13.3.1 The Owner and the Construction Manager waive all rights against each other, for damages caused by perils covered by insurance provided under Article 13.2 to the extent covered by such insurance except such rights as they may have to the proceeds of such insurance held by the Owner and Construction Manager as trustees. The Construction Manager shall require similar waivers from all Subcontractors and their Sub-subcontractors.

13.3.2 The Owner and Construction Manager waive all rights against each other for loss or damage to any equipment used in connection with the Project and covered by any property insurance. The Construction Manager shall require similar waivers from all subcontractors and their sub-subcontractors.

13.3.3 The Owner waives subrogation against the Construction Manager on all property and consequential loss policies carried by the Owner on adjacent properties and under property and consequential loss policies purchased for the Project after its completion.

13.3.4 If the policies of insurance referred to in this Article require an endorsement to provide for continued coverage where there is a waiver of subrogation, the Owner of such policies will cause them to be so endorsed. Failure to obtain proper endorsement nullifies the waiver of subrogation.

ARTICLE 14

TERMINATION OF THE AGREEMENT AND OWNER'S RIGHT TO PERFORM CONSTRUCTION MANAGER'S OBLIGATION

14.1 Termination by the Construction Manager - If the Project is stopped for a period of thirty (30) days under an order of any court or other public authority having jurisdiction or as a result of an act of government, such as a declaration of a national emergency making materials unavailable, through no act or fault of the Construction Manager, or if the Project should be stopped for a period of thirty (30) days by the Owner, then the Construction Manager may, upon seven (7) days written notice to the Owner, request undisputed payment for all work executed, the Construction Manager's fee earned to date, and for any proven loss sustained upon any materials, equipment, tools, construction equipment, and machinery, including reasonable profit, damages and terminal expenses incurred by the Construction Manager.

14.2 Owner's Right to Perform Construction Manager's Obligations and Termination by Owner for Cause -

(1) If the Construction Manager fails to perform any of its obligations under this Agreement, the Owner may, after seven (7) days written notice during which period the Construction Manager fails to perform such obligations, make good such deficiencies. The GMP, or the actual cost of the Project, whichever is less, shall be reduced by the cost to the Owner to making good such deficiencies and the Construction Manager's Construction Phase Fee shall be reduced by an amount required to manage the making good of such deficiencies.

(2) If the Construction Manager is adjudged a bankrupt, or if he makes a general assignment for the benefit of his creditors, or if a receiver is appointed on account of his insolvency, or if he persistently or repeatedly refuses or fails, except in case for which extension of time is provided, to supply enough properly skilled workmen or proper materials and fails to maintain an established schedule (failure to maintain schedule shall be defined as any activity on the critical path that falls forty-five (45) days or more behind schedule) which has been adopted by the Construction Team, or if he fails to make prompt payment to subcontractors for materials or labor, or persistently disregards laws, rules, ordinances, regulations, or orders of any public authority having jurisdiction, or otherwise is guilty of a substantial violation of a provision of the Agreement, then the Owner may, without prejudice to any right or remedy and after giving the Construction Manager and his surety, if any, seven (7) days written notice, during which period Construction Manager fails to cure the violation, terminate the employment of the Construction Manager and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Construction Manager, and may finish the Project by whatever method he may deem expedient. In such case, the Construction Manager shall not be entitled to receive any further payment until the Project is finished nor shall he be relieved from his obligations assumed under Article 7. Reasonable termination expenses incurred by the Owner may be deducted from any payments left owing the Construction Manager (excluding monies owed the Construction Manager for subcontract work).

14.3 Termination by Owner for Convenience

(1) If the Owner terminates this Agreement other than pursuant to Article 14.2(2) or Article 14.3(2), he shall reimburse the Construction Manager for any unpaid cost of the Project due him under Article 9, plus that part of the unpaid balance of the Construction Phase Fee in an amount as will increase the payment on account of his fee to a sum which bears the same ratio to the Construction Phase Fee as the Cost of the Project at the time of termination bears to the Guaranteed Maximum Price, if established,

otherwise to the Owner's Construction Budget. The Owner shall also pay to the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment retained. In case of such termination of Agreement the Owner shall reimburse the Construction Manager for obligations and commitments made before notice of termination was received by the Construction Manager.

(2) After the establishment of the Guaranteed Maximum Price or at the completion of the Construction Phase, if the final cost estimates or lack of legislative funding make the Project no longer feasible from the standpoint of the Owner, the Owner may terminate this Agreement and pay the Construction Manager his proportionate fee due in accordance with Article 8.1, plus any costs incurred pursuant to Articles 9 and 10.

(3) Any termination by Owner for cause which is later determined to be invalid shall be considered a termination by Owner for convenience.

ARTICLE 15

ASSIGNMENT AND GOVERNING LAW

15.1 Neither the Owner nor the Construction Manager shall assign his interest in this Agreement without the written consent of the other except as to the assignment of proceeds.

15.2 This Agreement shall be governed by the Laws of the State of Florida.

15.3 Venue and Attorney's Fees: Venue for any legal action brought by any party to this Agreement to interpret, construe or enforce this Agreement shall be in a court of competent jurisdiction in and for Brevard County, Florida. In the event of any legal action to enforce the terms of this Agreement, each party shall bear its own attorney's fees and costs and any trial shall be non-jury.

15.4 Severability: If any provision of this Agreement is held by a Court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired.

ARTICLE 16

NOTICE OF CLAIM: WAIVER OF REMEDIES; NO DAMAGES FOR DELAY; DISPUTE RESOLUTION

16.1 The Owner's liability to Construction Manager for any claims arising out of or related to the subject matter of this contract, whether in contract or tort, including,

but not limited to, claims for extension of construction time, for payment by the Owner of the costs, damages or losses because of changed conditions under which the work is to be performed, or for additional work, shall be governed by the following provisions:

(a) All claims must be submitted as a Request for Change Order in the manner as provided herein;

(b) If the Construction Manager claims that any instructions given to him by the Architect/Engineer or by the Owner, by drawings or otherwise, involve extra Work not covered by the Contract and not discoverable with a review of the plans and specifications, then, except in emergencies endangering life or property, Construction Manager shall give the Architect/Engineer and the Owner written notice thereof before proceeding to execute the Work. Said notice shall be given promptly enough to avoid delaying the Work and in no instance later than twenty (20) calendar days after the receipt of such instructions.

The Construction Manager must submit a Notice of Claim to the Owner and to the Architect/Engineer within twenty (20) days of when the Construction Manager was or should have been aware of the occurrence of the event giving rise to the claim; and

(c) Within ten (10) days of submitting its Notice of Claim, the Construction Manager shall submit to the Owner its Request For Change Order, which shall include a written statement of all details of the claim, including a description of the work affected. Within thirty (30) days from the Notice of Claim the Construction Manager shall submit a detailed schedule impact and detailed cost analysis indicating quantities, unit prices, etc. establishing the basis for the amount of the claim.

The Construction Manager agrees that the Owner shall not be liable for any claim that the Construction Manager fails to submit as a Request for Change Order as provided in this section.

16.2 After receipt of a Request for Change Order, the Owner, in consultation with the Architect/Engineer, shall deliver to the Construction Manager its written determination of the claim. As to disputed matters subject to the determination by final Owner action (not actions for breach of contract or tort) the Owner's written decision following compliance with the dispute resolution procedure set forth in sections 16.4 through 16.6 below shall be final Owner action.

16.3 For work the Construction Manager performs with its own forces, and in addition to the adjustments provided for in Article 8, the Construction Manager's exclusive remedy for delays in performance of the construction caused by events beyond its control, including delays claimed to be caused by or attributable to the Owner

or the Architect/Engineer, including claims based on breach of contract or negligence, shall be a claim submitted in compliance with Article 16.1 above, for an extension of the scheduled construction time. In the event of a change in such work that will modify the GMP, the Construction Manager's claim for adjustment in contract sum are limited exclusively to its actual costs for such changes, including costs involved in claim preparation, plus five percent (5%) overhead, five percent (5%) profit and a two percent (2%) bond in the General Conditions. The Construction Manager expressly agrees that the foregoing constitute its sole and exclusive remedies for delays and changes in such work, and eliminate any other remedies for claim for increase in the contract price, delays, changes in the work, damages, losses or additional compensation.

16.4 In the event of any dispute over a proposed change order or any other matter arising out of the implementation or interpretation of this contract the following dispute resolution process shall apply.

(a) Within three (3) days after denial of a contractor's change order or contract modification request in an amount, individually or in total, less than the authorized purchasing level approved for the County Manager by the County Commission (currently at $100,000) the contractor may submit to the County Manager or a designee with experience in the oversight of construction projects for a department or business other than the department responsible for monitoring the disputed request, documentation of the contractor's position in the dispute or disagreement. The County Manager or designee, within five (5) days after the receipt of the contractor's documentation, shall review the request and make a final determination as to whether denial was arbitrary or capricious based upon the sufficiency of the work under the terms of the contract, applicable regulations and relevant construction standards. Based upon the sufficiency and degree of completion, as well as any defects in the work and the amount reasonably required, if any, to correct or repair defective work, the reviewer shall make the final determination as to whether a written change order or contract modification should be approved by the County Manager.

(b) If the denied request or disputed amount exceeds the County Manager's purchasing authority, the County Manager shall present a report, recommendation and the contractor's claim and documentation, to the County Commission for a final determination within thirty (30) days after receiving the contractor's documentation for the claim. The Commission shall make its decision using the standards specified in subparagraph (a) above.

16.5 Within thirty (30) days after denial of a request for a change order or contract modification by the project manager or engineer involving (1) an amount in excess of the County Manager's expenditure authority or (2) for the amount the

contractor claims to be due at the time the project is ready for beneficial use or occupation, the County may, at the County's option in lieu of the procedure specified in subparagraph 16.4, submit the dispute to a mediator with knowledge or experience in construction management, as agreed upon by the parties. Upon referral to a mediator, the County and contractor shall each pay half the estimated cost of the mediator, up front. Within fifteen (15) days after the date of submittal, the mediator, applying the standards set forth in subparagraph 16.4, shall investigate the dispute and submit a written recommendation for disposition of the dispute to the County Manager or a designee with the qualifications specified in subparagraph 16.4. Within fifteen (15) days after receiving the mediator's recommendation, the County Manager shall submit the recommendation to the County Commission, along with a staff report analyzing the dispute and mediator's recommendation. Based on the standards set forth in subparagraph 16.4 above, the Commission shall decide whether to grant or deny, in whole or in part, the amounts recommended by the mediator. The Commission's decision will be deemed final action on the disputed claim for the purposes of ripening the decision for judicial review. If the mediator recommends that no change order or contract modification be granted, the contractor shall reimburse the county for any amounts paid by the county to the mediator.

16.6 The deadlines for completing the dispute resolution process described in subparagraphs 16.4 and 16.5 may be extended by mutual agreement of the contractor and the county.

ARTICLE 17

OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

17.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Construction Manager claims that a delay or additional cost is involved because of such action by the Owner, the Construction Manager shall make such claim as provided in this Agreement.

17.2 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Construction Manager, who shall cooperate with them. The Construction Manager shall participate with other separate contractors and the Owner in reviewing their construction schedules when directed to do so. The Construction Manager shall

make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Construction Manager, separate contractors and the Owner until subsequently revised.

17.3 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights which apply to the Construction Manager under the Conditions of the Contract.

17.4 The Construction Manager shall afford the Owner, and separate contractors, reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities and shall connect and coordinate the Contractor's construction and operations with the Construction Manager, as required.

17.5 If part of the Construction Manager's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Construction Manager shall, prior to proceeding with that portion of the Work, promptly report to the Architect/Engineer or Owner apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Construction Manager to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Construction Manager's Work, except as to defects not then reasonably discoverable.

17.6 Costs caused by delays or by improperly timed activities or defective construction shall be borne by the party responsible thereof.

17.7 The Construction Manager shall promptly remedy damage wrongfully caused by the Construction Manager to completed or partially completed construction or to property of the Owner or separate contractors.

ARTICLE 18

MISCELLANEOUS

18.1 Interest - Any monies not paid when due to either party under this contract shall not bear interest except as may be required by Section 218.70 et seq., Florida Statutes, ("The Florida Prompt Payment Act").

18.2 Harmony - Construction Manager is advised and hereby agrees to exert every reasonable and diligent effort to assure that all labor employed by Construction Manager and his Subcontractors for work on the Project shall work in harmony

with and be compatible with all other labor being used by building and Construction Managers now or hereafter on the site of the Project.

Construction Manager further agrees that this provision will be included in all subcontracts of the Subcontractors as well as the Construction Manager's own contract; provided, however, that this provision shall not be interpreted or enforced so as to deny or abridge, on account of membership or non-membership in any labor union or labor organization, the right of any person to work as guaranteed by Article 1, Section 6 of the Florida Constitution.

18.3 Apprentices - If the Construction Manager employs apprentices on the project, the behavior of the Construction Manager and the Owner shall be governed by the provision of Chapter 446, Florida Statutes, and by applicable standards and policies governing apprentice programs and agreements established by the Division of Labor of the State of Florida Department of Labor and Employment Security. The Construction Manager will include a provision similar to the foregoing sentence in each subcontract.

18.4 Minority Participation - The Construction Manager shall *diligently attempt* to award his material contracts, subcontracts and sub-subcontracts to firms having a letter of certification as a minority business from the "Office of Minority Business Assistance, Department of General Services, or any other Federal, Florida County or City certification.

18.5 Minority Employment Information - The Board of County Commissioners requires construction contracts, who would otherwise be required to file and EEO Form 1 Report under Federal Law (currently Federal law requires filing for employers with more than 15 employees), to submit an EEO Form 1 Report with the submission of their GMP. This requirement extends to any subcontractors who are required to submit the EEO Form 1 Report (over 15 employees) under Federal law. Failure to submit an EEO Form 1 Report with your GMP will be reason to declare your proposal "non-responsive" to the proposal requirements. However, the information will be used for statistical purposes only and will not be used in any way as a basis to award a contract. See **Attachment "O"**.

18.6 Public Entity Crime Affidavit attached as **Attachment "P"**.

18.7 Non-Collusion Affidavit of Prime Bidder attached as **Attachment "P"**.

18.8 Copyright Clause No reports, data, programs or other materials produced, in whole or in part for the benefit and use of the Owner, under this agreement shall be subject to copyright by Contractor in the United States or any other Country.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first written above.

ATTEST:

Scott Ellis, Clerk

Reviewed for legal form and content:

Shannon L. Wilson, Deputy County Attorney

4/19/16
Date

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA

Jim Barfield
Brevard County Commission

As Approved By the Brevard County Commission on:

1/27/15

Ivey's Construction

BY: Construction Manager
Kevin W. Ivey President

STATE OF FLORIDA
COUNTY OF BREVARD

The foregoing instrument was acknowledged before me this 29th day of April 2016 by whose position is PRESIDENT with Ivey's Construction, a Florida Corporation, on behalf of the corporation. He/She is personally known to me or has produced _____ as identification.

(SEAL)

JESSICA E FRATRIK
MY COMMISSION #FF190995
EXPIRES January 20, 2019
(407) 398-0153 FloridaNotaryService.com

Jessica Fratrik
NOTARY PUBLIC

Typed, Printed or Stamped Name

ATTACHMENT "A"

CONSTRUCTION TEAM ASSIGNED REPRESENTATIVES

Owner
Brevard County Facilities Department

Joan Van Sickle	Project Director
Tim Lawry	Construction Coordinator
Mary Bowers	Support Services Manager/Contracts
John McGinnis	Special Projects Coordinator II

Architect-Engineer

Bussen-Mayer Engineering

Construction Manager

Kevin Ivey	President
Steve Sergis	Vice President/Principal-In-Charge
Steve Sergis	Project Manager
Steve Sergis	Project Administrator
Steve Sergis	Project Superintendent
Mike Koons	Estimator/Cost Control
Mike Koons	Schedules

ATTACHMENT "B"

PROJECT SCOPE OF WORK

Construction of a pedestrian boardwalk, fishing pier, single rail fence around the conservation areas, installation of Owner supplied pavilion and gazebo, water and sewer hook-up for Owner supplied CXT restroom, and a new septic system for restroom.

All items will be completed per Bussen-Mayer's engineered drawings and all Owner acquired permits. Specifications defining the work to be included under this construction contract are further identified in Attachment "I" attached hereto.

The parties understand and agree that certain exact dimensions (example – length of pedestrian boardwalk) may vary based on final measurements.

ATTACHMENT "C"

DIRECT PURCHASING PROCEDURE
CONSTRUCTION MANAGEMENT AGREEMENT

INTENT: The Owner of this Project, Brevard County, Florida, intends that these procedures govern the County's direct purchases of selected materials so that the County may take advantage of its tax exempt status. All monies which would have been payable as taxes, if not for Owner direct purchase under these procedures, will inure solely to the benefit of the Owner. The Owner's direct purchase of materials will not minimize or conflict with the Construction Manager's responsibility for the purchase, installation, coordination, storage, protection, warranty, etc. of the materials as described herein and in the plans and specifications of the Contract.

Definitions: For the purpose of these Procedures, the following words have the following definitions.

a) Contract: Construction Management Agreement by and between Construction Manager and Brevard County Board of County Commissioners, Viera, Florida for the construction of a pedestrian boardwalk, fishing pier, single rail fence around the conservation areas, installation of Owner supplied CXT restroom, and a new septic system for restroom between the Owner and the Construction Manager supersedes any prior negotiations, representations or agreements. All items will be completed per Bussen-Mayer's engineered drawings and all Owner acquired permits.

b) County Purchased Materials: Materials purchased directly by the Owner through execution and delivery of a Purchase Order.

c) GMP - Guaranteed Maximum Price established under the Contract.

d) Materials: Tangible Personal Property necessary for completion of the Project.

e) Materials Deduction Summary: Written document signed by Owner's representative and Construction Manager setting forth the amounts of County Purchased Materials, plus applicable taxes were the purchase not exempt from such taxes, as reflected in the parties' previously executed deductive change order(s) to the Contract showing deduction of such Materials from the GMP.

f) Owner: See Definition in Article I, section 1.3.

g) Owner's Representative: See Definition in Article I, section 1.3.

h) Project: See Definition in Article I, section 1.3.

i) Purchase Order: The Owner's request for Materials from a particular vendor or supplier when fully executed and delivered to the Construction Manager, and the Owner's promise to pay for the Material specified upon delivery and acceptance

at the Project Site, and presentation of an invoice by the Construction Manager to the Owner certifying payment of same.

j) Material Requisition: A request by the Construction Manager to the Owner that the Owner directly purchase specific items described in sufficient detail, including quantity, grade, brand, etc., along with the vendor or material supplier and that vendor or material supplier's quoted price for the Materials.

Overview: The Owner requires the Construction Manager (hereinafter, "Manager") to notify the Owner's Representative of Materials needed for the Project exceeding $5,000.00 in value, through a Material Requisition form. For the purpose of these Procedures, the Manager will assign to the Owner any rights the Manager may have under quotes, contracts or commitments received from the particular vendor or supplier for the Materials described in the Material Requisition. Any Materials purchased by Owner pursuant to these Procedures shall be referred to as "County Purchased Materials", and the responsibilities of the Owner and Manager relating to such County Purchased Materials shall be governed by the terms and conditions of these Procedures, which shall take precedence over other conditions and terms of the Contract Documents where inconsistencies or conflicts exist. The invoiced amount of County Purchased Materials and applicable sales tax had the purchases not been tax exempt, once finalized through the Owner's Purchase Order and after confirmation of completed delivery and acceptance pursuant to this Procedure, will be deducted from the GMP, as defined in the Contract, by deductive change order.

Owner Direct Purchasing Requirements and Procedures: When a Materials purchase for the Project is estimated to be $5,000 or greater and time will allow for an Owner Direct Purchase, Manager shall prepare a Material Requisition form, *(to be provided by the Owner)*, acceptable to Owner, and which specifically identifies the Materials which Owner may, in its discretion, elect to purchase directly. The Material Requisition form shall be complete when submitted, and all information requested provided. Along with the Material Requisition the Construction Manager must provide:

a) The name, address, telephone and fax number and contact person for the material supplier;
b) Manufacturer or brand, model or specification number of the item;
c) Quantity needed as estimated by Manager;
d) The price quoted by the supplier for the Materials identified therein;
e) Any sales tax associated with such quote if it were not purchased by a tax exempt entity;
f) Shipping and handling cost, including associated insurance;
g) Delivery dates as established by the Manager;
h) Subcontractor's written acknowledgment of these Procedures for Owner Direct Purchase of Materials.

After receipt of the Material Requisition, the Owner's Representative will determine whether the Owner will directly purchase the Materials described in the Material Requisition, and communicate consent or decline to purchase the materials to the Manager within twenty four (24) hours. Brevard County's Purchasing Division shall be the Owner's approving authority on Purchase Orders of County Purchased Materials. If the Owner consents to purchase the Materials, the Owner shall issue a Purchase Order for same. The Owner shall issue the original Purchase Order, and the Manager shall deliver the Purchase Order to the subcontractor. The Purchase Order shall require (1) that the supplier provide the required shipping, (2) that the

supplier provide the required shipping and handling insurance, and (3) delivery of the County Purchased Materials on the delivery dates provided by the Manager in the Material Requisition.

The Manager shall be fully responsible for all matters relating to the receipt of County Purchased Materials under these Procedures, including, but not limited to, preparation of shop drawings and submittals, verifying correct quantities, verifying documents of orders in a timely manner, coordinating purchases, providing and obtaining all warranties and guarantees required by the Contract Documents, inspection and acceptance of the goods at the time of delivery, and loss or damage to equipment and materials due to the negligence of the Manager. The Manager shall coordinate delivery schedules, sequence of delivery, loading orientation, and other arrangements normally required by the Manager for the Materials furnished. The Manager shall provide all services required for the unloading, handling and storage of Materials through installation. The Manager agrees to indemnify and hold the Owner harmless from any and all claims of whatever nature resulting from non-payment of goods to suppliers arising from the actions of Manager.

The Manager shall insure that County Purchased Materials conform to the Specifications, and determine prior to incorporation into the Work, if such Materials are patently defective, and whether such Materials are identical to the Material ordered and match the description on the bill of lading. As County Purchased Materials are delivered to the job site, the Manager shall inspect all shipments from the suppliers, and, if in conformance with the Purchase Order, approve the vendor's invoice for materials delivered. The Manager shall assure that each delivery of County Purchased Material is accompanied by documentation adequate to identify the Purchase Order against which the purchase is made. This documentation may consist of an itemized delivery ticket, packing slip or invoice from the supplier conforming to the Purchase Order against which the purchase is made, together with such additional information as the Owner may require. The Manager will then forward the documentation to the Owner.

If the Manager discovers defective or non-conformities in County Purchased Material upon inspection, the Manager shall not use such non-conforming or defective Materials in the Work and instead shall promptly notify the Owner of the defective or non-conforming conditions and coordinate the repair or replacement of those Materials without any undue delay or interruption to the Project. All repair, maintenance or damage-repair calls shall be forwarded to the Manager for resolution with the appropriate supplier, vendor, or subcontractor. If the Manager fails to perform such inspection, the condition of which the Manager either knew or should have known by performance of an inspection, Manager shall be responsible for all damages to the County resulting from Manager's incorporation of such Materials into the Project, including liquidated or delay damages.

On a bi-weekly basis, Manager shall be required to review invoices submitted by all suppliers of County Purchased Materials delivered to the Project Site during that month and either concur or object to the Owner's issuance of payment to the suppliers, based on Manager's records of materials delivered to the site. In order to arrange for the prompt payment to the supplier, the Manager shall provide to the Owner a list indicating the acceptance of the goods or materials within fifteen (15) days of receipt of said invoice for goods or materials. The list shall reference the applicable purchase order and include a copy of the invoices, delivery tickets, written acceptance of the delivered items, and such other documentation as may be reasonably required by the Owner. Upon receipt of the appropriate documentation in duplicate, the Owner shall prepare a check drawn to the supplier based upon the receipt of data provided. This check will be delivered directly to the supplier. If any discounts are available from the supplier or vendor, they shall accrue to the benefit of the Owner, and the amount quoted by the vendor,

plus applicable tax, shall be deducted from the GMP. The Manager agrees to assist the Owner to immediately obtain partial or final releases or waivers as appropriate.

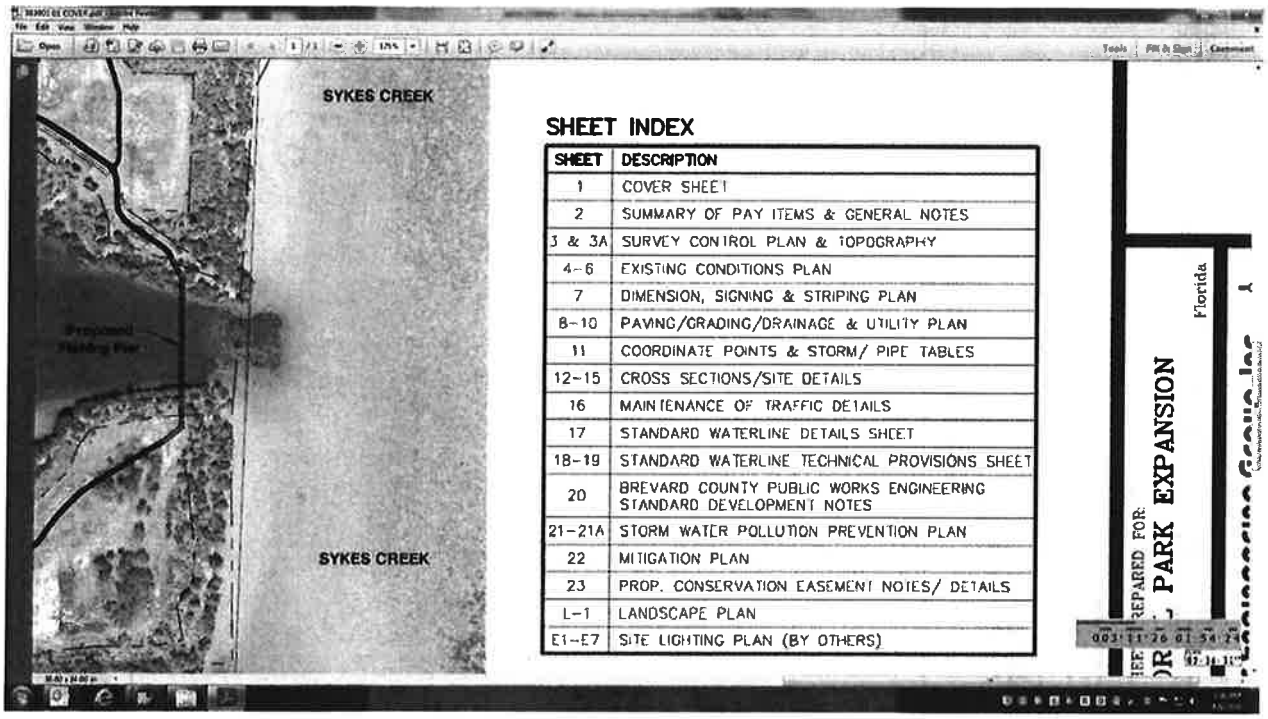
Following performance of the Purchase Orders by the suppliers, and submittal of documentation confirming same to Owner with an invoice for payment by Owner, the Manager shall execute and deliver to the Owner at the end of each month along with the Manager's regular pay requests, a Materials Deduction Summary setting forth the full value of all County Purchased Materials, plus all taxes which would have been payable on the purchase of the Materials had they not been Owner purchased. The Materials Deduction Summary shall show all sums to be deducted by an appropriate deductive change order, and ultimately the GMP, to date. The Board of County Commissioners, or their authorized representative, shall be the approving authority for the Owner on the Materials Deduction Summary for County Purchased Materials.

The Manager shall maintain records of all County Purchased Materials incorporated into the Work. These records shall be available for inspection by the Owner upon request.

Notwithstanding the delivery of County Purchased Materials to the Project Site for the Manager's inspection, custody and incorporation into the Work, the Owner shall retain legal and equitable title to any and all County Purchased Materials. The transfer of possession of County Purchased Materials from the Owner to the Manager shall constitute a bailment for the mutual benefit of the owner and the Manager solely for the purposes set forth herein. The Owner shall be considered the bailer and the Manager the bailee of the County Purchased Materials. County Purchased Materials shall be considered returned to the Owner for purposes of their bailment at such time as they are incorporated into the Project or are returned to the vendor or supplier at the discretion of the Manager prior to payment for the Purchase Order by Owner.

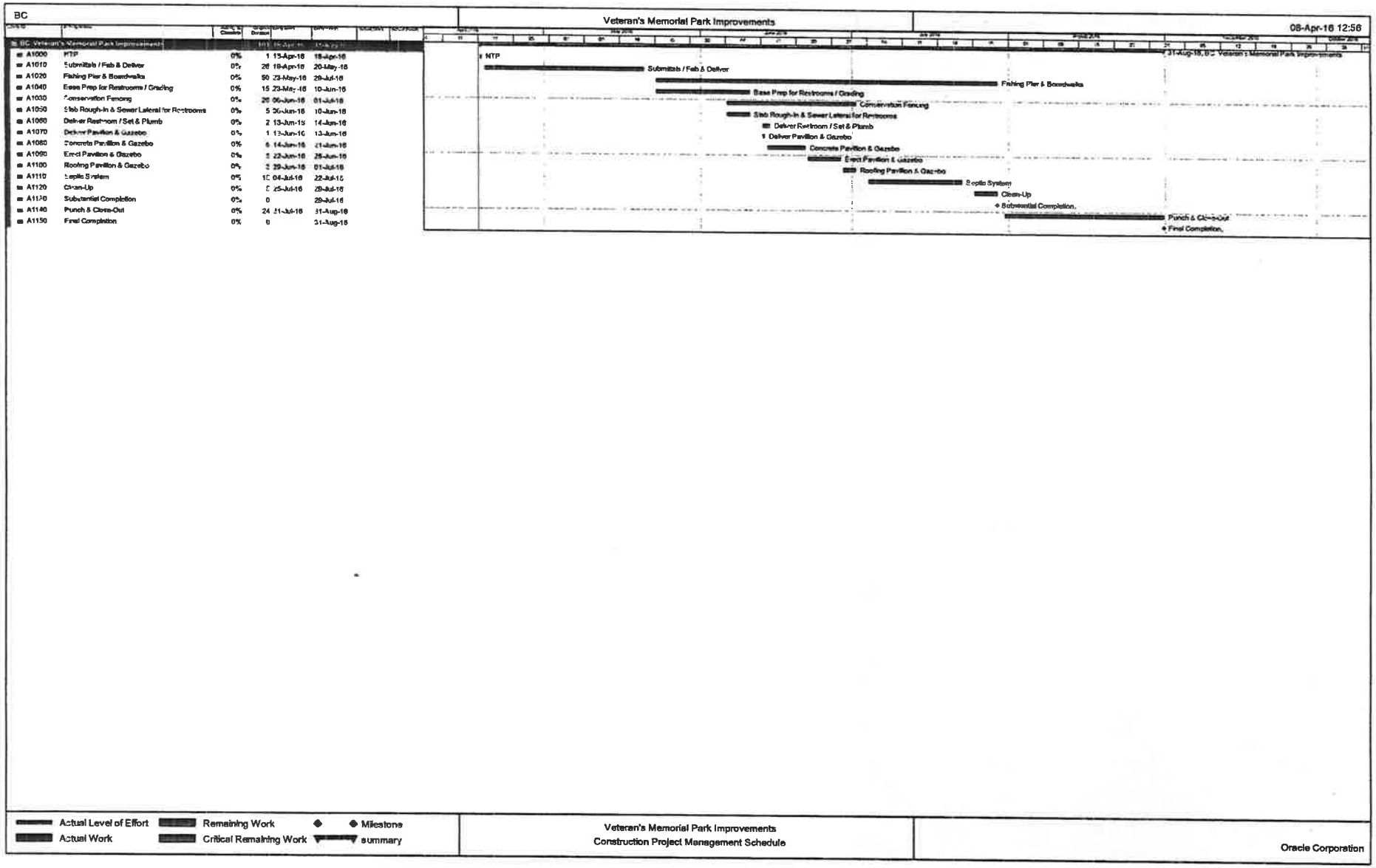
The Owner shall purchase and maintain Builder's Risk Insurance sufficient to protect against any loss or damage to County Purchased Materials. Such insurance shall cover the full value of any County Purchased Materials not yet incorporated into the Project from the time the Owner first takes title to any of such County Purchased Materials and the time when the last of such County Purchased Materials is incorporated into the Project, or are returned to the vendor at the Manager's discretion prior to Owner's payment for same.

The Owner shall in no way be liable for any interruption or delay in the Project, for any defects or other problems with the Project, or any extra costs or time resulting from any delay in the delivery of, or defects in, County Purchased Materials.



SHEET INDEX

SHEET	DESCRIPTION
1	COVER SHEET
2	SUMMARY OF PAY ITEMS & GENERAL NOTES
3 & 3A	SURVEY CONTROL PLAN & TOPOGRAPHY
4-6	EXISTING CONDITIONS PLAN
7	DIMENSION, SIGNING & STRIPING PLAN
8-10	PAVING/GRADING/DRAINAGE & UTILITY PLAN
11	COORDINATE POINTS & STORM/ PIPE TABLES
12-15	CROSS SECTIONS/SITE DETAILS
16	MAINTENANCE OF TRAFFIC DETAILS
17	STANDARD WATERLINE DETAILS SHEET
18-19	STANDARD WATERLINE TECHNICAL PROVISIONS SHEET
20	BREVARD COUNTY PUBLIC WORKS ENGINEERING STANDARD DEVELOPMENT NOTES
21-21A	STORM WATER POLLUTION PREVENTION PLAN
22	MITIGATION PLAN
23	PROP. CONSERVATION EASEMENT NOTES/ DETAILS
L-1	LANDSCAPE PLAN
E1-E7	SITE LIGHTING PLAN (BY OTHERS)



ATTACHMENT "E"

ATTACHMENT "F"

ORDINANCE 98-37

AN ORDINANCE AMENDING CHAPTER 2 OF THE BREVARD COUNTY CODE TO CREATE ARTICLE VII, A PROCEDURE FOR PREQUALIFYING CONSTRUCTION CONTRACTORS, FOR COMPETITIVE BIDDING CRITERIA AND FOR DEBARMENT OF CONSTRUCTION CONTRACTORS AND SURETIES; PROVIDING FOR ALTERNATIVE CONSTRUCTION DELIVERY METHODS; PROVIDING FOR PREQUALIFICATION AND COMPETITIVE BIDDING CRITERIA, PROCEDURE, AND FOR A STANDARD OF PROOF; PROVIDING FOR EDITING OF THE ORDINANCE FOR INCLUSION WITHIN THE BREVARD COUNTY CODE; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Section 255.20, Fla. Stat. (1997) requires that standards and procedures for determining the lowest qualified and responsive bidder or award of a construction contract under any delivery method be established if a bidder is selected for any reason other than price; and

WHEREAS, the Board has determined that it is in the public's best interest to provide such standards and procedures so that the Board may select the most qualified and responsive bidder; and

WHEREAS, the Board has determined that it is in the public's best interest to prevent construction firms and sureties who have defaulted on a previous contract with the County from future bidding on County projects through a debarment procedure;

THEREFORE, be it ordained by the Board of County Commissioners of Brevard County, Florida as follows:

Section 1: Chapter 2 of the Brevard County Code shall be amended to create Article VII as follows:

1. DEFINITIONS: The following words shall have these meanings throughout this article:

   "AFFECTED PARTY" means an individual or business which has submitted a bid, offer, proposal, quotation, or response which is rejected, or is found unqualified under the provisions of this article, or which would be selected if a low bidder was found unqualified or nonresponsive.

   "BOARD" means the Board of County Commissioners of Brevard County, Florida.

"COMMITTEE" means two or more persons designated to evaluate prequalification and responsiveness criteria. Committees established by the County Manager may be intradepartmental, or include representatives of several departments interested in the administration and success of the construction project.

"DEBARMENT" means the exclusion for cause of a vendor or contractor, or subcontractor from bidding or doing business with the County on a temporary or permanent basis.

"MINOR IRREGULARITY" means a variation from the Invitation to Bid which does not affect the price of the bid, or give the bidder an advantage or benefit not enjoyed by other bidders, or does not adversely impact the interests of the agency.

"QUALIFIED BIDDER" means an individual or business which has submitted a bid, offer, proposal, quotation, or response, which has the capability in all respects to fully perform the contract requirements, and has the financial stability, honesty, integrity, skill, business judgement, experience, facilities and reliability necessary to give reasonable assurance of good faith and performance.

"REQUEST FOR QUALIFICATION" ("RFQ") means the process by which the County may prequalify individuals or businesses for a particular project before requesting bids for the project, thereby limiting the pool of bidders to these prequalified.

"RESPONSIVE BIDDER" means an individual or business which has submitted a bid, offer, proposal, quotation, or response, which conforms in all material respects to the solicitation, including but not limited to compliance with the submittal of specified insurance and bond requirements.

1. Any County contract for the construction or improvement of a public building, structure, or other public construction work that is estimated in accordance with general accounting principles to have construction costs of more than fifty thousand dollars ($50,000.00) shall be competitively awarded to the lowest, qualified and responsive bidder in accordance with this article, unless the project (1) fits within exceptions set forth in s. 255.20, Fla. Stat., as amended from time to time, (2) is a contract governed by the Consultant's Competitive Negotiation Act, or (3) is awarded under another contract delivery method authorized by this article. Nothing in this article shall be construed to require competitive award of every County construction work, nor to prohibit the Board from rejecting all bids if competitively bid, or to prevent the Board from waiving minor irregularities in any bid.

2. (a) Potential lump sum bidders responding to a request for qualifications are required to submit information required by this article and as identified in the RFQ

package. A committee identified in the RFQ package will determine whether a potential bidder is qualified and responsive as defined in this article.

(b) For projects advertised for lump sum bid without prior prequalification, the apparent low bidder, after the formal bid opening, will be required to submit the following prequalification information identified in the bid package within five (5) business days after the bid opening. Failure to provide prequalification information within this time frame may be considered as grounds for finding the apparent low bidder nonresponsive. If the apparent low bidder cannot provide adequate documents for review, or the submitted documents indicate the apparent low bidder or any subcontractors are not qualified, or if the bidder's package is determined to be nonresponsive, the Committee will reject the bidder or any of its subcontractors. In the event the bidder is found unqualified or non-responsive, the apparent second low bidder will be contacted and afforded the previous mentioned five (5) days to submit pre-qualification documents. This process will continue until the lowest qualified and responsive bidder is established. In the event that a subcontractor is found unqualified or non-responsive, the potential bidder or prime contractor will have five (5) business days to submit a substitute subcontractor for the same bid price or withdraw the original bid.

(c) In addition to lump sum contracts for construction, the Board may use the following delivery methods for construction or improvement of a public building, structure, or other public construction work: construction manager, design/build, or continuing contracts based on unit prices. The Board may also enter into continuing contracts with construction managers using the pre-qualification procedure set forth herein for potential lump sum bidders. The individual projects shall be awarded under a continuing contract using the following criteria:

> Ability of professional personnel given project's special characteristics; past performance; willingness to meet time and budget requirements; location; recent, current and projected workloads of the firms available under continuing contract; volume of work previously awarded to each firm under a continuing contract provided distribution does not violate the principle of selection of the most qualified firm for the project; previous experience on County projects.

The County Manager will establish procedures for the Board to hear any affected party with a complaint or appeal as to any recommendation or finding made pursuant to this article. Any affected party's complaint or appeal must be presented, in writing, to the County Manager's office within five (5) business days of the posting of a committee's decision.

(d) At the completion of each competitively awarded County construction project, the County department which administered the construction contract shall

complete an evaluation of the contractor's performance on a form to be established by the County Manager. The department may also complete evaluations of critical subcontractors using the same form. All such records shall be copied to the party evaluated and maintained by County Purchasing. Any party evaluated may submit a written response of any length, which response shall be filed with the evaluation.

3. Potential bidders, the apparent lowest bidder, or the person providing services under any other contract delivery method, and applicable subcontractors identified in the bid or request for qualification package for any County construction project which is to be competitively awarded shall be evaluated to determine whether the bidder and its subcontractors are qualified. In evaluating qualifications, the County shall consider the following information:

   - A Contractor's Pre-Qualification Statement for the prime contractor and subcontractors performing parts of work identified in the bidding documents as critical to the project's success. The Pre-Qualification Statement shall be provided on a form to be established by the County Manager;

   - Most current financial statement, but not more than one (1) year old, indication of bondability, or, if project is under $100,000, other evidence of financial capability as identified in the bid documents;

   - Resumes of Contractor and Subcontractor's key personnel, including project manager and superintendent levels, showing job history, education related to work to be performed and any license, training, and experience related to the work which that individual will perform;

   - List of subcontractors and suppliers, and items of work to be performed by the Contractor's own work force;

   - County evaluations of the performance on County projects;

   - References obtained from individuals or businesses with whom the contractor or subcontractor has performed work or conducted business;

   - Any other relevant qualifications, data or information identified in the bidding documents to be critical to the success of the project.

4. The County Manager will establish committees which may debar a contractor, contractor's key personnel, contractor's surety, subcontractor and subcontractor's key personnel, or any entity which key personnel are later employed or retained by in a supervisory position, from bidding on any County project under the circumstances enumerated below. The decision to disbar is discretionary, the seriousness of the offense and all mitigating factors should be

considered in making the decision to disbar. The notice of debarment shall state the time when such debarment will be lifted, if ever, and the contractor's right to appeal such debarment to the Board of County Commissioners under the Board's regular agenda. The Board reserves the power to waive or lift any committee imposed suspension or debarment.

An individual or business may be *permanently* debarred for any of the following reasons:

- Conviction or a judgment obtained in a court of competent jurisdiction for:
- Commission of a fraud or a criminal offense as an incident to obtaining, attempting to obtain, or in the performance of a pubic contract
- Violation of any Federal or State of Florida anti-trust or anti-racketeering statutes arising out of submission of bids or proposals;
- Commission of embezzlement, theft, forgery, bribery, falsification of or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which seriously and directly affects the question of present responsibility as a County contractor, subcontractor or vendor;
- If the conviction or judgment is reversed on appeal, the debarment shall be removed upon receipt of notification thereof.

Competent and substantial evidence of a violation of a County contract provision, as set forth below, when the violation is of a character so as to justify debarment action such as:

- Failure to perform in accordance with the specifications or delivery requirements in a contract;
- A history of failure to perform, or of unsatisfactory performance, in accordance with the terms of one or more contracts; provided, that such failure or unsatisfactory performance is within a reasonable period of time preceding the determination to debar. Failure to perform for unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered as a basis of debarment.

Upon adequate evidence, an individual or business may be *temporarily* debarred for a period up to three (3) years based upon substantial evidence of involvement in any of the causes cited in paragraph (b) above.

Section 2: Inclusion in Code: It is the intention of the Board of County Commissioners that the provisions of this ordinance shall become and be made a part of the Brevard County Code; and that the sections of this ordinance may be renumbered or relettered to accomplish such intentions.

Section 3: Severability: If any provision of this ordinance is held to be illegal or invalid, the other provisions shall remain in full force and effect.

Section 4: Effective Date: This ordinance shall become effective upon filing as provided by law. A certified copy of the ordinance shall be filed with the Office of the Secretary of State, State of Florida within ten (10) days of enactment.

ATTACHMENT "G"

PUBLIC CONSTRUCTION PAYMENT BOND

BY THIS BOND, We _____ as Principal and _____, a corporation as Surety, are bound to Brevard County Board of County Commissioners, Brevard County, Florida, herein called Owner, in the sum of _____ ($), for payment of which we bind ourselves, our heirs, personal representatives, successors and assigns, jointly and severally.

THE CONDITIONS OF THIS BOND are that if Principal:

1. Promptly makes payments to all claimants, as defined in Section 255.05(1), Florida Statutes, supplying Principal with labor, materials, or supplies, used directly or indirectly by Principal in the prosecution of the work provided for in the contract dated _____, 20____, between Principal and Owner for construction of _____, the contract being attached hereto and made a part of this bond by reference, in such time and without delay, and in the manner prescribed in the contract; and
2. Pays Owner all losses, damages, expenses, costs, and attorney's fees, including appellate proceedings, that Owner sustains because of a default by Principal under the contract, then this bond is void; otherwise it remains in full force.

Any changes in or under the contract documents and compliance or noncompliance with any formalities connected with the contract does not affect Surety's obligation under this bond.

Signed and sealed this _____ day of _____, 20___.

Witness:

_____

_____
Principal Seal

Its: _____
Title

Witness:

_____

_____
Surety Seal

Its: _____
Title

ATTACHMENT "H"

PUBLIC CONSTRUCTION PERFORMANCE BOND

BY THIS BOND, We _____, as Principal and _____, a corporation as Surety, are bound to Brevard County Board of County Commissioners, Brevard County, Florida, herein called Owner, in the sum of _____ ($_____), for payment of which we bind ourselves, our heirs, personal representatives, successors and assigns, jointly and severally.

THE CONDITIONS OF THIS BOND are that if Principal:

1. Performs promptly, completely and faithfully the contract dated _____, 2010 between Principal and Owner for construction of _____, the contract being attached hereto and made a part of this bond by reference, in such time and without delay, and in the manner prescribed in the contract including the delivery, execution and performance of any warranty work required by the contract; and
2. Pays Owner all losses, damages, expenses, costs, and attorney's fees, including appellate proceedings, that Owner sustains because of default by Principal under the contract; and
3. Performs the guarantee of all work and materials furnished under the contract for the time specified in the contract, then this bond is void; otherwise it remains in full force.

Any changes in or under the contract documents and compliance or noncompliance with any formalities connected with the contract does not affect Surety's obligation under this bond.

Signed and sealed this _____ day of _____, 20___.

Witness:

_____

_____
Principal Seal

Its: _____
Title

Witness:

_____

_____
Surety Seal

Its: _____
Title

ATTACHMENT "I"

IVEY'S CONSTRUCTION, INC	Veteran's Memorial Park Improvements		Date: March 22, 2016 REV1 March 29, 2016 REV2 April 8, 2016
Line	**Division**	**Activity/Scope**	**Breakdown**	**Division Totals**
1	01	General Requirements		$31,210
2		Supervision	$0	
3		Project Foreman	$13,440	
4		Construction Trailer	$0	
5		Power for Trailer	$0	
6		Field Office Supplies	$0	
7		Field Office Equipment	$0	
8		Cell Phone and Internet	$0	
9		Temporary Power for Construction	$0	
10		Dumpster and Fees	$2,600	
11		Concrete Washout	$350	
12		Temporary Toilet and Hand Wash	$840	
13		Progress and Final Cleaning	$1,320	
14		Rental Equipment	$3,500	
15		Temporary Protection/Barricades	$1,500	
16		Temporary Site Fencing	Excluded	
17		Testing	Excluded	
18		Fuel for Rental Equipment	$150	
19		Fuel for Vehicles	$400	
20		Survey and Layout (Conservation Fence by others)	$5,960	
21		Drawing Reproductions	$150	
22		Permit (Brevard County)	Excluded	
23		Builders Risk Insurance	Excluded	
24		Misc. GC's (small tools, cleaning equip.)	$1,000	
25	02	Existing Conditions		$2,300
26		Grading Allowance - Prep for Slabs / Fine Grading for Sod	$2,000	
27		Termite Treatment	$300	
28	03	Concrete		$14,280
29		Concrete Foundations and Slab on Grade	$12,930	
30		Material Transport - Gazebo, Georgia Buggies if required	$600	
31		Connector Sidewalk to Gazebo, 5' wide x 10' long	$750	
32	06	Woods, Plastics & Composites		$199,071
33		Carpenter Labor, Gazebo and Pavilion Installation	$9,450	
34		SS Fasteners on exposed Beam-Column Plates	$950	
35		Conservation Fence	$21,525	
36		Single Line Fence around Septic Drain Field (250 LF)	$1,313	
37		Fishing Pier and Pedestrian Boardwalks	$152,833	
38		Material Transport and Rental Equipment	$13,000	
39	07	Thermal and Moisture Protection		$3,850
40		Shingle Roofing	$3,850	
41	09	Finishes		$1,800
42		Wood Sealer Preservative, Gazebo & Pavilion	$1,800	
43	22	Plumbing		$13,300
44		Septic System	$6,400	
45		Additional Sand, if required	$900	
46		Under Slab Rough-in and water/sewer laterals	$6,000	
47	32	Exterior Improvements		$3,000
48		Landscaping	$3,000	
49		**Column Subtotals**	$268,811.00	$268,811.00
50		**Overhead**		$13,440.00
51		**Subtotal**		$282,251.00
52		**Fee**		$26,954.00
53		**Subtotal**		$309,205.00
54		**Bond**	1%	$3,092.05
55		**Total**		**$312,297**

CERTIFICATE OF SUBSTANTIAL COMPLETION

AIA DOCUMENT G704

(Instructions on reverse side)

Attachement "J"

OWNER	☐
ARCHITECT	☐
CONTRACTOR	☐
FIELD	☐
OTHER	☐

PROJECT:
(Name and address)

PROJECT NO.:

CONTRACT FOR:
CONTRACT DATE:

TO OWNER:
(Name and address)

TO CONTRACTOR:
(Name and address)

DATE OF ISSUANCE:
PROJECT OR DESIGNATED PORTION SHALL INCLUDE:

The Work performed under this Contract has been reviewed and found, to the Architect's best knowledge, information and belief, to be substantially complete. Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use. The date of Substantial Completion of the Project or portion thereof designated above is hereby established as

which is also the date of commencement of applicable warranties required by the Contract Documents, except as stated below:

A list of items to be completed or corrected is attached hereto. The failure to include any items on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

ARCHITECT | BY | DATE

The Contractor will complete or correct the Work on the list of items attached hereto within days from the above date of Substantial Completion.

CONTRACTOR | BY | DATE

The Owner accepts the Work or designated portion thereof as substantially complete and will assume full possession thereof at (time) on (date).

OWNER | BY | DATE

The responsibilities of the Owner and the Contractor for security, maintenance, heat, utilities, damage to the Work and insurance shall be as follows:
(Note—Owner's and Contractor's legal and insurance counsel should determine and review insurance requirements and coverage.)

CAUTION: You should use an original AIA document which has this caution printed in red. An original assures that changes will not be obscured as may occur when documents are reproduced.

AIA DOCUMENT G704 • CERTIFICATE OF SUBSTANTIAL COMPLETION • 1992 EDITION • AIA® • ©1992 • THE AMERICAN INSTITUTE OF ARCHITECTS, 1735 NEW YORK AVENUE, N.W., WASHINGTON, D.C. 20006-5292
WARNING: Unlicensed photocopying violates U.S. copyright laws and will subject the violator to legal prosecution.

ATTACHMENT "K"

CERTIFICATE OF FINAL COMPLETION

PROJECT NO. & TITLE:
ARCHITECT: CONTRACTOR:
CONTRACT DATE: DATE OF FINAL COMPLETION:

CERTIFICATE OF ARCHITECT/ENGINEER

Based on my inspections and investigation of the Contractor's work under the above referenced contract, I certify that the work, in general, has been completed in accordance with the contract documents, that all matters previously brought to the Contractor's attention as incomplete or defective have been resolved pursuant to my direction, and that the Contractor has submitted the attached sworn affidavit as evidence that the Contractor has paid all labor, materials, and other charges against the project in accordance with the terms of the Contract.

A/E Firm Name: _____ By: _____

TO BE COMPLETED BY ARCHITECT/ENGINEER: DATE: DAYS:

THROUGH THE SUBSTANTIAL COMPLETION PHASE

1. Notice to Proceed (N.T.P.)
2. Time Specified in Original Contract for Substantial Completion (S.C.)
3. Extension Granted By Change Orders (Days Between Original Contract S.C. and Final Contract S.C.)
4. Total Days Allowable to Substantial Completion (Add Lines 2 and 3)
5. Project Substantially Completed as Certified by A/E (Total Days from NTP through Date Certified by A/E)
6. Substantial Completion Overrun (Subtract Line 4 from 5 and Enter Overrun)

THROUGH THE FINAL COMPLETION PHASE

1. Time Specified in Contract, Between Substantial and Final Completion
2. Extensions Granted by Change Orders (Days Between S.C. and Final Completion)
3. Total Days Allowable Between Substantial Completion and Final Completion (Add Lines 1 and 2)
4. Date Actually Completed and Total Days Between and Date Certified by A/E as Actually being Finally Completed).
5. Final Completion Overrun (Subtract Line)

Architect: _____ Date: _____

Project Manager: _____ Date: _____

Facilities Construction Manager: _____ Date: _____

ATTACHMENT "L"

ALLOWABLE COSTS, OVERHEAD

DESCRIPTION	EST QUANTITY	UNITS	UNIT COST	BUDGET VALUE	QUANTITY TO DATE	QUANTITY TO COMP
OFFICE PHONES						
OFFICE SUPPLIES						
POSTAGE						
GAS/OIL/LUBRICATION						
AUTOMOBILES/TRUCKS						
PROJECT MANAGER						
ESTIMATING COSTS						
EXECUTIVE LABOR COST						
ASST PROJECT MANAGER						
IN HOUSE SECRETARY						
TRAVEL EXPENDITURES						
WARRANTY EXPENSE						

ATTACHMENT "M"
(Direct Cost Items)
GENERAL CONDITIONS

SUPERINTENDENT

JOB SITE SECRETARY/CLERK

QUALITY CONTROL

SURVEY

PERMITS

IMPACT/CONNECTION FEES

CONSTRUCTION DRAWINGS/SPECS

PROGRESS PHOTOGRAPHS *(IF REQUESTED BY THE OWNER)*

JOB SITE SIGN *(IF REQUESTED BY THE OWNER)*

SPECIAL SECURITY *(IF REQUESTED BY THE OWNER)*

PAYMENT & PERFORMANCE BONDS

BUILDERS RISK INSURANCE

JOBSITE TRAILER AND SUPPORT *(IF REQUESTED BY THE OWNER)*

TEMPORARY UTILITIES *(AS APPROVED BY THE OWNER)*

TEMPORARY JOBSITE FENCING *(INITIAL INSTALLATION ONLY)*

TRASH REMOVAL/DUMP FEES, AND RECYCLING *(AS APPROVED BY THE OWNER)*

APPLICATION AND CERTIFICATE FOR PAYMENT *AIA DOCUMENT G702*

(Instructions on reverse side) PAGE ONE OF PAGES

TO (OWNER):

PROJECT:

APPLICATION NO:

Distribution to:
☐ OWNER
☐ ARCHITECT
☐ CONTRACTOR

PERIOD TO:

FROM (CONTRACTOR):

VIA (ARCHITECT):

ARCHITECT'S PROJECT NO:

☐
☐

CONTRACT FOR:

CONTRACT DATE:

CONTRACTOR'S APPLICATION FOR PAYMENT

CHANGE ORDER SUMMARY			
Change Orders approved in previous months by Owner TOTAL		ADDITIONS	DEDUCTIONS
Approved this Month			
Number	Date Approved		
TOTALS			
Net change by Change Orders			

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

CONTRACTOR:

By: _____ Date: _____

Application is made for Payment, as shown below, in connection with the Contract. **Continuation Sheet, AIA Document G703,** is attached.

1. **ORIGINAL CONTRACT SUM** ..... $ _____
2. **Net change by Change Orders** ..... $ _____
3. **CONTRACT SUM TO DATE** (Line 1 ± 2) ..... $ _____
4. **TOTAL COMPLETED & STORED TO DATE** ..... $ _____
   (Column G on G703)
5. **RETAINAGE:**
   a. ____ % of Completed Work $ _____
   (Column D + E on G703)
   b. ____ % of Stored Material $ _____
   (Column F on G703)
   Total Retainage (Line 5a + 5b or Total in Column I of G703) ..... $ _____
6. **TOTAL EARNED LESS RETAINAGE** ..... $ _____
   (Line 4 less Line 5 Total)
7. **LESS PREVIOUS CERTIFICATES FOR PAYMENT** (Line 6 from prior Certificate) ..... $ _____
8. **CURRENT PAYMENT DUE** ..... $ _____
9. **BALANCE TO FINISH, PLUS RETAINAGE** ..... $ _____
   (Line 3 less Line 6)

State of: County of:
Subscribed and sworn to before me this day of ,19
Notary Public:
My Commission expires:

ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising the above application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED ..... $ _____

(Attach explanation if amount certified differs from the amount applied for.)

ARCHITECT:

By: _____ Date: _____

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

ATTACHMENT "N"

66

AIA DOCUMENT G702 • APPLICATION AND CERTIFICATE FOR PAYMENT • MAY 1983 EDITION • AIA* • © 1983
THE AMERICAN INSTITUTE OF ARCHITECTS, 1735 NEW YORK AVENUE, N.W., WASHINGTON, D.C. 20006

CONTINUATION SHEET

AIA DOCUMENT G703 (Instructions on reverse side) PAGE OF PAGES

AIA Document G702, APPLICATION AND CERTIFICATE FOR PAYMENT, containing Contractor's signed Certification is attached.

In tabulations below, amounts are stated to the nearest dollar.

Use Column I on Contracts where variable retainage for line items may apply.

APPLICATION NUMBER:
APPLICATION DATE:
PERIOD TO:
ARCHITECT'S PROJECT NO:

A	B	C	D	E	F	G		H	I
ITEM NO.	DESCRIPTION OF WORK	SCHEDULED VALUE	WORK COMPLETED		MATERIALS PRESENTLY STORED (NOT IN D OR E)	TOTAL COMPLETED AND STORED TO DATE (D + E + F)	% (G ÷ C)	BALANCE TO FINISH (C – G)	RETAINAGE
			FROM PREVIOUS APPLICATION (D + E)	THIS PERIOD					

ATTACHMENT "O"

MINORITY EMPLOYMENT INFORMATION

The Board of County Commissioners requires construction contracts, who would otherwise be required to file and EEO Form 1 Report under Federal Law (currently Federal law requires filing for employers with more than 15 employees), to submit an EEO Form 1 Report with the submission of their GMP. This requirement extends to any subcontractors who are required to submit the EEO Form 1 Report (over 15 employees) under Federal law. Failure to submit an Acknowledgment and/or EEO Form 1 Report with your GMP will be reason to declare your proposal "non-responsive" to the proposal requirements. However, the information will be used for statistical purposes only and will not be used in any way as a basis to award a contract.

Please fill out and sign one (1) of the following statements:

1. My Company or subcontractors are required to submit the EEO Form 1 Report and they are attached.

   Company Name:
   Signature: _____ Date: _____

2. My Company or subcontractors are not required to submit the EEO Form 1 Report.

   Company Name:
   Signature: _____ Date: _____

Company Name: _____

Company Address: _____

Company Telephone: _____

Signature: _____ Printed Signature: _____

ATTACHMENT "P"

PUBLIC ENTITY CRIME ACKNOWLEDGMENT

A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid/quote/proposal on a contract to provide goods or services to a public entity, may not submit a bid/quote/proposal on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids/quotes/proposals on leases of rental property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for Category Two ($15,000) for a period of thirty six (36) months from the date of being placed on the convicted vendor list.

NON-COLLUSION AFFIDAVIT OF PRIME BIDDER

State of Florida
County of Brevard

_____, being duly sworn, deposes and says that:

(1) Affiant is _____ of _____, the Bidder that has submitted a bid/quote/proposal;

(2) Affiant is fully informed respecting the preparation and contents of the bid/quote/proposal and of all pertinent circumstances respecting such bid/quote/proposal;

(3) Such bid/quote/proposal is genuine and is not a collusive or sham bid/quote/proposal;

(4) Neither the said Bidder nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, has in any way colluded, conspired, connived or agreed, directly or indirectly with any other Bidder, firm or person to submit a collusive or sham bid/quote/proposal in connection with the Contract for which the bid/quote/proposal has been submitted or to refrain from bidding in connection with such Contract, or has in any manner, directly or indirectly, sought by Contract, or has in any manner, directly or indirectly, sought by the agreement or collusion or communication or conference with any other bidder, firm or person to fix the price or prices in the bid/quote/proposal or of any other Bidder, or to fix any overhead, profit or cost element of the bid/quote/proposal price or the bid/quote/proposal price of any other bidder, or to secure through any collusion, conspiracy, connivance or unlawful agreement any advantage against the Board of County Commissioners of Brevard County, Florida, or any person interested in the Contract; and

(5) The price or prices negotiated for the bid/quote/proposal are fair and proper and are not tainted by any collusion, conspiracy, connivance, or unlawful agreement

on the part of the Bidder or any of its agents, representatives, owners, employees, or parties of interest, including affiant.

_____
Signature

_____
Title

Subscribed and sworn to before me this ____ day of _____, 20___.

_____
Notary Public

My Commission expires: _____

CONTINUING
CONSTRUCTION MANAGER (AT RISK)
SERVICES AGREEMENT
(Federally Funded Projects)

THIS AGREEMENT, entered into this _____ day of _____, 2016 by and between **BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS**, a political subdivision of the State of Florida, hereinafter referred to as COUNTY, and **W&J CONSTRUCTION CORPORATION** whose address is 1038 Harvin Way, Suite 120, Rockledge, Florida 32955, a corporation under the laws of the State of Florida, hereinafter referred to as CONSTRUCTION MANAGER.

For and in consideration of the mutual agreement hereinafter contained, the COUNTY hereby retains the CONSTRUCTION MANAGER and the CONSTRUCTION MANAGER hereby covenants to provide Continuing Construction Manager (At Risk) services for Federally Funded County Projects ($1 - $2,000,000 each).

ARTICLE 1

1.1 The CONSTRUCTION MANAGER agrees to furnish its best skill and judgement and to cooperate with the Architect/Engineer, where applicable, in furthering the interest of the COUNTY. The CONSTRUCTION MANAGER agrees to furnish efficient business administration and supervision and to use its best efforts to complete the Project(s) in an expeditious and economical manner consistent with the interests of the COUNTY.

1.2 The Construction Team: The CONSTRUCTION MANAGER, the COUNTY and the Architect/Engineer (the "Construction Team") will work as a team through construction completion. The CONSTRUCTION MANAGER shall provide leadership to the Construction Team on all matters relating to construction. The Architect/Engineer will provide leadership to the Construction Team on all matters relating to design.

ARTICLE 2

2.1 The CONSTRUCTION MANAGER'S basic services under this Agreement include construction management services for federally funded projects ($1-$2,000,000). For each proposed Project, the COUNTY and the CONSTRUCTION MANAGER shall inter into a separate Agreement Between Owner and Construction Manager (**Attachment "A"**).

2.2 Selection for each proposed Project will be per Florida Statute 287.055, and Qualification Based Selection Criteria as follows:

A. Ability of firms professional personnel given the project's special characteristics;
B. Willingness to meet time and budget requirements;
C. Physical Location of Firm;
D. Recent, current and projected workload of the firms available under the continuing contract;

E. Volume of work previously awarded to the firm by the Board of County Commissioners, provided distribution does not violate the principles of selection of the most qualified firm for the project;
F. Previous Board of County Commissioners experience, including staff evaluations on file with Brevard County Facilities and Brevard County Purchasing Services.

2.3 The Contract Time for performance of each proposed Project shall be established in the "Agreement Between Owner and Construction Manager" for each proposed Project, including the Notice to Proceed.

2.4 This Agreement shall remain in effect for a period of one (1) year, and may be renewed for an additional three (3) one-year increments at the COUNTY'S option, based upon satisfactory performance of the CONSTRUCTION MANAGER.

2.5 The Guaranteed Maximum Price (GMP) for each proposed Project shall include the Cost of the Work required by the Contract Documents, and the CONSTRUCTION MANAGER'S fee. The GMP will be negotiated based on Contract Documents, Plans & Specifications for each proposed Project provided by the COUNTY.

2.6 Payment & Performance Bonds will be provided to the COUNTY by the CONSTRUCTION MANAGER for each proposed Project which exceeds $100,000 in construction cost. Insurance must be provided to the COUNTY by the CONSTRUCTION MANAGER for each proposed Project.

ARTICLE 3

3.1 The COUNTY and CONSTRUCTION MANAGER respectively bind themselves, their partners, successors, assigns and legal representatives to this Agreement and to the partners, successors, assigns and legal representatives of other party with respect to all covenants of this Agreement. Neither the COUNTY nor the CONSTRUCTION MANAGER shall assign this Agreement without written consent of the other.

3.2 This Agreement shall be governed by the laws of the State of Florida.

ARTICLE 4

4.1 The CONSTRUCTION MANAGER shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement.

4.2 The CONSTRUCTION MANAGER is required to pay its subcontractors performing work related to this Agreement for satisfactory performance of that work no later than thirty (30) days after the CONSTRUCTION MANAGER'S receipt of payment for that work from COUNTY. In addition, the CONSTRUCTION MANAGER may not hold retainage from its subcontractors.

ARTICLE 5

FEDERAL CLAUSES

5.1 **Fly America Requirements**
Applicability – all contracts involving transportation of persons or property, by air between the U.S. and/or places outside the U.S. These requirements do not apply to micro-purchases ($3,000 or less, except for construction contracts over $2,000).

Contractor shall comply with 49 USC 40118 (the "Fly America" Act) in accordance with General Services Administration regulations 41 CFR 301-10, stating that recipients and sub-recipients of Federal funds and their contractors are required to use US Flag air carriers for US Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a US flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. Contractor shall include the requirements of this section in all subcontracts that may involve international air transportation.

5.2 **Buy America Certification (Steel and Manufactured Products)**
Construction Contracts and Acquisition of Goods or Rolling Stock (valued at more than $100,000)

Contractor shall comply with 49 USC 5323(j) and 49 CFR 661, as amended by MAP-21 stating that Federal funds may not be obligated unless steel, iron and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include final assembly in the US for 15 passenger vans and 15 passenger wagons produced by Chrysler Corp., software, microcomputer equipment and small purchases (currently less than $100,000) made with capital, operating or planning funds. Separate requirements for rolling stock are stated at 5323(j)(2)(C) and 49 CFR 661.11. Rolling stock must be manufactured in the US and have a minimum 60% domestic content. A bidder or offeror shall submit appropriate Buy America certification to the County with all bids on FTA-funded contracts, except those subject to a general waiver. Proposals not accompanied by a completed Buy America certification shall be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

5.3 **Cargo Preference**
Contracts involving equipment, materials or commodities which may be transported by ocean vessels. These requirements do not apply to micro-purchases ($3,000 or less, except for construction contracts over $2,000).

Contractor shall: a. use privately owned US-Flag commercial vessels to ship at least 50% of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners and tankers) involved, whenever shipping any equipment, material or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for US flag commercial vessels; b. furnish within 20 working days following the loading date of shipments originating within the US or within 30 working days following the loading date of shipments originating outside the US, a legible copy of a rated, "on-board" commercial bill-of-lading in English for each shipment of cargo described herein to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the recipient (through contractor in the case of a subcontractor's bill-of-lading.); c. include these requirements in all subcontracts issued pursuant to this contract when the subcontract involves the transport of equipment, material or commodities by ocean vessel.

5.4 **Seismic Safety**

Construction of new buildings or additions to existing buildings. These requirements do not apply to micro- purchases ($3,000 or less, except for construction contracts over $2,000).

Contractor agrees that any new building or addition to an existing building shall be designed and constructed in accordance with the standards required in USDOT Seismic Safety Regulations 49 CFR 41 and shall certify compliance to the extent required by the regulation. Contractor shall also ensure that all work performed under this contract, including work performed by subcontractors, complies with the standards required by 49 CFR 41 and the certification of compliance issued on the project.

5.5 **Energy Conservation**

All Contracts except micro-purchases ($3,000 or less, except for construction contracts over $2,000).

Contractor shall comply with mandatory standards and policies relating to energy efficiency, stated in the state energy conservation plan issued in compliance with the Energy Policy & Conservation Act.

5.6 **Clean Water**

All Contracts and Subcontracts over $100,000.

Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq. Contractor shall report each violation to the County and understands and agrees that the County shall, in turn, report each violation as required to FTA and the appropriate EPA Regional Office. Contractor shall include these requirements in each subcontract exceeding $100,000 financed in whole or in part with FTA assistance.

5.7 **Lobbying**

Construction/Architectural and Engineering/Acquisition of Rolling Stock/Professional Service Contract/Operational Service Contract/Turnkey contracts over $100,000.

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104- 65 [to be codified at 2 U.S.C. § 1601, et seq.] - Contractors who apply or bid for an award of $100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non- Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the County.

5.8 **Access to Records and Reports**

Applicability – As shown below. These requirements do not apply to micro-purchases ($3,000 or less, except for construction contracts over $2,000)

The following access to records requirements apply to this Contract:

1. Where the purchaser is not a State but a local government and is an FTA recipient or a sub-grantee of FTA recipient in accordance with 49 CFR 18.36(i), contractor shall provide the purchaser, the FTA, the US Comptroller General or their authorized representatives access to any books, documents, papers and contractor records which are pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor shall also, pursuant to 49 CFR 633.17, provide authorized FTA representatives, including any PMO contractor, access to contractor's records and construction sites pertaining to a capital project, defined at 49 USC 5302(a)1, which is receiving FTA assistance through the programs described at 49 USC 5307, 5309 or 5311.

2. Where the purchaser is a State and is an FTA recipient or a sub-grantee of FTA recipient in accordance with 49 CFR 633.17, contractor shall provide the purchaser, authorized FTA representatives, including any PMO Contractor, access to contractor's records and construction sites pertaining to a capital project, defined at 49 USC 5302(a)1, which receives FTA assistance through the programs described at 49 USC 5307, 5309 or 5311. By definition, a capital project excludes contracts of less than the simplified acquisition threshold currently set at $100,000.

3. Where the purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is an FTA recipient or a sub-grantee of FTA recipient in accordance with 49 CFR 19.48, contractor shall provide the purchaser, the FTA, the US Comptroller General or their authorized representatives, access to any books, documents, papers and record of the contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.

4. Where a purchaser which is an FTA recipient or a sub-grantee of FTA recipient in accordance with 49 USC 5325(a) enters into a contract for a capital project or improvement (defined at 49 USC 5302(a)(1) through other than competitive bidding, contractor shall make available records related to the contract to the purchaser, the Secretary of USDOT and the US Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

5. Contractor shall permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

6. Contractor shall maintain all books, records, accounts and reports required under this contract for a period of not less than three (3) years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case contractor agrees to maintain same until the recipient, FTA Administrator, US Comptroller General, or any of their authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Re: 49 CFR 18.39(i)(11).

FTA does not require the inclusion of these requirements in subcontracts.

5.9 **Federal Changes**

All Contracts except micro-purchases ($3,000 or less, except for construction contracts over $2,000)

Contractor shall comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the purchaser and FTA, as they may be amended or promulgated from time to time during the term of the contract. Contractor's failure to comply shall constitute a material breach of the contract.

5.10 **Bonding Requirements**

Applicability – For those construction or facility improvement contracts or subcontracts exceeding $100,000, FTA may accept the bonding policy and requirements of the County, provided that they meet the minimum requirements for construction contracts as follows:

1. A bid guarantee from each bidder equivalent to five (5) percent of the bid price. The "bid guarantees" shall consist of a firm commitment such as a bid bond, certifies check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

2. A performance bond on the part to the Contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

3. A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment, as required by law, of all persons supplying labor and material in the execution of the work provided for in the contract.
   i.

The undersigned understands that any material alteration of any of the above or any of the material contained on this form, other than that requested will render the bid unresponsive.

4. Performance and Payment Bonding Requirements (Construction)

   The Contractor shall be required to obtain performance and payment bonds as follows:

   A. Performance Bonds
      i. The penal amount of performance bonds shall be 100 percent of the original contract price, unless the County determines that a lesser amount would be adequate for the protection of the County.

      ii. The County may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The County may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

   B. Payment Bonds
      The penal amount of the payment bonds shall equal 100% of the original contract price.

C. Patent Infringement Bonding Requirements (Patent Indemnity)
The Contractor may be required to obtain a patent indemnity bond if a performance bond is not furnished and the financial responsibility of the Contractor is unknown or doubtful. The County shall determine the amount of the patent indemnity to protect the County.

5.11 **Warranty of the Work and Maintenance Bonds**

1. The Contractor warrants to County, the Architect and/or Engineer that all materials and equipment furnished under this Contract will be of highest quality and new unless otherwise specified by County, free from faults and defects and in conformance with the Contract Documents. All work not so conforming to these standards shall be considered defective. If required by the [Project Manager], the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

2. The Work furnished must be of first quality and the workmanship must be the best obtainable in the various trades. The Work must be of safe, substantial and durable construction in all respects. The Contractor hereby guarantees the Work against defective materials or faulty workmanship for a minimum period of one (1) year after Final Payment by County and shall replace or repair any defective materials or equipment or faulty workmanship during the period of the guarantee at no cost to County. As additional security for these guarantees, the Contractor shall, prior to the release of Final Payment [as provided in Item X below], furnish separate Maintenance (or Guarantee) Bonds in form acceptable to County written by the same corporate surety that provides the Performance Bond and Labor and Material Payment Bond for this Contract. These bonds shall secure the Contractor's obligation to replace or repair defective materials and faulty workmanship for a minimum period of one (1) year after Final Payment and shall be written in an amount equal to ONE HUNDRED PERCENT (100%) of the CONTRACT SUM, as adjusted (if at all).

5.12 **Clean Air**

1. Contractor shall comply with all applicable standards, orders or regulations pursuant to the Clean Air Act, 42 USC 7401 et seq. Contractor shall report each violation to the County and understands and agrees that the County will, in turn, report each violation as required to FTA and the appropriate EPA Regional Office.

2. Contractor shall include these requirements in each subcontract exceeding $100,000 financed in whole or in part with FTA assistance.

5.13 **Recycled Products**
All contracts for items designated by the EPA, when the purchaser or contractor procures $10,000 or more of one of these items during the current or previous fiscal year using Federal funds.

The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive

Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

5.14 Davis-Bacon and Copeland Anti-Kickback Acts

(1) **Minimum wages –**

(i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

1. Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and
2. The classification is utilized in the area by the construction industry; and
3. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and
4. With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(v)(A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

1. The work to be performed by the classification requested is not performed by a classification in the wage determination; and

2. The classification is utilized in the area by the construction industry; and

3. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination with 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(v) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(2) **Withholding** - The County shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the County may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) **Payrolls and basic records –**

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the

commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the County for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

1. That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete;
2. That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;
3. That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) **Apprentices and trainees –**

(i) *Apprentices* - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination.

Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) *Trainees* - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination.

Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices.

Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the

ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) *Equal employment opportunity* - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) **Compliance with Copeland Act requirements** - The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) **Subcontracts** - The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) **Contract termination: debarment** - A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) **Compliance with Davis-Bacon and Related Act requirements** - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) **Disputes concerning labor standards** - Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) **Certification of eligibility** - (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

5.15 **Contract Work Hours & Safety Standards Act**
Applicability – Contracts over $100,000

1. Overtime requirements - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in

which he or she is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

2. Violation; liability for unpaid wages; liquidated damages - In the event of any violation of the clause set forth in para. (1) of this section, contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in para. (1) of this section, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in para. (1) of this section.

3. Withholding for unpaid wages and liquidated damages - the County shall upon its own action or upon written request of USDOL withhold or cause to be withheld, from any moneys payable on account of work performed by contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours & Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in para. (2) of this section.

4. Subcontracts - Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. Prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.

5.15 **No Government Obligation to Third Parties**

Applicability – All contracts except micro-purchases ($3,000 or less, except for construction contracts over $2,000)

1. The County and contractor acknowledge and agree that, notwithstanding any concurrence by the US Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the US Government, the US Government is not a party to this contract and shall not be subject to any obligations or liabilities to the County, the contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

2. Contractor agrees to include the above clause in each subcontract financed in whole or in part with FTA assistance. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

5.16 **Program Fraud and False or Fraudulent Statements or Related Acts**

Applicability – All contracts except micro-purchases ($3,000 or less, except for construction contracts over $2,000)

1. Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC 3801 et seq. and USDOT regulations, "Program Fraud Civil Remedies," 49 CFR 31, apply to its actions pertaining to this project. Upon execution of the underlying contract, contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification, the US Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act (1986) on contractor to the extent the US Government deems appropriate.

2. If contractor makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification to the US Government under a contract connected with a project that is financed in whole or in part with FTA assistance under the authority of 49 USC 5307, the Government reserves the right to impose the penalties of 18 USC 1001 and 49 USC 5307(n)(1) on contractor, to the extent the US Government deems appropriate.

3. Contractor shall include the above two clauses in each subcontract financed in whole or in part with FTA assistance. The clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

5.17 **Termination**

Applicability – All Contracts over $10,000, except contracts with nonprofit organizations and institutions of higher learning, where the threshold is $100,000.

1. Termination for Convenience (General Provision) the County may terminate this contract, in whole or in part, at any time by written notice to contractor when it is in the County's best interest. Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. Contractor shall promptly submit its termination claim to the County. If contractor is in possession of any of the County's property, contractor shall account for same, and dispose of it as the County directs.

2. Termination for Default [Breach or Cause] (General Provision) If contractor does not deliver items in accordance with the contract delivery schedule, or, if the contract is for services, and contractor fails to perform in the manner called for in the contract, or if contractor fails to comply with any other provisions of the contract, the County may terminate this contract for default. Termination shall be effected by serving a notice of termination to contractor setting forth the manner in which contractor is in default. Contractor shall only be paid the contract price for supplies delivered and accepted, or for services performed in accordance with the manner of performance set forth in the contract. If it is later determined by the County that contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of contractor, the County, after setting up a new delivery or performance schedule, may allow contractor to continue work, or treat the termination as a termination for convenience.

3. Opportunity to Cure (General Provision) the County in its sole discretion may, in the case of a termination for breach or default, allow contractor an appropriately short period of time in which to cure the defect. In such case, the notice of termination

shall state the time period in which cure is permitted and other appropriate conditions If contractor fails to remedy to the County's satisfaction the breach or default or any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by contractor or written notice from the County setting forth the nature of said breach or default, the County shall have the right to terminate the Contract without any further obligation to contractor. Any such termination for default shall not in any way operate to preclude the County from also pursuing all available remedies against contractor and its sureties for said breach or default.

4. Waiver of Remedies for any Breach In the event that the County elects to waive its remedies for any breach by contractor of any covenant, term or condition of this Contract, such waiver by the County shall not limit its remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

5. Termination for Convenience (Professional or Transit Service Contracts) the County, by written notice, may terminate this contract, in whole or in part, when it is in the County's interest. If the contract is terminated, the County shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

6. Termination for Default (Supplies and Service) If contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the contractor fails to comply with any other provisions of this contract, the County may terminate this contract for default. The County shall terminate by delivering to contractor a notice of termination specifying the nature of default. Contractor shall only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract. If, after termination for failure to fulfill contract obligations, it is determined that contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the County's convenience.

7. Termination for Default (Transportation Services) If contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if contractor fails to comply with any other provisions of this contract, the County may terminate this contract for default. The County shall terminate by delivering to contractor a notice of termination specifying the nature of default. Contractor shall only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract. If this contract is terminated while contractor has possession of the County goods, contractor shall, as directed by the County, protect and preserve the goods until surrendered to the County or its agent. Contractor and the County shall agree on payment for the preservation and protection of goods. Failure to agree on an amount shall be resolved under the Dispute clause. If, after termination for failure to fulfill contract obligations, it is determined that contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the County's convenience.

8. Termination for Default (Construction) If contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified, or any extension, or fails to complete the work within this time, or if contractor fails to comply with any other provisions of this contract, the County may terminate this contract for default. the County shall terminate by delivering to contractor a notice of termination specifying the nature of default. In this event, the

County may take over the work and compete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. Contractor and its sureties shall be liable for any damage to the County resulting from contractor's refusal or failure to complete the work within specified time, whether or not contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the County in completing the work.

Contractor's right to proceed shall not be terminated nor shall contractor be charged with damages under this clause if:

1. Delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of contractor. Examples of such causes include: acts of God, acts of the County, acts of another contractor in the performance of a contract with the County, epidemics, quarantine restrictions, strikes, freight embargoes; and

2. Contractor, within 10 days from the beginning of any delay, notifies the County in writing of the causes of delay. If in the County's judgment, delay is excusable, the time for completing the work shall be extended. The County's judgment shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses. If, after termination of contractor's right to proceed, it is determined that contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if termination had been issued for the County's convenience.

3. Termination for Convenience or Default (Architect & Engineering) the County may terminate this contract in whole or in part, for the County's convenience or because of contractor's failure to fulfill contract obligations. The County shall terminate by delivering to contractor a notice of termination specifying the nature, extent, and effective date of termination. Upon receipt of the notice, contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the County all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process. If termination is for the County's convenience, it shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services. If termination is for contractor's failure to fulfill contract obligations, the County may complete the work by contact or otherwise and contractor shall be liable for any additional cost incurred by the County. If, after termination for failure to fulfill contract obligations, it is determined that contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the County's convenience.

4. Termination for Convenience or Default (Cost-Type Contracts) the County may terminate this contract, or any portion of it, by serving a notice or termination on contractor. The notice shall state whether termination is for convenience of the County or for default of contractor. If termination is for default, the notice shall state the manner in which contractor has failed to perform the requirements of the contract. Contractor shall account for any property in its possession paid for from funds received from the County, or property supplied to contractor by the County. If termination is for default, the County may fix the fee, if the contract provides for a fee, to be paid to contractor in proportion to the value, if any, of work performed up to the time of termination. Contractor shall promptly submit its termination claim to the

County and the parties shall negotiate the termination settlement to be paid to contractor. If termination is for the County's convenience, contractor shall be paid its contract close- out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination. If, after serving a notice of termination for default, the County determines that contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of contractor, the County, after setting up a new work schedule, may allow contractor to continue work, or treat the termination as a termination for convenience.

5.18 **Government Wide Debarment and Suspension (Non Procurement)**

The County agrees to the following: (1) It will comply with the requirements of 2 C.F.R. part 180, subpart C, as adopted and supplemented by U.S. DOT regulations at 2 C.F.R. part 1200, which include the following: (a) It will not enter into any arrangement to participate in the development or implementation of the Project with any Third Party Participant that is debarred or suspended except as authorized by: 1 U.S. DOT regulations, "Non-procurement Suspension and Debarment," 2 C.F.R. part 1200, 2 U.S. OMB, "Guidelines to Agencies on Government wide Debarment and Suspension (Non procurement)," 2 C.F.R. part 180, including any amendments thereto, and 3 Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101 note, (b) It will review the U.S. GSA "System for Award Management," https://www.sam.gov, if required by U.S. DOT regulations, 2 C.F.R. part 1200, and (c) It will include, and require each of its Third Party Participants to include, a similar provision in each lower tier covered transaction, ensuring that each lower tier Third Party Participant: 1 Will comply with Federal debarment and suspension requirements, and 2 Reviews the "System for Award Management" at https://www.sam.gov, if necessary to comply with U.S. DOT regulations, 2 C.F.R. part 1200, and (2) If the County suspends, debars, or takes any similar action against a Third Party Participant or individual, the County will provide immediate written notice to the: (a) FTA Regional Counsel for the Region in which the County is located or implements the Project, (b) FTA Project Manager if the Project is administered by an FTA Headquarters Office, or (c) FTA Chief Counsel.

5.19 **Contracts Involving Federal Privacy Act Requirements**

When a grantee maintains files on drug and alcohol enforcement activities for FTA, and those files are organized so that information could be retrieved by personal identifier, the Privacy Act requirements apply to all contracts except micro-purchases ($3,000 or less, except for construction contracts over $2,000)

The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

1. The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

2. The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

5.20 **Civil Rights Requirements**

Applicability – All contracts except micro-purchases ($3,000 or less, except for construction contracts over $2,000)

The following requirements apply to the underlying contract:

The County understands and agrees that it must comply with applicable Federal civil rights laws and regulations, and follow applicable Federal guidance, except as the Federal Government determines otherwise in writing. Therefore, unless a Recipient or Program, including an Indian Tribe or the Tribal Transit Program, is specifically exempted from a civil rights statute, FTA requires compliance with that civil rights statute, including compliance with equity in service:

1. Nondiscrimination in Federal Public Transportation Programs. The County agrees to, and assures that each Third Party Participant will, comply with Federal transit law, 49 U.S.C. § 5332 (FTA's "Nondiscrimination" statute):

   A. FTA's "Nondiscrimination" statute prohibits discrimination on the basis of: (a) Race, (b) Color, (c) Religion, (d) National origin, (e) Sex, (f) Disability, or (g) Age, and (2) The FTA "Nondiscrimination" statute's prohibition against discrimination includes: (a) Exclusion from participation, (b) Denial of program benefits, or (c) Discrimination, including discrimination in employment or business opportunity, (3) Except as FTA determines otherwise in writing: (a) General. Follow: 1 The most recent edition of FTA Circular 4702.1, "Title VI Requirements and Guidelines for Federal Transit Administration Recipients," to the extent consistent with applicable Federal laws, regulations, and guidance, and 2 Other applicable Federal guidance that may be issued, but (b) Exception for the Tribal Transit Program. FTA does not require an Indian Tribe to comply with FTA program-specific guidelines for Title VI when administering its projects funded under the Tribal Transit Program:

   B. Nondiscrimination – Title VI of the Civil Rights Act. The County agrees to, and assures that each Third Party Participant will: (1) Prohibit discrimination based on: (a) Race, (b) Color, or (c) National origin, (2) Comply with: (a) Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d et seq., (b) U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964," 49 C.F.R. part 21, and (c) Federal transit law, specifically 49 U.S.C. § 5332, as stated in the preceding section a, and (3) Except as FTA determines otherwise in writing, follow: (a) The most recent edition of FTA Circular 4702.1, "Title VI and Title VI-Dependent Guidelines for Federal Transit Administration Recipients," to the extent consistent with applicable Federal laws, regulations, and guidance. (b) U.S. DOJ, "Guidelines for the enforcement of Title VI, Civil Rights Act of 1964," 28 C.F.R. § 50.3, and (c) Other applicable Federal guidance that may be issued,

   C. Equal Employment Opportunity. (1) Federal Requirements and Guidance. The County agrees to, and assures that each Third Party Participant will, prohibit discrimination on the basis of race, color, religion, sex, or national

origin, and: (a) Comply with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq., (b) Facilitate compliance with Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order No. 11246, Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note, (c) Comply with Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a, and (d) Comply with other applicable EEO laws and regulations, as provided in Federal guidance, including laws and regulations prohibiting discrimination on the basis of disability, except as the Federal Government determines otherwise in writing, (2) General. The County agrees to: (a) Ensure that applicants for employment are employed and employees are treated during employment without discrimination on the basis of their: 1 Race, 2 Color, 3 Religion, 4 Sex, 5 Disability, 6 Age, or 7 National origin, (b) Take affirmative action that includes, but is not limited to: 1 Recruitment advertising, 2 Recruitment, 3 Employment, 4 Rates of pay, 5 Other forms of compensation, 6 Selection for training, including apprenticeship, 7 Upgrading, 8 Transfers, 9 Demotions, 10 Layoffs, and 11 Terminations, but (b) Indian Tribe. Title VII of the Civil Rights Act of 1964, as amended, exempts Indian Tribes under the definition of "Employer".

D. Equal Employment Opportunity Requirements for Construction Activities. In addition to the foregoing, when undertaking "construction" as recognized by the U.S. Department of Labor (U.S. DOL), the County agrees to comply, and assures the compliance of each Third Party Participant, with: (a) U.S. DOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and (b) Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order No. 11246, Relating to Equal Employment Opportunity," 42 U.S.C.§ 2000e note,

E. Disadvantaged Business Enterprise. To the extent authorized by applicable Federal law, the County agrees to facilitate, and assures that each Third Party Participant will facilitate, participation by small business concerns owned and controlled by socially and economically disadvantaged individuals, also referred to as "Disadvantaged Business Enterprises" (DBEs), in the Project as follows: 1) Requirements. The County agrees to comply with: (a) Section 1101(b) of MAP-21, 23 U.S.C. § 101 note, (b) U.S. DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 C.F.R. part 26, and (c) Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a, (2) Assurance. As required by 49 C.F.R. § 26.13(a), (b) DBE Program Requirements. Recipients receiving planning, capital and/or operating assistance that will award prime third party contracts exceeding $250,000 in a Federal fiscal year must: 1 Have a DBE program meeting the requirements of 49 C.F.R. part 26, 2 Implement a DBE program approved by FTA, and 3 Establish an annual DBE participation goal, (c) Special Requirements for a Transit Vehicle Manufacturer. The County understands and agrees that each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, must certify that it has complied with the requirements of 49 C.F.R. part 26, (d) the County provides assurance that: The County shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 C.F.R. part 26. The County shall take all necessary and reasonable steps under

49 C.F.R. part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The County's DBE program, as required by 49 C.F.R. part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the County of its failure to carry out its approved program, the Department may impose sanctions as provided for under 49 C.F.R. part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. § 1001 and/or the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. § 3801 et seq., (2) Exception for the Tribal Transit Program. FTA exempts Indian tribes from the Disadvantaged Business Enterprise regulations at 49 C.F.R. part 26 under MAP-21 and previous legislation,

F. Nondiscrimination on the Basis of Sex. The County agrees to comply with Federal prohibitions against discrimination on the basis of sex, including: (1) Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 et seq., (2) U.S. DOT regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. part 25, and (3) Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a,

G. Nondiscrimination on the Basis of Age. The County agrees to comply with Federal prohibitions against discrimination on the basis of age, including: (1) The Age Discrimination in Employment Act (ADEA), 29 U.S.C. §§ 621 – 634, which prohibits discrimination on the basis of age, (2) U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, which implements the ADEA, (3) The Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., which prohibits discrimination against individuals on the basis of age in the administration of programs or activities receiving Federal funds, (4) U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, which implements the Age Discrimination Act of 1975, and (5) Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a,

H. Nondiscrimination on the Basis of Disability. The County agrees to comply with the following Federal prohibitions pertaining to discrimination against seniors or individuals with disabilities: (1) Federal laws, including: (a) Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of disability in the administration of federally funded programs or activities, (b) The Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. § 12101 et seq., which requires that accessible facilities and services be made available to individuals with disabilities, 1 General. Titles I, II, and III of the ADA apply to FTA Recipients, but 2 Indian Tribes. While Titles II and III of the ADA apply to Indian Tribes, Title I of the ADA exempts Indian Tribes from the definition of "employer," (c) The Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., which requires that buildings and public accommodations be accessible to individuals with disabilities, (d) Federal transit law, specifically 49 U.S.C. § 5332, which now includes disability as a prohibited basis for discrimination, and (e) Other applicable laws and amendments pertaining to access for elderly individuals or individuals with disabilities, (2) Federal regulations, including: (a) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. part 37, (b) U.S. DOT

regulations, "Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. part 27, (c) U.S. DOT regulations, "Transportation for Individuals with Disabilities: Passenger Vessels," 49 C.F.R. part 39, (d) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB) and U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. part 1192 and 49 C.F.R. part 38, (e) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. part 35, (f) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. part 36, (g) U.S. EEOC, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. part 1630, (h) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities," 47 C.F.R. part 64, Subpart F, (i) U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. part 1194, and (j) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. part 609, and (3) Other applicable Federal civil rights and nondiscrimination guidance,

I. Drug or Alcohol Abuse - Confidentiality and Other Civil Rights Protections. The County agrees to comply with the confidentiality and civil rights protections of: (1) The Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. § 1101 et seq., (2) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. § 4541 et seq., and (3) The Public Health Service Act, as amended, 42 U.S.C. §§ 290dd – 290dd-2,

J. Access to Services for People with Limited English Proficiency. Except as the Federal Government determines otherwise in writing, the County agrees to promote accessibility of public transportation services to people whose understanding of English is limited by following: 1) Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," August 11, 2000, 42 U.S.C. § 2000d-1 note, and (2) U.S. DOT Notice, "DOT Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficiency (LEP) Persons," 70 Fed. Reg. 74087, December 14, 2005,

K. Other Nondiscrimination Laws. Except as the Federal Government determines otherwise in writing, the County agrees to: (1) Comply with other applicable Federal nondiscrimination laws and regulations, and (2) Follow Federal guidance prohibiting discrimination.

L. Remedies. Remedies for failure to comply with applicable Federal Civil Rights laws and Federal regulations may be enforced as provided in those Federal laws or Federal regulations.

5.21 **Breaches and Dispute Resolution**
All contracts over $100,000

Disputes arising in the performance of this contract which are not resolved by agreement of the parties shall be decided in writing by the County's authorized representative. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, contractor mails or otherwise furnishes a written appeal to the County's CEO.

In connection with such appeal, contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the County's CEO shall be binding upon contractor and contractor shall abide by the decision. FTA has a vested interest in the settlement of any violation of Federal law including the False Claims Act, 31 U.S.C. § 3729.

Performance During Dispute - Unless otherwise directed by the County, contractor shall continue performance under this contract while matters in dispute are being resolved.

Claims for Damages - Should either party to the contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within ten days after the first observance of such injury or damage.

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the County and contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the residing State.

Rights and Remedies - Duties and obligations imposed by the contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the County or contractor shall constitute a waiver of any right or duty afforded any of them under the contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

5.22 **Disadvantaged Business Enterprise**

Contracts over $3,000 awarded on the basis of a bid or proposal offering to use DBEs

1. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 7%.

2. The contractor shall not discriminate on the basis of race, color, religion, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the municipal corporation deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

3. If a separate contract goal has been established, Bidders/offerors are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53.

4. If no separate contract goal has been established, the successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

5. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from the County. In addition, the contractor may not hold retainage from its subcontractors or must return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed or must return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor's work by the County and contractor's receipt of the partial retainage payment related to the subcontractor's work.

6. The contractor must promptly notify the County whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the County.

5.23 **Prompt payment**

Applicability – All contracts except micro-purchases ($3,000 or less, except for construction contracts over $2,000)

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contract receives from the County. The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractors work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the County. This clause applies to both DBE and non-DBE subcontracts.

5.24 **Incorporation of Federal Transit Administration (FTA) Terms**

All contracts except micro-purchases ($3,000 or less, except for construction contracts over $2,000)

The preceding provisions include, in part, certain Standard Terms & Conditions required by USDOT, whether or not expressly stated in the preceding contract provisions. All USDOT-required contractual provisions, as stated in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The contractor shall not perform any act, fail to perform any act, or refuse to comply with any request that would cause the County to be in violation of FTA terms and conditions.

5.25 **Other Federal Requirements**

The following requirements are not federal clauses.

1. **Full and Open Competition**

In accordance with 49 U.S.C. § 5325(a) all procurement transactions shall be conducted in a manner that provides full and open competition.

2. **Prohibition Against Exclusionary or Discriminatory Specifications**

Apart from inconsistent requirements imposed by Federal statute or regulations, the contractor shall comply with the requirements of 49 USC 5323(h)(2) by refraining

from using any FTA assistance to support procurements using exclusionary or discriminatory specifications.

5.26 **Conformance with ITS National Architecture**
Contractor shall conform, to the extent applicable, to the National Intelligent Transportation Standards architecture as required by SAFETEA-LU Section 5307(c), 23 U.S.C. Section 512 and as amended by MAP-21 23 U.S.C. § 517(d), note and follow the provisions of FTA Notice, "FTA National Architecture Policy on Transit Projects," 66 Fed. Reg.1455 et seq., January 8, 2001, and any other implementing directives FTA may issue at a later date, except to the extent FTA determines otherwise in writing.

5.27 **Access Requirements for Persons with Disabilities**
Contractor shall comply with 49 USC 5301(d), stating Federal policy that the elderly and persons with disabilities have the same rights as other persons to use mass transportation services and facilities and that special efforts shall be made in planning and designing those services and facilities to implement that policy. Contractor shall also comply with all applicable requirements of Sec. 504 of the Rehabilitation Act (1973), as amended, 29 USC 794, which prohibits discrimination on the basis of handicaps, and the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments thereto.

5.28 **Notification of Federal Participation**
To the extent required by law, in the announcement of any third party contract award for goods and services (including construction services) having an aggregate value of $500,000 or more, contractor shall specify the amount of Federal assistance to be used in financing that acquisition of goods and services and to express that amount of Federal assistance as a percentage of the total cost of the third party contract.

5.29 **Interest of Members or Delegates to Congress**
No members of, or delegates to, the US Congress shall be admitted to any share or part of this contract nor to any benefit arising therefrom.

5.30 **Ineligible Contractors and Subcontractors**
Any name appearing upon the Comptroller General's list of ineligible contractors for federally-assisted contracts shall be ineligible to act as a subcontractor for contractor pursuant to this contract. If contractor is on the Comptroller General's list of ineligible contractors for federally financed or assisted construction, the County shall cancel, terminate or suspend this contract.

5.31 **Other Contract Requirements**
To the extent not inconsistent with the foregoing Federal requirements, this contract shall also include those provisions attached hereto, and shall comply with the County's Procurement Guidelines, available upon request from the County.

5.32 **Compliance with Federal Regulations**
Any contract entered pursuant to this solicitation shall contain the following provisions: All USDOT-required contractual provisions, as set forth in FTA Circular 4220.1F, are incorporated by reference. Anything to the contrary herein notwithstanding, FTA mandated terms shall control in the event of a conflict with other provisions contained in this Agreement. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any grantee request that would cause the County to be in violation of FTA terms and conditions. Contractor shall comply with all applicable FTA regulations,

policies, procedures and directives, including, without limitation, those listed directly or incorporated by reference in the Master Agreement between the County and FTA, as may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

5.33 **Real Property**

Any contract entered into shall contain the following provisions: Contractor shall at all times comply with all applicable statutes and USDOT regulations, policies, procedures and directives governing the acquisition, use and disposal of real property, including, but not limited to, 49 CFR 18.31-18.34, 49 CFR 19.30-19.37, 49 CFR Part 24, 49 CFR 5326 as amended by MAP-21, 49 CFR part 18 or 19, 49 USC 5334, applicable FTA Circular 5010, and FTA Master Agreement, as they may be amended or promulgated during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

5.34 **Access to Services for Persons with Limited English Proficiency**

To the extent applicable and except to the extent that FTA determines otherwise in writing, the County agrees to comply with the policies of Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," 42 U.S.C. § 2000d 1 note, and with the provisions of U.S. DOT Notice, "DOT Guidance to Recipients on Special Language Services to Limited English Proficient (LEP) Beneficiaries," 70 Fed. Reg. 74087, December 14, 2005.

5.35 **Environmental Justice**

Except as the Federal Government determines otherwise in writing, the County agrees to promote environmental justice by following: (1) Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low- Income Populations," February 11, 1994, 42 U.S.C. § 4321 note, as well as facilitating compliance with that Executive Order, and (2) DOT Order 5610.2, "Department of Transportation Actions To Address Environmental Justice in Minority Populations and Low-Income Populations," 62 Fed. Reg. 18377, April 15, 1997, and (3) The most recent and applicable edition of FTA Circular 4703.1, "Environmental Justice Policy Guidance for Federal Transit Administration Recipients," August 15, 2012, to the extent consistent with applicable Federal laws, regulations, and guidance,

5.36 **Environmental Protections**

Compliance is required with any applicable Federal laws imposing environmental and resource conservation requirements for the project. Some, but not all, of the major Federal laws that may affect the project include: the National Environmental Policy Act of 1969; the Clean Air Act; the Resource Conservation and Recovery Act; the comprehensive Environmental response, Compensation and Liability Act; as well as environmental provisions with Title 23 U.S.C., and 49 U.C. chapter 53. The U.S. EPA, FHWA and other federal agencies may issue other federal regulations and directives that may affect the project. Compliance is required with any applicable Federal laws and regulations in effect now or that become effective in the future.

5.37 **Geographic Information and Related Spatial Data**

Any project activities involving spatial data or geographic information systems activities financed with Federal assistance are required to be consistent with the National Spatial Data Infrastructure promulgated by the Federal Geographic Data Committee, except to the extent that FTA determines otherwise in writing.

5.38 **Geographic Restrictions**

The County agrees that it will not use any State or local geographic preference, except: (1) A preference expressly mandated by applicable Federal law, or (2) A preference permitted by FTA; for example, a contractor's geographic location may be a selection criterion for a County that is procuring architectural engineering or related services, provided that a sufficient number of qualified firms are eligible to compete for that contract, or (3) As provided in section 418 of the Consolidated and Further Continuing Appropriations Act, 2015, Public Law No. 113-235, December 15, 2014, geographic preferences in construction hiring are protected from enforcement under former 49 C.F.R. § 18.36(c)(2), in accordance with any applicable federal regulations, requirements, and guidance and as implemented by FTA.

5.39 **Organizational Conflicts of Interest**

The County agrees that it will not enter into a procurement that involves a real or apparent organizational conflict of interest described as follows: (1) When It Occurs. An organizational conflict of interest occurs when the Project work, without appropriate restrictions on certain future activities, results in an unfair competitive advantage: (a) To that Third Party Participant or another Third Party Participant performing the Project work, and (b) That impairs that Third Party Participant's objectivity in performing the Project work, or (2) Other. An organizational conflict of interest may involve other situations resulting in fundamentally unfair competitive conditions, (3) Disclosure Requirements. Consistent with FTA policies, the County must disclose to FTA, and each of its Sub-recipients must disclose to the Recipient: (a) Any instances of organizational conflict of interest, or (b) Violations of federal criminal law, involving fraud, bribery, or gratuity violations potentially affecting the federal award, and (4) Failure to Disclose. Failure to make required disclosures can result in remedies for noncompliance, including debarment or suspension.

5.40 **Federal Single Audit Requirements for State Administered Federally Aid Funded Projects Only**

Non Federal entities that expend $750,000 or more in a year in Federal awards from all sources are required to comply with the Federal Single Audit Act provisions contained in U.S. Office of Management and Budget (OMB) Circular No. A 133, Audits of States, Local Governments, and Non Profit Organizations and (2 CFR § 200.501). Non Federal entities that expend Federal awards from a single source may provide a program specific audit, as defined in the Circular. Non Federal entities that expend less than $750,000 in a year in Federal awards from all sources are exempt from Federal audit requirements for that year, except as noted in '3052.215(a), but records must be available for review or audit by appropriate officials of the Federal and State agencies.

5.41 **Catalog of Federal Domestic Assistance (CFDA) Identification Number**

The municipal project sponsor is required to identify in its accounts all Federal awards received and expended, and the Federal programs under which they were received. Federal program and award identification shall include, as applicable, the CFDA title and number, award number and year, name of the Federal agency, and name of the pass through entity.

5.42 **CFDA number for the Federal Transportation Administration**

A Recipient covered by the Single Audit Act Amendments of 1996 and OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations," agrees to separately identify the expenditures for Federal awards under the Recovery Act on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by OMB Circular A-133. The County agrees to accomplish this by identifying expenditures for Federal awards made under Recovery Act separately on the

SEFA, and as separate rows under Item 9 of Part III on the SF-SAC by CFDA number, and inclusion of the prefix "ARRA" in identifying the name of the Federal program on the SEFA and as the first characters in Item 9d of Part III on the SF-SAC.

5.43 BUY AMERICA CERTIFICATION
(STEEL OR MANUFACTURED PRODUCTS)
[61 FR 6302, Feb. 16, 1996, as amended at 74 FR 30239, June 25, 2009]

General Requirement (as stated in 49 CFR661.5)

Except as provided in 49 CFR 661.7 and 49 CFR 661.11, no funds may be obligated by FTA for a grantee project unless all iron, steel, and manufactured products used in the project are produced in the United States.

All steel and iron manufacturing processes must take place in the United States, except metallurgical processes involving refinement of steel additives.

The steel and iron requirements apply to all construction materials made primarily of steel or iron and used in infrastructure projects such as, transit or maintenance facilities, rail lines, and bridges. These items include, but are not limited to, structural steel or iron, steel or iron beams and columns, running rail and contact rail. These requirements do not apply to steel or iron used as components or subcomponents of other manufactured products or rolling stock, or to bimetallic power rail incorporating steel or iron components.

For a manufactured product to be considered produced in the United States:

(1) All of the manufacturing processes for the product must take place in the United States; and

(2) All of the components of the product must be of U.S. origin. A component is considered of U.S. origin if it is manufactured in the United States, regardless of the origin of its subcomponents.

If steel, iron, or manufactured products (as defined in 49 CFR 661.3 and 661.5) are being procured, the appropriate certificate as set forth below shall be completed and submitted by each bidder or offeror in accordance with the requirement contained in 49 CFR 661.13(b).

☐ **Certificate of Non-Compliance with Buy America Steel or Manufactured Products Requirements** The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j), but it may qualify for an exception to the requirement pursuant to 49 U.S.C. 5323(j)(2), as amended, and the applicable regulations in 49 C.F.R. 661.7.

☐ **Certificate of Compliance with Buy America Requirements.**
The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(1), and the applicable regulations in 49 CFR part 661.

Signature Nick Nitch Date 4/19/2016

Company W+J Construction Corp.

IN WITNESS WHEREOF, the parties have affixed their signatures, effective on the date first above written.

ATTEST:

Scott Ellis, Clerk

BREVARD COUNTY

BOARD OF COUNTY COMMISSIONERS

By: _____
Jim Barfield, Chairman

As approved by the Board on: 1/27/15

ATTEST:

W&J CONSTRUCTION CORPORATION

By: NICK WITEK / PRESIDENT
Printed Name & Title

ATTACHMENT "A"
AGREEMENT
BETWEEN OWNER AND CONSTRUCTION MANAGER

THIS AGREEMENT made the __ day of _____ in the year Two Thousand Sixteen between the **BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS**, a political subdivision of the State of Florida whose address is 2725 Judge Fran Jamieson Way, Viera, Florida 32940 (hereinafter referred to as "Owner"), and _____ whose address is _____ (hereinafter referred to as "Construction Manager"), a company licensed to do business in the State of Florida.

ARTICLE 1

THE CONSTRUCTION TEAM AND EXTENT OF AGREEMENT

The Construction Manager accepts the relationship of trust and confidence established between him and the Owner by this Agreement. The Construction Manager covenants with the Owner to furnish the best skill and judgment and to cooperate with the Architect/Engineer in furthering the interests of the Owner. The Construction Manager agrees to furnish efficient business administration and superintendence and use its best efforts to complete the Project in the best and soundest way, and in the most expeditious and economical manner consistent with the interest of the Owner.

1.1 The Construction Team - The Construction Manager, the Owner and the Architect/Engineer, called the "Construction Team", shall work jointly during design and through final construction completion and shall be available thereafter should additional services be required. The Architect/Engineer will provide leadership during the Design Phase, with support from the Construction Manager, and the Construction Manager shall provide leadership to the Construction Team on all matters relating to construction.

The specific representatives of the Construction Team are shown in **Attachment "A"** attached.

1.2 Scope of Work – A general description of the Work/Project to be built/constructed/installed under this Agreement (**Attachment "B"**).

1.3 Definitions:

Project - The Project is the total work to be performed under this Agreement. The Project consists of planning, design review, permitting, construction (which includes all labor, equipment, material and supervision) and code inspection necessary to build/construct and complete the Scope of Work identified in Attachment "B" (Scope of Work).

Owner - Brevard County Board of County Commissioners, Central Services Department - Facilities, 2725 Judge Fran Jamieson Way, Building A, 2nd Floor, Viera, Florida 32940, (321) 633-2050; facsimile (321) 633-2101. For the purposes of this agreement, the Owner may also include the County Manager or the Project Director with regard to the performance of designated functions and duties specified for each under the terms and provisions of this agreement.

Contract Documents - Consist of this Agreement with attachments, Scope of Work, the drawings, the specifications, the GMP, any Conditions of the Contract between the Owner and the Construction Manager (General, Special, Supplementary and other conditions), permit conditions, if any, grant specifications, any addenda to the foregoing listed documents and all change orders, amendments or modifications as provided in Article 10, whether or not any of the foregoing listed documents have been attached hereto.

Permitting Authority - All applicable Federal, State, County and local agencies responsible for permitting and code inspections on projects administered by the Owner.

Construction Manager –

Architect/Engineer –

Project Director - The person designated by the Owner to provide direct interface with the Construction Manager with respect to the Owner's responsibilities. Joan Van Sickle is the designated Project Director, and _____ is the designated Construction Coordinator.

Owner's Representatives - The Project Director and his/her supervisors and/or designees.

Estimate - The Construction Manager's latest estimate of probable Project construction cost.

Guaranteed Maximum Price (GMP) - The Guaranteed Maximum Price for the construction of the project, which shall be subject to adjustments only as provided herein. GMP includes Cost of the Work and Construction Manager's fee for Construction Phase services. The Guaranteed Maximum Price does include the cost for Owner direct purchases, however, all Owner direct purchases will be deducted in one deductive change order in accordance with **Attachment "C"** (Direct Purchasing Procedure) at the end of the project.

Substantial Completion - the point in the construction where all essential elements of the Project are sufficiently complete in conformance with the Contract, that the OWNER has both the occupancy of the Project, as evidenced by a Certificate of Occupancy issued by the governmental authority with

jurisdiction and the beneficial use of the Project for its intended purpose where only minor punch list items are required for final completion. Substantial Completion shall not be deemed to have occurred where 1) latent defects are revealed subsequent to use and occupation of the project by the OWNER or 2) where the scope of substantial defects in workmanship or materials are not readily observable or discoverable when use and occupancy of the project commenced or 3) the failure to meet grant specifications, if any.

1.4 Extent of Agreement - This Agreement for Construction Management services for the construction of the _____ between the Owner and the Construction Manager supersedes any prior negotiations, representations or agreements. The drawings, specifications and other descriptive documents defining the work to be included under this construction contract are identified in **Attachment "D"**. The Construction Manager shall obtain from the Owner three (3) sets of signed, sealed and dated drawings, specifications and other documents upon which the GMP is based; shall acknowledge on the face of each document of each set that it is the set upon which he based his GMP; and shall send one (1) set of the documents to the Project Director along with his GMP proposal, while keeping one (1) set for himself and returning one (1) set to the Architect/Engineer.

This Agreement shall not be superseded by any provisions of the documents for construction and may be amended only by written instrument signed by both Owner and Construction Manager.

ARTICLE 2

CONSTRUCTION MANAGER'S RESPONSIBILITIES

Construction Manager shall perform all services described in this Article. The services to be provided under Paragraph 2.1 constitute the Pre-Construction Phase services. The services to be provided under Paragraph 2.2 thru 2.9 constitute the Construction Phase services. The parties acknowledge the Construction Phase shall commence before the Pre-Construction Phase is completed, and to a certain extent both phases shall proceed concurrently.

2.1 PRE-CONSTRUCTION PHASE

2.1.1 Preliminary Evaluation - Construction Manager shall provide a preliminary evaluation of Owner's program and Project budget requirements, each in terms of the other.

2.1.2 Consultation - Construction Manager will provide Design Disciplines Construction Documents Plans and Specifications review at all design milestones and a final constructability review. The review at each milestone will identify areas of omission, overlapping and identify documents to be modified in order to clarify

the construction details. The review will also include the coordination and interface of the contract document's General Conditions, Special Conditions, trade contractor bid packages and site utilization planning during construction. Reviews shall be completed and comments provided within five (5) business days. As part of the design review, Construction Manager will provide Value Engineering and construction alternatives, identifying to the Owner and Architect options for systems and components that are cost effective, ease of maintainability and efficiency to be considered.

Construction Manager, with Architect, has scheduled and attended, and will continue to jointly schedule and attend, **weekly** progress meetings (*or as determined by the Project Director or Project Manager*) with Owner and Architect. Construction Manager has and will continue to consult with Owner and Architect regarding site use and improvements, and the selection of materials, building systems and equipment. Construction Manager has provided and will continue to provide recommendations on construction feasibility; actions designated to minimize adverse effects of labor or material shortages; time requirements for procurement, installation and construction completion; and factors related to construction cost including estimates of alternative designs or materials, preliminary budgets and possible economies.

2.1.3 Preliminary Project Schedule - Construction Manager has prepared a Preliminary Project Schedule, a copy of which is attached as **Attachment "E"**. Construction Manager shall coordinate and integrate the Preliminary Project Schedule with the services and activities of Owner, Architect and Construction Manager. The Construction Manager shall provide current scheduling information and provide direction and coordination regarding milestones, beginning and finishing dates, responsibilities for performance and the relationships of the Construction Manager's work to the work of his subcontractors and suppliers to enable them to perform their respective tasks so that the development of construction progresses in a smooth and efficient manner in conformance with the overall Total Project Schedule. The schedule shall include all phases of construction work, material supplies, long lead procurement, approval of shop drawings, change orders in progress, schedules for change orders, and performance of testing requirements. The Construction Manager shall advise the Owner, its representatives and the Architect/Engineer of their required participation in any meeting or inspection giving each at least one (1) week notice unless such notice is made impossible by conditions beyond the Construction Manager's control. The Construction Manager shall hold jobsite meetings at least once each week with the Construction Team and at least once each week with the subcontractors and the Architect/Engineer field representatives, and Owner or more frequently as required by work progress, to review progress, discuss problems and their solutions and coordinate future work with all subcontractors.

2.1.4 Subcontractors and Suppliers - Construction Manager shall continue to develop subcontractor interest in the Project and shall furnish to Owner and Architect for

their information a list of possible subcontractors, including suppliers who are to furnish materials or equipment fabricated to a special design, from whom proposals will be requested for each principal portion of the Project. Owner will promptly reply in writing to Construction Manager if Owner has an objection to any such subcontractor or supplier. The receipt of such list shall not require Owner to investigate the qualifications of proposed subcontractors or suppliers, nor shall it waive the rights of Owner to later object to or reject any proposed subcontractor or supplier.

2.1.5 Long Lead and Owner Direct Procurement - The Construction Manager shall review the design for the purpose of identifying long lead and Owner direct procurement items (machinery, equipment, materials and supplies). When each item is identified the Construction Manager shall notify the subcontractors, the Project Director, and the Owner of the required procurement and schedule. Such information shall be included in the bid documents and made a part of all affected subcontracts. As soon as the Architect/Engineer has completed drawings and technical specifications and the Construction Manager has obtained permitting approval, the Construction Manager shall prepare Invitation for Bids. The Construction Manager shall keep informed of the progress of the respective subcontractors and/or suppliers, manufacturing or fabricating such items and notify the Project Director, Owner and Architect/Engineer of any problems or prospective delay in delivery.

2.1.6 Extent of Responsibility - The recommendations and advice of Construction Manager concerning design alternatives shall be subject to the review and approval of Owner and Owner's professional consultants. It is not Construction Manager's responsibility to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations. However, if Construction Manager recognizes that portions of the Drawings and Specifications are at variance therewith, Construction Manager shall promptly notify Owner and Architect in writing.

2.1.7 Equal Employment Opportunity and Affirmative Action - Construction Manager shall comply with applicable laws, regulations and special requirements of the Contract Documents regarding equal employment opportunity and affirmative action programs.

2.1.8 Separate Contracts Planning - The Construction Manager shall review the design with the Architect/Engineer and make recommendations to the Owner and to the Architect/Engineer with respect to dividing the work in such manner as will permit the Construction Manager to take bids and award separate construction subcontracts on the current schedule while the design is being completed. The Construction Manager shall take into consideration such factors as natural and practical lines of severability, sequencing, effectiveness, access and availability constraints, total time for completion, construction market conditions, availability of labor and materials, community relations and any other factors pertinent to

saving time and cost by overlapping design and construction that are authorized by the Owner.

2.2 CONSTRUCTION PHASE

2.2.1 Interfacing -

(1) The Construction Manager shall take such measures as are appropriate to provide that all construction requirements will be covered in the separate subcontracts for procurement of long lead items, the separate construction subcontracts and the general conditions items performed without duplication or overlap, sequenced to maintain completion of all work on schedule. Particular attention shall be given to provide that each bid package clearly identifies the work included in that particular separate subcontract, its schedule for start and completion and its relationship to other separate subcontractors.

(b) Subcontractor Interfacing - The Construction Manager shall be the single point of interface with all Subcontractors for the Owner, and all of its agents and representatives, including the Architect/Engineer. The Construction Manager shall negotiate all change orders, field orders and request for proposals, with all affected Subcontractors and shall review the costs of those proposals and advise the Owner and Architect/Engineer of their validity and reasonableness, acting in the Owner's best interest prior to requesting approval of each change order from the Owner. Before any work is begun on any change order, an executed Authorization to Initiate Work form from the Owner must be issued. However, when health and safety are threatened, the Construction Manager shall act immediately to remove the threat to health and safety. The Construction Manager shall also carefully review all shop drawings and then forward the same to the Architect/Engineer for review and actions. The Architect/Engineer will transmit them back to the Construction Manager who will then issue the shop drawings to the affected Subcontractor for fabrication or revision. The Construction Manager shall maintain a suspense control system to promote expeditious handling. The Construction Manager shall request the Architect/Engineer to make interpretations of the drawings or specifications requested of the Construction Manager by the Subcontractors and shall maintain a suspense control system to promote timely response. The Construction Manager shall advise the Project Director and Architect/Engineer when timely response is not occurring on any of the above.

2.2.2 Solicitation of Bids

(1) Without assuming responsibilities of the Architect/Engineer, the Construction Manager shall prepare Invitations for Bids (or Request For

Proposals, when applicable) for all procurements of long lead times, materials and services for Subcontractor contracts and for site utilities.

(2) As part of such preparation, the Construction Manager shall review the specifications and drawings prepared by the Architect/Engineer. Ambiguities, conflicts or lack of clarity of language, use of illegally restrictive requirements, and any other defects in the specifications or in the drawings noted by the Construction Manager shall be brought to the attention of the Project Director and Architect/Engineer in written form.

(3) For each separate subcontractor or construction trade contract used in this project, the Construction Manager shall, unless waived by the Owner, conduct a pre-bid conference with prospective bidders, the Architect/Engineer and Project Director. In the event questions are raised which require an interpretation of the bidding documents or otherwise indicate a need for clarification or correction of the invitation, the Construction Manager shall transmit these to the Architect/Engineer and upon receiving clarification or correction in writing shall prepare an addendum to the bidding document, and issue same to all of the prospective bidders.

(4) In accordance with Article 2.4.2 the Construction Manager shall open and review all bids and enter into contract(s) with those low bidders determined to be most qualified by the Construction Manager. The Construction Manager shall make every effort to follow the County's Pre-Qualification Ordinance 98-37 (**Attachment "F"**) for applicable subcontract trades.

2.2.3 Bonds - For those projects where the cost will exceed $100,000.00, in accordance with the provisions of Section 255.05, Florida Statutes, the Construction Manager shall provide to the Owner, on forms furnished by the Owner (**Attachment "G" and "H"**), certified copies of the recorded 100% Public Construction Performance Bond and 100% Public Construction Payment Bond each in an amount not less than the total construction cost (GMP) as defined in Article 9 and inclusive of the construction fee. *Payment and Performance Bonds shall be recorded (by the Construction Manager) in the official record of the County in which the project is located.* The Contractor must provide a copy of the bond(s) to all subcontractors and notify them of deadlines to make claims under the bonds.

2.2.4 Quality Control - The Construction Manager shall develop and maintain a program, acceptable to the Owner and Architect/Engineer, to assure quality control of the construction (*this may include personnel if approved by the Owner*). The Construction Manager shall have a qualified and competent Superintendent to supervise the work of all Subcontractors providing instructions to each when

their work does not conform to the requirements of the plans and specifications and shall continue to exert influence and control over each Subcontractor to ensure that corrections are made in a timely manner so as to not affect the efficient progress of the work. Should disagreement occur between the Construction Manager and Architect/Engineer over acceptability of work and conformance with the requirements of the specifications and plans, the Owner shall be the final judge of performance and acceptability.

2.3 Guaranteed Maximum Price (GMP) and Contract Time

2.3.1 Construction Manager acknowledges and agrees the Drawings and Specifications are sufficiently complete for Construction Manager to propose a Guaranteed Maximum Price (GMP), which is the total not to exceed sum of the Construction Manager's Fee and the Cost of the Project. Accordingly, the Guaranteed Maximum Price (GMP) is hereby established at $_____. *The final approved GMP spread sheet is hereby attached as* **Attachment "I"** *to and shall become a part of this Agreement between Owner and Construction Manager.*

2.3.2 The Cost of the Work shall include Construction Manager's contingency, a sum agreed to by all parties for the Manager's use to cover costs arising from unforeseen conditions in the project. Construction Manager's contingency is hereby established as a separate line item of $_____ within the Guaranteed Maximum Price.

2.3.3 Basis of Guaranteed Maximum Price (GMP)
The Guaranteed Maximum Price, herein established is based upon the following:

.1 The list of the Drawings and Specifications, including all addenda thereto, and the Conditions of the Contract, which are identified in the Attachments to this Agreement.

.2 The list of clarifications and assumptions made by Construction Manager in the preparation of its Guaranteed Maximum Price proposal to supplement the information contained in the Drawings and Specifications.

.3 The Preliminary Construction Schedule (**Attachment "E"**). As reflected in said Schedule, Construction Manager is to achieve Substantial Completion of the Work within ____ calendar days from issuance of Notice to Proceed. Final Completion shall be achieved within an additional ____ calendar days.

2.3.4 Included within the Guaranteed Maximum Price is the Construction Manager's fee. The Construction Manager's Fee is hereby established as $_____ for services provided in this Agreement. The sum of the Cost of the Project and the Construction Manager's Fee shall not exceed the Guaranteed Maximum

Price. The Construction Manager's Fee shall constitute Construction Manager's total compensation for profit. All costs in excess of the final approved GMP (as reduced by Owner direct purchases, if any, in accordance with **Attachment "C"**) are the responsibility of the Construction Manager. Any savings between the GMP (as reduced by Owner direct purchases) and the sum of the actual cost of the Project plus the Construction Manager's fee will be returned to the Owner.

2.3.5 Prior to issuance of the Construction Phase Notice to Proceed, Construction Manager shall not incur any costs to be reimbursed as part of the Cost of the Project, except as Owner may specifically authorize in writing.

2.3.6 The Guaranteed Maximum Price and date of Substantial Completion shall be subject to additions and deductions by a Change Order as provided in the Contract Documents.

2.3.7 The Guaranteed Maximum Price shall include in the Cost of the Project only those taxes which are enacted and in effect at the time the GMP was determined.

2.4 Construction Phase

2.4.1 General

2.4.1.1 The Construction Phase shall commence on the date identified in the Notice to Proceed to be issued by the Owner.

2.4.1.2 The Construction Manager shall cause all Work required by the Contract Documents to be properly completed in accordance with the terms of the Contract Documents and within the Contract Time.

2.4.1.3 Construction Manager's Staff - The Construction Manager shall maintain sufficient off-site support staff, and competent full time staff at the Project site authorized to act on behalf of the Construction Manager and to coordinate, inspect and provide general direction of the work and progress of the subcontractors, and the Construction Manager shall provide no less than those personnel during the respective phases of construction. The Construction Manager shall not change any of those designated persons unless mutually agreed to by the Owner and Construction Manager. In such case, the Owner shall have the right of approval of the qualifications of replacement personnel. Such approval will not be reasonably withheld.

2.4.1.3.1 The Construction Manager shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during the progress of the work. The superintendent shall represent the Construction Manager and all communications given to the superintendent shall be as binding as if given to the Construction Manager.

2.4.1.3.2 The superintendent shall be in attendance at the Project site not less than eight (8) hours per day, five (5) days per week, and any time work is being performed at the jobsite, unless the job is closed down due to a general strike or conditions beyond the control of the Construction Manager or until completion or termination of the Contract. It is understood that such superintendent shall be acceptable to the Owner and the Architect and shall be the one who will be continued in that capacity for the duration of the project, unless the Owner otherwise agrees. The superintendent shall not be employed on any other project for or by Construction Manager or any other entity during the course of the work.

2.4.1.4 Lines of Authority - The Construction Manager shall establish and maintain lines of authority for its personnel, and shall provide this description/definition to the Owner and all other affected parties such as the code inspectors of the permitting authorities, the subcontractors, the Architect/Engineer and the Owner's representatives, to provide general direction of the work and progress of the various phases and subcontractors. The Owner and the Architect/Engineer may attend meetings between the Construction Manager and subcontractors, however, such attendance shall not diminish either the authority or responsibility of the Construction Manager to administer the subcontractor.

2.4.2 Administration

2.4.2.1 Those portions of the Project that Construction Manager does not customarily perform with Construction Manager's own personnel shall be performed under subcontracts or by other appropriate written agreements with Construction Manager. Construction Manager shall obtain bids from subcontractors and from suppliers of materials or equipment fabricated to a special design for the Project from the list previously reviewed and, after analyzing such bids, shall deliver such bids to the Owner and Architect for review and comment. Based upon that review and comment, Construction Manager shall then determine, subject to the reasonable objection of Architect or Owner, which bids will be accepted. Construction Manager shall not be required to contract with anyone to whom Construction Manager has reasonable objection. Notwithstanding anything herein to the contrary, Construction Manager covenants and agrees that it shall competitively bid all subcontracts. Further, with respect to all such subcontracts, Construction Manager covenants and agrees that it shall select and contract with the lowest, responsive and qualified bidder, unless otherwise consented to in writing by Owner.

2.4.2.2 Subcontracts and agreements with suppliers furnishing materials or equipment fabricated to a special design shall conform with payment provisions and shall not be awarded on the basis of cost plus a fee without

prior written consent of Owner.

2.4.2.3 Construction Manager shall schedule and conduct weekly meetings at which Owner, Architect, Construction Manager and appropriate Subcontractors can discuss the status of the Project. Construction Manager shall prepare and promptly distribute meeting minutes within two (2) business days after any such meeting is held.

2.4.2.4 Promptly after Owner's issuance of the Notice to Proceed, Construction Manager shall prepare a more detailed Project Schedule, based upon the preliminary Project Construction Schedule attached as **Attachment "E"**, including Owner's occupancy requirements. Construction Manager will submit monthly updates to the Schedule until the project is completed.

2.4.2.5 Construction Manager shall provide Monthly Written Reports to Owner on the progress of the entire Work. Construction Manager shall maintain a daily log containing a record of weather, subcontractors working on the site, number of workers, Work accomplished, problems encountered and other similar relevant data as Owner may require. The log shall be available to Owner at all times.

2.5 Professional Services - Construction Manager shall not be required to provide professional services which constitute the practice of architecture or engineering, unless such services are specifically required by the Contract Documents for a portion of the Project, or unless Construction Manager has specifically agreed in writing to provide such services. In such event, Construction Manager shall cause such services to be performed by appropriately licensed professionals.

2.6 Unsafe Materials - If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance encountered but not created or brought on the site Construction Manager shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to Owner and Architect in writing. Owner shall be responsible for obtaining the services of a licensed laboratory to verify the presence or absence of the material or substance reported by Construction Manager and, in the event such material or substance is found to be present, to verify that it has been rendered harmless.

In accordance with Florida Statute 255.40, the Owner will require that the Contractor certify (at project completion) that to the best of his/her knowledge and ability no asbestos-containing materials and/or supplies have been purchased and/or installed on this Project.

(Florida Statute 255.40 Use of asbestos in new public buildings or buildings newly constructed for lease to governmental agencies; prohibition - The use of asbestos or asbestos-based fiber materials is prohibited in any building, construction of which is commenced

after September 30, 1983, which is financed with public funds or is constructed for the express purpose of being leased to any governmental entity.)

2.7 Weather Protection - The Construction Manager will be responsible to ascertain what temporary enclosures, if any, of building areas should be provided for and may be provided as a practical matter, in order to assure orderly progress of the work in periods when extreme weather conditions are likely to be experienced. All costs associated with this shall be the responsibility of the Construction Manager.

2.8 Job Site Requirements

(1) The Construction Manager shall provide for each of the following activities as a part of the Construction Manager's Construction Phase services:

a. Maintain a log of daily activities, including manpower records, weather, delays, major decisions, etc. and require the same of subcontractors
b. Maintain a directory of companies on the Project with names, addresses, telephone numbers, emergency telephone numbers and fax numbers of key personnel.
c. Establish and enforce job rules governing parking, clean-up, use of facilities and worker discipline.
d. Provide labor relations management for a harmonious, productive Project.
e. Provide a safety program for the Project to meet OSHA requirements. Monitor for Subcontractor compliance without relieving them of responsibilities to perform work in accordance with the best acceptable practice.
f. Provide a quality control program.
g. Miscellaneous office supplies that support the construction efforts which are consumed by his own forces.

2.9 Job Site Administration - The Construction Manager shall provide as part of the Construction Manager's Construction Phase services, administrative functions during construction, including but not limited to, the following:

(1) Job Meetings - Hold weekly progress and coordination meetings to provide for an easy flowing Project. Implement procedures and assure timely submittals, expedite processing approvals and return of shop drawings, samples, etc. Coordinate and expedite critical ordering and delivery of materials, work sequences, inspection and testing, labor allocations, etc. Review and coordinate each Subcontractor's work. Review and implement revisions to the Schedule. Monitor and promote safety requirements.

Use the job site meeting as a tool for preplanning of work and enforcing schedules and for establishing procedures, responsibilities, and identification of authority for all to clearly understand.

Identify party or parties responsible for follow-up on any problems, delay items or questions and document and implement the course for solution. Revisit each pending item at each subsequent meeting until resolution is achieved. Require all present to make any problems or delaying event known to those present for appropriate attention and resolution.

(2) Shop Drawing Submittals/Approvals - Check Shop Drawings and implement procedures for submittal and transmittal to the Architect/Engineer of such drawings for action, and closely monitor their submittal and approval process. Provide copy of all correspondence to Owner. Construction Manager will provide one (1) approved Submittal or Shop Drawing to Owner.

(3) Material and Equipment Expediting - Closely monitor material and equipment deliveries; implement inspection and follow-up procedures on commitments of all Suppliers and Subcontractors.

(4) Payments to Subcontractor - Develop and implement a procedure for review, processing, and payment of applications by Subcontractors for progress and final payments.

(5) Document Interpretation - Refer all questions for interpretation of the documents prepared by the Architect/Engineer to the Architect/Engineer.

(6) Reports and Project Site Documents - Record the progress of the Project. Submit written progress reports to the Owner and the Architect/Engineer including information on the Subcontractor's work, and the percentage of completion. Keep a daily log available to the Owner, the Architect/Engineer and the Permitting Authority inspectors.

(7) Substantial Completion - The Construction Manager shall secure the Certificate of Occupancy and notify the Owner and Architect/Engineer, in writing, that the Project will be ready for inspection to determine if it is substantially complete and ready for inspection on or after a specific date, which date shall be stated in the notice. The notice shall be given at least seven (7) calendar days in advance of said date. Inspection and testing shall take place at time(s) mutually agreeable to the Construction Manager, Architect/Engineer and Owner. The inspection will be conducted jointly between the Architect/Engineer, Owner and Construction Manager's representative. The inspection shall determine if substantial completion has been accomplished and the Architect/Engineer shall

produce a Certificate of Substantial Completion (**Attachment "J"**) and a written list of unfinished Work and defective work, commonly referred to as a "Punch List", which must be finished and corrected to obtain final completion.

At the Owner's option a specific area or segment of the project may be inspected and/or determined substantially complete.

(8) Final Completion - The Construction Manager shall notify the Architect/Engineer and Owner, in writing, that the Project will be ready for final inspection on or after a specific date, which date shall be stated in the notice. This notice shall be given at least seven (7) calendar days in advance. That inspection and any necessary testing shall be conducted in the same manner as the inspection for Substantial Completion. When the Project is finally and totally complete, including the elimination of all defects, a Certificate of Final Completion (**Attachment "K"**) will be issued by the Architect/Engineer and the Project shall be submitted to the Owner for final acceptance.

The Owner and Architect/Engineer shall conduct the inspections. The Owner may elect to have other persons of its choosing also participate in the inspections. If one or more re-inspections are required, the Construction Manager shall reimburse the Owner for all costs of re-inspection or, at the Owner's option, the costs may be deducted from payments due to the Construction Manager. The Total Project Schedule shall include these notices and inspections as activities.

The Construction Manager shall secure and transmit to the Architect/Engineer all required guarantees, affidavits, releases, bonds and waivers, manuals, record drawings, and maintenance books as part of final completion (in triplicate) unless stated otherwise in the Project specifications.

(9) Start-Up - With the Owner's personnel, direct the checkout of utilities, operations, systems and equipment for readiness and assist in their initial start-up and testing by the subcontractors.

(10) Record Drawings - The Construction Manager shall monitor the progress of Work on marked-up field prints which, at Substantial Completion, shall be submitted to the Architect/Engineer who will prepare the final record drawings.

(11) Administrative Records - The Construction Manager will maintain at the job site on a current basis, files and records such as, but not limited to the following:

Contracts and Purchase Orders
Shop Drawing Submittal/Approval Logs
Equipment Purchase/Delivery Logs
Contract Drawings and Specifications with Addenda
Cost Proposal Requests
Meeting Minutes
Lab Test Reports
Contract Changes
Material Purchase Delivery Logs
"As-Built" Marked Prints
Monthly Progress Reports
Correspondence Files
Transmittal Records
Inspection Reports
Punch Lists

The Project records shall be available at all times to the Owner and Architect/Engineer for reference or review.

(12) Owner Occupancy:
The Construction Manager shall provide services during the Construction Phase which will provide a smooth and successful Owner occupancy of the Project. The Construction Manager shall provide consultation and project management to facilitate Owner occupancy and provide transitional services to get the work, as completed by the contractors "on line" in such conditions as will satisfy Owner operational requirements.

The Construction Manager shall conduct the Construction Manager's preliminary punch list inspection and coordinate the completion of all punch list work to be done with Owner occupancy requirements in mind.

The Construction Manager shall catalog operational and maintenance requirements of equipment to be operated by maintenance personnel and convey these to the Owner in such a manner as to promote their usability (in triplicate). The Construction Manager shall provide operational training, in equipment use, for building operators to a maximum of eight (8) hours.

The Construction Manager shall secure required guarantees and warranties, assembled and organized (in a binder) and deliver same, in triplicate, to the Owner in a manner that will facilitate their maximum enforcement and assure their meaningful implementation.

The Construction Manager shall continuously review "As-Built" Drawings and mark-up progress prints to provide as much accuracy as possible.

(13) Warranty - Where any work is performed by the Construction Manager's

own forces or by Subcontractors under contract with the Construction Manager, the Construction Manager shall warrant that all materials and equipment included in such Work will be new except where indicated otherwise in Contract Documents, and that such Work will be of good quality, free from improper workmanship and defective materials and in conformance with the Drawings and Specifications. With respect to the same Work, the Construction Manager further agrees to correct all work found by the Owner to be defective in material and workmanship or not in conformance with the Drawings and Specifications for a period of one (1) year from the Date of Final Completion or as may be set forth with respect to specific warranties contained in the trade sections of the Specifications. The Construction Manager shall collect and deliver to the Owner any specific written warranties given by others as required by the Contract Documents. **Also, the Construction Manager shall conduct, jointly with the Owner and the Architect/Engineer, a warranty inspection nine (9) months after the date of Owner Occupancy. This warranty inspection will be scheduled by a representative of the Owner**.

ARTICLE 3

OWNER'S RESPONSIBILITIES

3.1 Owner's Information - The Owner shall provide full information regarding Owner's requirements for the Project.

3.2 Owner's Representative/Project Director - The Owner shall designate a representative who shall be fully acquainted with the Project and shall define the lines of Owner authority to approve Project Construction Budgets, and changes in Project. The Owner's representative shall render decisions promptly and furnish information expeditiously.

3.3 Architect and Engineer's Agreement - The Owner shall retain an Architect/Engineer for design and to prepare construction documents for the Project. The Architect/Engineer's services, duties and responsibilities are described in the Agreement between the Owner and the Architect/Engineer, a copy of which will be furnished to the Construction Manager upon request.

3.4 Approvals and Easements - The Owner shall pay for necessary approvals, easements, assessments and charges required for the construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

3.5 Legal Services - The Owner shall furnish such legal services as may be necessary for providing the items set forth in Article 3 and such auditing services as the Owner may require.

3.6 Drawings and Specifications - The Owner will provide to the Construction Manager a reproducible set of all drawings and specifications reasonably necessary and ready for printing.

3.7 Cost of Surveys & Reports - The services, information, surveys and reports required by the above paragraphs shall be furnished with reasonable promptness in accordance with the approved schedule at the Owner's expense, and the Construction Manager shall be entitled to rely upon the accuracy and completeness thereof.

3.8 Project Fault or Defects - If the Owner becomes aware of any fault or defect in the Project or non-conformance with the drawings and specifications, the Owner shall give prompt written notice thereof to the Construction Manager and Architect/Engineer.

3.9 Funding - The Owner shall furnish, in accordance with the established schedule, reasonable evidence satisfactory to the Construction Manager that sufficient funds will be available and committed for the cost of each part of the Project.

3.10 Lines of Communication - The Owner and Architect/Engineer shall communicate with the Subcontractors or Suppliers only through the Construction Manager while such method of communication is effective in maintaining Project schedules and quality.

3.11 Lines of Authority - The Owner shall establish and maintain lines of authority for Owner's personnel and shall provide this definition to the Construction Manager and all other affected parties.

3.12 Permitting & Code Inspections - The Owner recognizes and coordinates with the Permitting Authority and expects the Construction Manager to do the same.

ARTICLE 4

PERMITTING AND INSPECTION

4.1 Permits, Fees and Notices - Unless otherwise provided in the Contract Documents, the Construction Manager shall secure and the Owner shall pay for any Brevard County building permit or other County permits and governmental fees and licenses necessary for proper execution of the Contract and which are legally required. Any other entity/jurisdiction permits (i.e.: City of Titusville, City of Melbourne, etc.) shall be included in the Guaranteed Maximum Price and secured and paid for by the Construction Manager. County Impact and Solid Waste fees will also be paid by the Owner. Copies of all permits shall be submitted to the Owner.

4.2 The Construction Manager shall comply with and give notices required by laws,

ordinances, rules and regulations and lawful orders of public authorities bearing on performance of the work required for the Project.

4.3 It is not the Construction Manager's responsibility to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations. However, if the Construction Manager observes that portions of the Contract Documents are at variance therewith, and such variance was not discoverable during the Construction Manager's review of these documents for the purpose of determining the GMP, the Construction Manager shall promptly notify the Architect and Owner, in writing, and necessary changes shall be accomplished by appropriate modification.

4.4 If the Construction Manager performs Work knowing it to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without such notice to the Architect and Owner, the Construction Manager shall assume full responsibility for such Work and shall bear the attributable costs.

ARTICLE 5

SUBCONTRACTS

5.1 Definition - A Subcontractor is a person or organization who has a direct contract with the Construction Manager to perform any of the work. Nothing contained in the Contract Document shall create any contractual relation between the Owner or Architect/Engineer and any Subcontractor.

5.2 Bids/Proposals - The Construction Manager shall request and make every attempt to receive, at a minimum, three (3) bids/proposals from Subcontractors and Suppliers and will award those contracts to the most qualified and responsive low bidder after the Construction Manager and Owner have reviewed each bid/proposal and agree that the Subcontractor is qualified to perform the work.

5.3 Required Subcontractor and Subcontract Conditions.

5.3.1 Subcontractual Relations - By an appropriate written agreement, the Construction Manager shall require each Subcontractor to the extent of the work to be performed by the Subcontractor, to be bound to the Construction Manager by the terms of the Contract Documents, and to assume toward the Construction Manager all the obligations and responsibilities which the Construction Manager by this Agreement, assumes toward the Owner and the Architect/Engineer. Said agreements shall preserve and protect the rights of the Owner and Architect/Engineer under the Contract Documents with respect to the work to be performed by the Subcontractor so that the subcontracting thereof will not prejudice such rights. Where appropriate, the Construction Manager shall require each Subcontractor to enter into similar agreements with his Subcontractor's

Subcontractor.
The Construction Manager shall make available to each proposed Subcontractor, prior to the execution of the Subcontract, copies of the Contract Documents to which the Subcontractor will be bound by this Article 5.3 and identify to the Subcontractor any terms and conditions of the proposed Subcontract which may be at variance with the Contract Documents. Each Subcontractor shall similarly make copies of such Documents available to his Sub-subcontractor.

(1) Subcontractors must submit a complete pre-qualification form demonstrating their work experience, financial condition, and adherence to schedule. The Subcontractors financial condition must demonstrate that adequate fixed and liquid assets and equipment are available to properly perform the subcontract.

(2) Workforce - The Subcontractor must agree to perform no less than fifty 50%) percent of the Project construction work utilizing its own forces.

(3) All subcontracts shall provide:

a. LIMITATION OF REMEDY - NO DAMAGES FOR DELAY
That the Subcontractor's exclusive remedy for delays in the performance of the contract caused by events beyond its control, including delays claimed to be caused by the Owner or Architect/Engineer or attributable to the Owner or Architect/Engineer and including claims based on breach of contract or negligence, shall be an extension of its contract time.

In the event of a change in the work the Subcontractor's claim for adjustments in the contract sum are limited exclusively to its actual cost for such change, plus, no more than five percent (5%) for profit, and five percent (5%) for overhead.

The subcontract shall require the Subcontractor expressly agree that the foregoing constitute its sole and exclusive remedies for delays and changes in the work and thus eliminate any other remedies for claim for increase in the contract price, damages, loss or additional compensation.

b. Each subcontract shall require that any claims by Subcontractor for delays or additional cost must be submitted to Construction Manager within the time and in the manner in which the Construction Manager must submit such claims to the Owner, and that failure to comply with the conditions for giving notice and submitting claims shall result in the waiver of such claims.

5.4 Responsibilities for Acts and Omissions - The Construction Manager shall be responsible to the Owner for the acts and omissions of its employees and agents and its Subcontractors, agents and employees, and all other persons performing

any of the work or supplying materials under this contract to the Construction Manager.

ARTICLE 6

SCHEDULE, TIME OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

6.1 At the time a Guaranteed Maximum Price (GMP) is established, as provided for in Article 7, a Project Substantial Completion Date, a Project Final Completion Date and an Owner Occupancy Date for completion of the Project in accordance with the master Project schedule, shall also be established by the Construction Team. The Construction Manager agrees to complete the construction in accordance with the agreed upon Substantial Completion Date, Final Completion Date and Owner Occupancy Date. The Construction Manager acknowledges that failure to complete the Project within the construction time set forth in the approved schedule will result in substantial damages to the Owner.

It is specifically agreed by and between the parties that the Owner may deduct a sum in the amount scheduled below from the amount of compensation to be paid the Construction Manager, Sundays and Holidays included, that the Project remains uncompleted. This amount as scheduled and agreed upon as a proper measure of liquidated damages, which the Owner will sustain per day by failure of the Construction Manager to complete the Project by the time stipulated in this Agreement, is not to be construed in any sense as a penalty provision.

Project Substantial Completion	$500 per day
Project Final Completion	$250 per day

Liquidated Damages will be assessed for each day beyond the contracted project Substantial Completion date, until actual project Substantial Completion is achieved. From the date of Substantial Completion, the Construction Manager shall be granted thirty (30) days for completion of punch list items, associated inspections and approvals, and submission and approval of required closeout documentation, at which time Final Completion shall be obtained. Final Completion liquidated damages will be assessed for each day beyond the thirty (30) days period from actual Substantial Completion.

6.2 The date of Owner Occupancy shall occur as described in Article 2.9(7) and Article 1.3, hereinabove. Warranties called for by this Agreement or by the Drawings and Specifications shall commence on the Date of Final Completion of the Project unless specified otherwise in the Project Specifications.

ARTICLE 7

GUARANTEED MAXIMUM PRICE FOR CONSTRUCTION

7.1 The Construction Manager will establish and submit in writing a Guaranteed Maximum Price to the Owner for its approval, guaranteeing the maximum price to

the Owner, for the construction cost of the Project or designated part thereof, based on a review of the contract drawings and specifications. Such Guaranteed Maximum Price will be subject to increase or deduction for changes in the Project as provided in Article 10 and for Owner direct purchases, if any, in accordance with **Attachment "C"**. All costs in excess of the final approved GMP, as adjusted up or down in accordance with the terms of this agreement, are the responsibility of the Construction Manager. Any savings between the GMP, as adjusted, and the sum of the actual cost of the Project plus the Construction Manager's fees, will be returned to the Owner. The GMP includes all taxes in the Cost of the Project which were legally enacted and in effect at the time the GMP was established.

7.2 Owner-Direct Purchases - In the event the Owner opts to make Owner Direct Purchases, as outlined in **Attachment "C"**, the Guaranteed Maximum Price shall be reduced by the cost of the materials plus applicable sales tax so that all sales tax savings accrue to the benefit of the project contingency. The Construction Manager shall diligently process all Owner Direct Purchase invoices for the project in order for the Owner to benefit from applicable vendor discounts. The Construction Manager will be required to submit all invoices to Owner in sufficient amount of time in order for the project to benefit from the vendor discount. All costs associated with missed discounts by the Construction Manager will be deducted from the Construction Manager's contract via deductive change order at project completion. Owner reserves the right to waive the Construction Manager's responsibility for missing discounts.

7.3 At the time of execution of the contract, the Construction Manager will verify the time schedule for activities and work which is adopted by the Construction Team and used to determine the Construction Manager's cost of work. Surplus funds from bids received below the applicable line items, including line items within the General Conditions, in the GMP will be set aside for contingency. Construction contingency funds will be used for the purpose of defraying the expenses due to unforeseen circumstances relating to construction. The Construction Manager will be required to furnish documentation evidencing expenditures charged to this contingency prior to the release of funds by the Owner. Documentation for use of the Contingency shall be determined by the Construction Team. The Architect/Owner shall verify and approve the actual costs.

If bids are received above the applicable line item in the GMP the deficiency will be taken from the contingency via an approved Authorization to Initiate Work/GMP Realignment form; however, such events shall not be cause to increase the GMP. If bids are not received for a portion of the work at or below the applicable line item amount in the GMP, the Construction Manager reserves the right to perform that portion of the work or negotiate for its performance for the specified line item lump sum amount or less.

ARTICLE 8

CONSTRUCTION MANAGER'S FEE

8.1 In consideration of the performance of the contract, the Owner agrees to pay the Construction Manager as compensation for his services fees as set forth in Subparagraphs 8.1.2 and 8.1.3. subject to the retainage specified in 8.1.1 below.

8.1.1 Construction Phase Fee - Prior to commencement of the Construction Phase, the Owner will direct the Construction Manager in writing to proceed into the Construction Phase. The Owner retains the right to review the need and effectiveness of any employee or employees assigned by the Construction Manager, should the Project Director question the need for the employee or employees. A percentage of the agreed upon Construction Phase Fee shall be paid monthly based on percentage (%) of work completed, less retainage, in accordance with subsection 12.1 below. The Construction Manager's first monthly Certificate for Payment shall be submitted no earlier than thirty (30) days following the issuance of the Notice to Proceed, and the final monthly payment shall be paid only when construction of the Project is finally completed, all original, final release of liens are received, closeout documentation has been submitted and occupancy of the Project accepted by the Owner. If construction is authorized only for a part of the Project, the fee paid shall be proportionate to the amount of work authorized by the Owner.

(1) Adjustments in Fee - For changes in the Project as provided in Article 10, the Construction Phase fee shall be adjusted as follows:

(a) The Construction Manager shall be paid an additional fee subject to negotiation if the Construction Manager is placed in charge of reconstruction of an insured or uninsured loss excluding any condition that may have been caused from negligent acts by the Construction Manager, subcontractors or others for whose acts the Construction Manager is responsible.

(2) Costs and Expenses Included in Construction Manager's Construction Phase Fee - The following are included in the Construction Manager's fee for services during the Construction Phase and are included in the GMP (See **Attachment "L"** for Allowable Costs, Overhead associated with the Construction Manager's Construction Phase Fee referenced in Article 8):

(a) Corporate costs including expenses and overhead and profit related to this project by the Construction Manager's principal and branch offices.
(b) Costs of all data processing, accounting, purchasing and associated staff which is performed at the home office.
(c) General operating expenses incurred in the management and supervision of the project, except as expressly included in Article 9.

(d) Salaries or other compensation of the Construction Manager's employees at his principal and branch offices.
(e) Those services set forth in Paragraph 2.1, 2.2, 2.3 and 2.4; except as expressly included in Article 9.
(f) Relocation expenses for Construction Manager's personnel.
(g) Costs of all project estimating, safety, scheduling and accounting staff.

8.1.3 The Construction Manager will establish and submit in writing to the Owner for his approval a Guaranteed Maximum Price, guaranteeing the maximum price to the Owner, for the construction cost of the Project or designated part thereof, based on a review of the contract drawings and specifications. Such Guaranteed Maximum Price will be subject to modification for changes in the Project as provide in Article 10. However, the actual price paid for the Work by the Owner shall be (1) the Cost of the Project as defined in Article 9, plus the Construction Manager's fees, or (2) the GMP, whichever is less, when the Work is complete. All costs in excess of the final approved GMP are the responsibility of the Construction Manager.

ARTICLE 9

COST OF THE PROJECT

9.1 Definition - The term Cost of the Project shall mean costs reasonably and necessarily incurred in the Project during the Construction Phase for construction services and paid by the Construction Manager which are included in the Construction Phase Fee, less Owner direct purchases made in accordance with **Attachment "C"** upon completion of the Project. Such costs shall include the items set forth below in this Article, and shall also include, but are not limited to, those set forth in **Attachment "M"** - "Allowable General Conditions".

The Owner agrees to pay the Construction Manager for the Cost of the Project subject to the limits set forth in Articles 9.2 and 9.3 plus the Construction Manager's fees stipulated in Article 8, provided the total does not to exceed the GMP.

9.2 Direct Cost Items (See **Attachment "M"** - "Allowable General Conditions")

(1) Labor wages paid for the on-site Project Superintendent directly responsible for the operation and supervision of the project, clerical and Quality Control personnel (as opposed to wages paid to management or supervisory personnel who are not part of the on-site project management) in the direct employ of the Construction Manager in the performance of the Construction Manager's work under this Agreement, acceptable salary or wage schedules and such fringe benefits, if any, as

may be payable with respect thereto (labor burden not to exceed 40% for payroll and 15% for per diem).

(2) Payments due to Subcontractors from the Construction Manager or made by the Construction Manager to Subcontractors for their work performed pursuant to contract under this Agreement.

(3) Cost of the premiums for insurance above and beyond the minimum required by Brevard County ($1 million) and cost of premiums for bonds which the Construction Manager is required to procure by this Agreement specifically for the construction of this project.

(4) Sales, use, gross receipts or similar taxes related to allowable direct costs of the Project imposed by a governmental authority, and for which the Construction Manager is liable. No costs shall be paid by the Owner to the Construction Manager for any expenses made necessary to correct defective workmanship or to correct any work not in conformance with the Plans and Specifications or to correct any deficiency or damage caused by negligent acts by the Construction Manager.

(5) If approved by the Owner, the Construction Manager, when qualified, may self perform all or a portion of the work for any item listed on the estimate or GMP breakdown where it is deemed advantageous due to schedule or economic benefit for the direct cost of the work.

(6) Legal costs reasonably and properly resulting from prosecution of the Project for the Owner, including handling claims for changes by subcontractors and vendors, subject to the following limitations:

(a) The Owner approved incurring such costs in advance, which approval shall not be unreasonably denied; and
(b) The legal costs were not incurred as result of the Construction Manager's own negligence or default.

(7) Costs for such temporary facilities during construction, as approved by the Owner, including temporary water, heat, power, sanitary facilities, telephones, radios and computers with software.

9.3 Allowances

Within the GMP, there may be specific items which the Construction Manager and Owner have agreed to include as allowances in the estimates until such time as the cost and schedule impact of these items can be more specifically ascertained. At the time that the Costs of the Work of allowance items becomes known (either through a subcontract price or by virtue of either (A) scope of work and cost agreed to by Construction Manager and Owner or (B) an actual buyout of the item), the GMP and Scheduled Completion Date will be adjusted (either

increased or decreased) by the actual Costs of the Work and schedule impact of the item. With respect to increases and decreases to the amount of an allowance item, Construction Manager shall be entitled to the Construction Manager's fee, subject to the limits set forth in Article 8, on the adjusted amount of such allowance, and the GMP shall be adjusted by reason thereof, by Change Order. Allowances must be agreed to by both parties. Allowances included within the GMP constitute approval of said allowances at the time the Guaranteed Maximum Price is approved.

9.4 Public Records Law and Audit Requirements

In the performance of this Contract, the Construction Manager shall keep books, records and accounts of all activities related to the Contract in compliance with generally accepted accounting procedures and in compliance with the Public Records Laws of the State of Florida (Including, but not limited to Chapter 119, Florida Statutes).

All records or documents created by Construction Manager or provided to Construction Manager by the County in connection with the activities or services provided by Construction Manager under the terms of this agreement, are public records and Construction Manager agrees to comply with any request for such public records or documents made in accordance with section 119.07 Florida Statutes.

Records, documents, books and accounts ordinarily and necessarily required for the performance of this Contract shall be kept, maintained and open to inspection by the Owner, Owner's representative, and members of the public during regular business hours.

The Construction Manager shall provide the public with access to public records on the same terms and conditions that the public agency provides the records and at a cost that does not exceed the cost provided for in Florida Statute Chapter 119 or as otherwise provided by law (see also County Administrative Order, AO-47).

The Construction Manager shall also ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.

No reports, data, programs or other materials produced, in whole or in part for the benefit and use of the County, under this Contract shall be subject to copyright by Construction Manager in the United States or any other country.

The Construction Manager shall meet all requirements for retaining public

records and shall transfer, at no cost, to the Owner/County all public records in possession of the Construction Manager upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the Owner/County in a format that is compatible with the information technology systems of the Owner/County.

Failure to comply with the provisions of this Section 9.4, shall result in the Owner taking enforcement action against the Construction Manager including the cost to the Owner for gaining the Construction Manager's compliance which will include, but are not limited to, the gross hourly rate of the Owner's employee(s) contacts to the Construction Manager to obtain compliance with this section, litigation filing fees and attorney's fees.

ARTICLE 10

CHANGES IN THE PROJECT

10.1 Change Orders - The Owner, without invalidating this Agreement, may order Changes in the Project within the general scope of this Agreement consisting of additions, deletions or other revisions which may cause an increase or decrease in the GMP, and/or the Construction Completion Date. All changes in the Project GMP or Construction Completion Date not covered by an authorized contingency, as described in Article 7.3 must be authorized by a written Change Order or Construction Change Directive, and signed by the Owner, Architect and Construction Manager before the change is implemented. It shall be the Owner's discretion as to whether each change order requires the A/E signature. **Maximum allowable mark-up on any change order is 5% Profit, 5% Overhead, and a 2% Bond.**

10.1.1 A Construction Change Directive is a change directive signed by the Project Director and the County Manager directing an addition, deletion, or revision in the scope of work and/or schedule. The Construction Change Directive is necessary when no Agreement exists among the Architect/Engineer of record, Brevard County and the Construction Manager on the dollar amount of a necessary change in the scope of work and/or an extension of time to the construction contract. The Construction Change Directive is used (1) when an unsafe, hazardous or other similar condition exists, (2) when failure to achieve prompt resolution of the change will result in a demobilization of the Construction Manager, its subcontractors and/or agents, (3) when failure to achieve prompt resolution will result in additional cost, and/or a significant delay in completing the project. A Construction Change Directive does not change the contract price or the contract time, but is evidence that the parties

expect that the change will be incorporated in a subsequently issued Change Order or be covered by an authorized contingency.

10.1.2 A Change Order is a written order to the Construction Manager signed by the Owner, Architect, and Construction Manager, issued after the execution of this Agreement, authorizing a change in the Project and/or an adjustment in the construction authorization, the Construction Manager's fee, or the Construction Completion date. Each adjustment in the GMP resulting from a change order shall be documented clearly to separate the amount attributable to the cost of the change in the Project from the original cost of the Project.

10.1.3 The increase or decrease in the Guaranteed Maximum Price resulting from Change Orders in the Project shall be determined by one of the following ways:

(1) by mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation by the Architect/Engineer and Owner;
(2) by unit prices stated in the Agreement or subsequently agreed upon;
(3) by cost as defined in Article 9 plus a mutually acceptable fixed or percentage fee; or
(4) by the method provided in Subparagraph 10.1.4.

10.1.4 If none of the methods set forth in Clause 10.1.3 is agreed upon, the Construction Manager, provided he receives a written order signed by the Owner, shall promptly proceed with the work required by the Construction Change Directive involved. The cost of such work shall then be determined on the basis of the reasonable expenditures and savings of those performing the work attributed to the change. However, in the event a Change Order is issued under these conditions, the Architect/Engineer will establish an estimated cost of the work and the Construction Manager shall not perform any work whose cost exceeds that estimate without prior written approval by the Owner. In such case, and also under Article 10.1.3 above, the Construction Manager shall keep and present, in such forms as the Owner may prescribe, an itemized accounting together with appropriate supporting data of the increase in the Cost of the Project as outlined in Article 9. The amount of decrease in the Guaranteed Maximum Price to be allowed by the Construction Manager to the Owner for any deletion or change which results in a net decrease in cost will be the amount of the actual net decrease in the Cost of the Project and the Construction Manager's fee subject to the limits set forth in Article 7.

10.1.5 If unit prices are stated in the Agreement or subsequently agreed upon and if the quantities originally contemplated are so changed in a proposed

Change Order that application of the agreed unit prices to the quantities of Work proposed will cause substantial inequity to the Owner or the Construction Manager, the applicable unit prices and Guaranteed Maximum Price shall be equitably adjusted.

10.1.6 Should the Construction Manager or his contracted subcontractors encounter:

(1) concealed conditions in the performance of the Work below the surface of the ground; or
(2) concealed or unknown conditions in an existing structure be at variance with the conditions indicated by the Drawings, Specifications, or Owner furnished information; or
(3) unknown physical conditions below the surface of the ground; or
(4) concealed or unknown conditions in an existing structure of an unusual nature;

differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Agreement, then the Guaranteed Maximum Price and the Construction Completion date shall be equitably adjusted by Change Order upon a request for Change Order in accordance with Article 10.2. and Article 11.

Upon discovery of concealed or unknown conditions, the Construction Manager shall notify the Owner and Architect/Engineer within twenty four (24) hours of discovery, and not proceed with Work until such notice has been given and a response is issued by the Owner. The Architect/Engineer will evaluate the alleged unknown or concealed condition and, if warranted, recommend to the Owner that the GMP and schedule be increased or decreased accordingly. No claim under this Article may be made unless notice, as herein provided, is given prior to Work being performed. No equitable adjustment shall be permitted if this notice provision is not complied with.

Within ten (10) calendar days of submitting its Notice, the Construction Manager shall submit to the Owner its Request for Change Order, which shall include a written statement of all details of the claim, including a description of the work affected. Within thirty (30) days from Notice, the Construction Manager shall submit detailed schedule impact and detailed cost analysis indicating quantities, unit prices, etc.

10.1.7 The Construction Manager shall review any Owner directed change and shall respond in writing within seven (7) calendar days after receipt of the proposed change (or such other reasonable time as the Owner may direct), stating the effect of the proposed change upon the Construction Manager's Work, including any increase or decrease in the contract time

or price. The Construction Manager shall furnish to the Owner an itemized breakdown of the quantities and prices used in computing the change in Contract price.

The Owner and Architect/Engineer shall review the Construction Manager's proposal and respond to the Construction Manager within seven (7) calendar days of receipt. If a change to the Contract price and time for performance are agreed upon, both parties shall sign the Change Order. Changes to the Contract time and/or price shall be effective when signed by both parties. It shall be the Owner's discretion as to whether each change order requires the A/E signature.

10.2 **Claims for Additional Cost or Time**
All claims for additional cost or time shall be made by request for a change order submitted as provided in Article 16.

10.2.1 If the Construction Manager is delayed at any time in the progress of the work by any act or neglect of the Owner or the Architect or of any employee of either or by any separate Construction Manager employed by the Owner or by any changes ordered in the work by labor disputes, fire, or unusual delay in transportation, unavoidable casualties or any causes beyond the Construction Manager's control or by delay authorized by the Owner pending resolution or disputes, and such delay extends the completion date, the Substantial Completion shall be extended by Change Order for such reasonable time as the Construction Team may determine.

10.2.2 All change orders must indicate that the Contract Time for Completion is not changed or is either increased or decreased by a specific number of days. The previous Time for Completion and, if there is one, the new Time for Completion must be stated. The Construction Manager must provide written justification for an extension of the Time for Completion to the Architect/Engineer and to the Owner. The written justification must demonstrate an anticipated actual increase in the time required to complete the Work beyond that allowed by the Contract as adjusted by prior change orders or amendments to the Contract, not just an increase or decrease in the time needed to complete some portion of the total Work. No increase to the Time for Completion shall be allowed unless the additional or changed Work increases the length of the critical path. Approved increases in time required to complete the Work shall be added to the Time for Completion. Decreases in time as a result of the change order shall be demonstrated by a decrease in the critical path of the Work if CPM scheduling is properly used and updated by the Construction Manager. If no CPM is used the Owner shall determine the appropriate decrease by the best means possible. Approved decreases in the time needed to complete the Work shall be deducted from the Contract completion date. The change to time and Contract price allowed by each

change order shall include all time and monetary impacts of the change, whether the change order is considered alone or with all other changes during the course of the project. Failure to include a change to time and Contract price in a change order shall waive any change to the time and Contract price unless the parties mutually agree in writing to postpone a determination of the change to time and price resulting from the change order. Such a determination may be postponed not more than forty five (45) days to give the Construction Manager an opportunity to demonstrate a change in the time and price needed to complete the Work.

Only delays which are determined to extend the critical path for the schedule for constructing the Project will result in a time extension. Neither the Owner nor the Construction Manager shall be considered to own the schedule float time.

10.3 Minor Changes in the Project (Realignment of Work)
The Owner and/or Architect/Engineer will have authority to order minor changes in the Project not involving an adjustment in the Guaranteed Maximum Price or an extension of the Construction Completion Date and not inconsistent with the intent of the Drawings and Specifications. Such changes shall be affected by written order. Documentation of changes shall be determined by the Construction Team, and included in the Project Manual. Changes shall be approved by the Project Director, Architect/Engineer. It shall be the Owner's discretion as to whether a Realignment of Work requires the A/E signature. All changes or realignments of work performed within the Guaranteed Maximum Price will not include overhead, profit or General Condition additional costs, since costs are absorbed within the Guaranteed Maximum Price (GMP).

10.4 In any emergency affecting the safety of persons or property, the Construction Manager shall act at his discretion, to prevent threatened damage, injury or loss. Any increase in the Guaranteed Maximum Price or extension of time claimed by the Construction Manager on account of emergency work shall be determined as provided in Article 10.

ARTICLE 11

DISCOUNTS

11.1 All discounts for prompt payment shall accrue to the Owner to the extent the Cost of the Project is paid directly by the Owner or from a fund made available by the Owner to the Construction Manager for such payments.

To the extent the Cost of the Project is paid with funds of the Construction Manager, all cash discounts shall accrue to the Construction Manager. All trade discounts, rebates and refunds, and all returns from sale of surplus materials and equipment, shall be credited to the Cost of the Project.

ARTICLE 12

PAYMENTS TO THE CONSTRUCTION MANAGER

12.1 Monthly Statements - The Construction Manager shall submit to the Owner a sworn statement along with the Certificate for Payment, showing in detail all monies paid out, cost accumulated or costs incurred on account of the Cost of the Project during the previous period and the amount of the Construction Manager's fees due as provided in Article 8. This data shall be attached to the Certificate for Payment Form shown in **Attachment "N"**, and shall include, but not be limited, to the following:

- Daily Reports;
- Updated Project Schedule;
- Daily Red line As-Builts review;
- Provide a billing report with each payment application that shows a breakdown of costs incurred by line item. This report should correspond with the amounts being charged on the Schedule of Values.
- Provide backup copies of all invoices that the County is being billed for, including vendor invoices, payments to subcontractors, cell phone statements, insurance, petty cash receipts, etc. These invoices should be coded by the line item that they correspond to on the billing report and Schedule of Values.
- Provide backup copies and documentation of all costs incurred under General Conditions.
- Provide backup copies of all payroll that details which labor amounts were paid to whom on a weekly basis.
- Provide copies of all subcontractor agreements.
  * The amounts charged on the Payment Application must be accurate and correspond with the total dollar amount of backup provided by the Construction Manager.

Payment by the Owner to the Construction Manager of the statement amount shall be made in accordance with Florida Statute 218.735.

Ten percent of each payment shall be held by the OWNER as retainage until 50-percent completion of such Project, which shall be deemed to have occurred when 50% of the GMP, as increased or decreased from time to time, has been expended. At that time, the retainage shall be reduced to 5% and the Construction Manager shall be entitled to request payment or release of up to 50% of the previously withheld retainage amounts, provided the retainage is not the subject of a good faith dispute, the subject of a

claim brought pursuant to s. 255.05, Florida Statutes or otherwise the subject of a claim or demand by the OWNER.

Owner may refuse to certify payment and withhold a Certificate for Payment in whole or in part, in accordance with subsection(s) above, to such extent as may be reasonably necessary to protect the Owner from loss because of:

(1) defective work not remedied;
(2) third party claims filed or reasonable evidence indicating probably filing of such claims;
(3) failure of Construction Manager to make payments properly to subcontractors, consultants, or for labor, materials or equipment;
(4) evidence that the Project cannot be completed for the unpaid balance of the GMP, as adjusted;
(5) evidence that the Work will not be completed by the Scheduled Completion Date, as adjusted, and that the unpaid balance would not be adequate to cover the liquidated damages for the anticipated delay;
(6) failure to carry out the Work of the Project in accordance with the Contract Documents; or

If the Owner is unwilling to certify payment in the amount of the Application for Payment submitted by the Construction Manager, Owner will provide Construction Manager with written reasons for its refusal, within three (3) calendar days. If Construction Manager and Owner cannot agree on a revised amount, Owner will, within one (1) day of the aforesaid notification, promptly issue a Certificate for Payment as to the undisputed amount with respect to which Owner concurs.

12.2 Final Payment - Final payment constituting the unpaid balance of the Cost of the Project and the Construction Manager's fee, shall be due and payable in accordance with Florida Statutes after an *acceptable* Certificate of Final Completion has been issued **and all contractual closeout obligations have been met by the Construction Manager**. Before issuance of final payment, the Construction Manager, subcontractors and agents shall submit original, sworn, notarized statements that all payrolls, material bills, and other indebtness connected with the Project have been paid or otherwise satisfied, warranty information is complete, Final As-Builts in AutoCad format acceptable to the Owner, have been submitted and instruction and documentation for the Owner's operating and maintenance personnel is complete.

12.3 Payments for Materials and Equipment - Payments will be made for material and equipment not incorporated in the work but insured, itemized, delivered and suitably stored at the site or another location subject to prior approval and acceptance by the Owner on each occasion.

12.4 Withholding Payments to Subcontractors - The Construction Manager shall not

withhold payments to Subcontractors if such payments have been made to the Construction Manager. Should this occur for any reason, the Construction Manager shall immediately return such monies to the Owner, adjusting pay requests and project bookkeeping, as required.

ARTICLE 13

INSURANCE, INDEMNITY WAIVER OF SUBROGATION

13.1 (1) Indemnification - The Construction Manager agrees to indemnify and hold harmless the County and their employees from all claims, losses and expenses, arising out of or resulting from the performance of the products or services to be contracted, provided such claim, damage, loss or expense (1) is attributable to bodily injury, sickness, disease, death or personal injury, or to property damage, including loss of use resulting therefrom, (but not loss of use for which liquidated damages are assessed under the Agreement) and (2) is caused in whole or in part by any negligent act or omission of the Construction Manager, any subcontractor, any of their employees and/or agents in the performance of this contract. The Construction Manager agrees that it will pay the costs of the County's legal defense, including fees of attorneys as may be selected by the County, and shall defend, satisfy, and pay any judgments which may be rendered against the County in connection with the above hold harmless agreement. The Construction Manager acknowledges specific consideration has been received for this hold harmless/indemnification provision.

(2) The Owner shall cause any other Construction Manager who may have a contract with the Owner to perform construction or installation work in the area where work will be performed under this Agreement, to agree to indemnify the Owner and the Construction Manager and hold them harmless from all claims for bodily injury and property damage (other than property insured under Paragraph 13.2(3)) that may arise from the Construction Manager's operations.

Loss Deductible Clause - Brevard County Board of County Commissioners shall be exempt from, and in no way liable for, any sums of money which may represent a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of the Construction Manager and/or Subcontractor providing such insurance.

13.2 Insurance

(1) The Construction Manager shall not commence any construction work in connection with this Agreement until the Construction Manager has obtained all of the following types of insurance and such insurance

certificate(s) have been submitted to the Owner and have been approved by the Owner, nor shall the Construction Manager allow any Subcontractor to commence work on his subcontract until all insurance required of the Subcontractor has been so obtained and approved. All insurance policies shall be with insurers qualified and doing business in the State of Florida.

a. Worker's Compensation - Provide Worker's Compensation Insurance on behalf of all employees who are to provide a service for this project, as required under Florida Laws.

b. Commercial General Liability - Including but not limited to bodily injury, property damage and personal injury with limits of not less than $1,000,000.00 combined single limit per occurrence, including products and completed operations, to include:

1. "XCU" (Explosion, Collapse, Underground Damage) - The Construction Manager's Liability Policy shall provide "XCU" coverage.

2. Broad Form Property Damage Coverage, Products and Completed Operations Coverage - The Construction Manager's Liability Policy shall include Broad Form Property Damage Coverage, Products and Completed Operations Coverages.

3. Contractual Liability Work Contracts - The Construction Manager's Liability Policy shall include Contractual Liability Coverage designed to protect the Construction Manager for contractual liabilities assumed by the Construction Manager in the performance of this Agreement.

c. Automobile Liability - Including bodily injury, property damage liability for all vehicles owned, hired, leased and non-owned with limits of not less than $1,000,000.00 combined single limit, per accident.

d. Performance and Payment Bonds - With limits of not less than 100% of the total construction cost of this project. Payment and Performance Bond shall be recorded in the official record of the County in which the project is located. These bonds shall remain in effect at least until one (1) year after the date when the final payment is approved. Any bonding company submitting a Bid Bond, Performance Bond or Payment Bond to Brevard County must be licensed to transact a fidelity and surety business in the State of Florida, and hold a Certificate of Authority from the Secretary of the Treasury under Act of Congress, approved by July

30, 1947 (U.S.C. 613), and approved by Brevard County. Acceptable surety companies shall be licensed to do business in Florida and shall have an A.M. Best Rating of "A-" and financial size V or higher.

e. Builder's Risk Coverage - The Construction Manager shall take out and maintain during the life of this Agreement a "Builder's Risk Policy" completed value form as a cost of the Project, issued to provide coverages on an "all risk" basis including theft. This coverage shall not be lapsed or canceled because of partial occupancy by the Owner prior to final acceptance of the Project.

The Construction Manager shall require each of his Subcontractors to procure and maintain insurance during the life of the respective subcontracts.

(2) Certificate of Insurance - The Owner shall be furnished proof of coverage of Insurance as follows:

Certificate(s) of Insurance will be furnished to the Owner within five (5) days of Notice to Proceed. These shall be completed and signed by the authorized Resident Agent, and shall be dated and show:

(1) The name of the insured Construction Manager, the specific job by name and job number, the name of the insurer, the number of the policy, its effective date, and its termination date.

(2) The General Liability and Auto Liability certificates of insurance shall indicate that the policies have been endorsed to cover the County as an additional insured to the extent of liability assumed by the Construction Manager under this Agreement, and that these policies may not be canceled or modified without thirty (30) days prior written notice to the County.

(3) The insurance coverages enumerated above constitute the minimum requirements and shall in no way lessen or limit the liability of the Construction Manager under the terms of the Contract.

*Certificates of Insurance shall be submitted to the Owner within five (5) days of Notice to Proceed, and no work shall commence on site until all submitted Certificates of Insurance are acceptable to the Owner.

13.3 Waiver of Subrogation

13.3.1 The Owner and the Construction Manager waive all rights against each

other, for damages caused by perils covered by insurance provided under Article 13.2 to the extent covered by such insurance except such rights as they may have to the proceeds of such insurance held by the Owner and Construction Manager as trustees. The Construction Manager shall require similar waivers from all Subcontractors and their Sub-subcontractors.

13.3.2 The Owner and Construction Manager waive all rights against each other for loss or damage to any equipment used in connection with the Project and covered by any property insurance. The Construction Manager shall require similar waivers from all subcontractors and their sub-subcontractors.

13.3.3 The Owner waives subrogation against the Construction Manager on all property and consequential loss policies carried by the Owner on adjacent properties and under property and consequential loss policies purchased for the Project after its completion.

13.3.4 If the policies of insurance referred to in this Article require an endorsement to provide for continued coverage where there is a waiver of subrogation, the Owner of such policies will cause them to be so endorsed. Failure to obtain proper endorsement nullifies the waiver of subrogation.

ARTICLE 14

TERMINATION OF THE AGREEMENT AND OWNER'S RIGHT TO PERFORM CONSTRUCTION MANAGER'S OBLIGATION

14.1 Termination by the Construction Manager - If the Project is stopped for a period of thirty (30) days under an order of any court or other public authority having jurisdiction or as a result of an act of government, such as a declaration of a national emergency making materials unavailable, through no act or fault of the Construction Manager, or if the Project should be stopped for a period of thirty (30) days by the Owner, then the Construction Manager may, upon seven (7) days written notice to the Owner, request undisputed payment for all work executed, the Construction Manager's fee earned to date, and for any proven loss sustained upon any materials, equipment, tools, construction equipment, and machinery, including reasonable profit, damages and terminal expenses incurred by the Construction Manager.

14.2 Owner's Right to Perform Construction Manager's Obligations and Termination by Owner for Cause -

(1) If the Construction Manager fails to perform any of its obligations under this Agreement, the Owner may, after seven (7) days written notice during

which period the Construction Manager fails to perform such obligations, make good such deficiencies. The GMP, or the actual cost of the Project, whichever is less, shall be reduced by the cost to the Owner to making good such deficiencies and the Construction Manager's Construction Phase Fee shall be reduced by an amount required to manage the making good of such deficiencies.

(2) If the Construction Manager is adjudged a bankrupt, or if he makes a general assignment for the benefit of his creditors, or if a receiver is appointed on account of his insolvency, or if he persistently or repeatedly refuses or fails, except in case for which extension of time is provided, to supply enough properly skilled workmen or proper materials and fails to maintain an established schedule (failure to maintain schedule shall be defined as any activity on the critical path that falls forty-five (45) days or more behind schedule) which has been adopted by the Construction Team, or if he fails to make prompt payment to subcontractors for materials or labor, or persistently disregards laws, rules, ordinances, regulations, or orders of any public authority having jurisdiction, or otherwise is guilty of a substantial violation of a provision of the Agreement, then the Owner may, without prejudice to any right or remedy and after giving the Construction Manager and his surety, if any, seven (7) days written notice, during which period Construction Manager fails to cure the violation, terminate the employment of the Construction Manager and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Construction Manager, and may finish the Project by whatever method he may deem expedient. In such case, the Construction Manager shall not be entitled to receive any further payment until the Project is finished nor shall he be relieved from his obligations assumed under Article 7. Reasonable termination expenses incurred by the Owner may be deducted from any payments left owing the Construction Manager (excluding monies owed the Construction Manager for subcontract work).

14.3 Termination by Owner for Convenience

(1) If the Owner terminates this Agreement other than pursuant to Article 14.2(2) or Article 14.3(2), he shall reimburse the Construction Manager for any unpaid cost of the Project due him under Article 9, plus that part of the unpaid balance of the Construction Phase Fee in an amount as will increase the payment on account of his fee to a sum which bears the same ratio to the Construction Phase Fee as the Cost of the Project at the time of termination bears to the Guaranteed Maximum Price, if established, otherwise to the Owner's Construction Budget. The Owner shall also pay to the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment

retained. In case of such termination of Agreement the Owner shall reimburse the Construction Manager for obligations and commitments made before notice of termination was received by the Construction Manager.

(2) After the establishment of the Guaranteed Maximum Price or at the completion of the Construction Phase, if the final cost estimates or lack of legislative funding make the Project no longer feasible from the standpoint of the Owner, the Owner may terminate this Agreement and pay the Construction Manager his proportionate fee due in accordance with Article 8.1, plus any costs incurred pursuant to Articles 9 and 10.

(3) Any termination by Owner for cause which is later determined to be invalid shall be considered a termination by Owner for convenience.

ARTICLE 15

ASSIGNMENT AND GOVERNING LAW

15.1 Neither the Owner nor the Construction Manager shall assign his interest in this Agreement without the written consent of the other except as to the assignment of proceeds.

15.2 This Agreement shall be governed by the Laws of the State of Florida.

15.3 Venue and Attorney's Fees: Venue for any legal action brought by any party to this Agreement to interpret, construe or enforce this Agreement shall be in a court of competent jurisdiction in and for Brevard County, Florida. In the event of any legal action to enforce the terms of this Agreement, each party shall bear its own attorney's fees and costs and any trial shall be non-jury.

15.4 Severability: If any provision of this Agreement is held by a Court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired.

ARTICLE 16

NOTICE OF CLAIM: WAIVER OF REMEDIES; NO DAMAGES FOR DELAY; DISPUTE RESOLUTION

16.1 The Owner's liability to Construction Manager for any claims arising out of or related to the subject matter of this contract, whether in contract or tort, including, but not limited to, claims for extension of construction time, for payment by the Owner of the costs, damages or losses because of changed conditions under which the work is to be performed, or for additional work, shall be governed by

the following provisions:

(a) All claims must be submitted as a Request for Change Order in the manner as provided herein;

(b) If the Construction Manager claims that any instructions given to him by the Architect/Engineer or by the Owner, by drawings or otherwise, involve extra Work not covered by the Contract and not discoverable with a review of the plans and specifications, then, except in emergencies endangering life or property, Construction Manager shall give the Architect/Engineer and the Owner written notice thereof before proceeding to execute the Work. Said notice shall be given promptly enough to avoid delaying the Work and in no instance later than twenty (20) calendar days after the receipt of such instructions.

The Construction Manager must submit a Notice of Claim to the Owner and to the Architect/Engineer within twenty (20) days of when the Construction Manager was or should have been aware of the occurrence of the event giving rise to the claim; and

(c) Within ten (10) days of submitting its Notice of Claim, the Construction Manager shall submit to the Owner its Request For Change Order, which shall include a written statement of all details of the claim, including a description of the work affected. Within thirty (30) days from the Notice of Claim the Construction Manager shall submit a detailed schedule impact and detailed cost analysis indicating quantities, unit prices, etc. establishing the basis for the amount of the claim.

The Construction Manager agrees that the Owner shall not be liable for any claim that the Construction Manager fails to submit as a Request for Change Order as provided in this section.

16.2 After receipt of a Request for Change Order, the Owner, in consultation with the Architect/Engineer, shall deliver to the Construction Manager its written determination of the claim. As to disputed matters subject to the determination by final Owner action (not actions for breach of contract or tort) the Owner's written decision following compliance with the dispute resolution procedure set forth in sections 16.4 through 16.6 below shall be final Owner action.

16.3 For work the Construction Manager performs with its own forces, and in addition to the adjustments provided for in Article 8, the Construction Manager's exclusive remedy for delays in performance of the construction caused by events beyond its control, including delays claimed to be caused by or attributable to the Owner or the Architect/Engineer, including claims based on breach of contract or negligence, shall be a claim submitted in compliance with Article 16.1 above, for an extension of the scheduled construction time. In the event of a change in

such work that will modify the GMP, the Construction Manager's claim for adjustment in contract sum are limited exclusively to its actual costs for such changes, including costs involved in claim preparation, plus five percent (5%) overhead, five percent (5%) profit and a two percent (2%) bond in the General Conditions. The Construction Manager expressly agrees that the foregoing constitute its sole and exclusive remedies for delays and changes in such work, and eliminate any other remedies for claim for increase in the contract price, delays, changes in the work, damages, losses or additional compensation.

16.4 In the event of any dispute over a proposed change order or any other matter arising out of the implementation or interpretation of this contract the following dispute resolution process shall apply.

(a) Within three (3) days after denial of a contractor's change order or contract modification request in an amount, individually or in total, less than the authorized purchasing level approved for the County Manager by the County Commission (currently at $100,000) the contractor may submit to the County Manager or a designee with experience in the oversight of construction projects for a department or business other than the department responsible for monitoring the disputed request, documentation of the contractor's position in the dispute or disagreement. The County Manager or designee, within five (5) days after the receipt of the contractor's documentation, shall review the request and make a final determination as to whether denial was arbitrary or capricious based upon the sufficiency of the work under the terms of the contract, applicable regulations and relevant construction standards. Based upon the sufficiency and degree of completion, as well as any defects in the work and the amount reasonably required, if any, to correct or repair defective work, the reviewer shall make the final determination as to whether a written change order or contract modification should be approved by the County Manager.

(b) If the denied request or disputed amount exceeds the County Manager's purchasing authority, the County Manager shall present a report, recommendation and the contractor's claim and documentation, to the County Commission for a final determination within thirty (30) days after receiving the contractor's documentation for the claim. The Commission shall make its decision using the standards specified in subparagraph (a) above.

16.5 Within thirty (30) days after denial of a request for a change order or contract modification by the project manager or engineer involving (1) an amount in excess of the County Manager's expenditure authority or (2) for the amount the contractor claims to be due at the time the project is ready for beneficial use or occupation, the County may, at the County's option in lieu of the procedure

specified in subparagraph 16.4, submit the dispute to a mediator with knowledge or experience in construction management, as agreed upon by the parties. Upon referral to a mediator, the County and contractor shall each pay half the estimated cost of the mediator, up front. Within fifteen (15) days after the date of submittal, the mediator, applying the standards set forth in subparagraph 16.4, shall investigate the dispute and submit a written recommendation for disposition of the dispute to the County Manager or a designee with the qualifications specified in subparagraph 16.4. Within fifteen (15) days after receiving the mediator's recommendation, the County Manager shall submit the recommendation to the County Commission, along with a staff report analyzing the dispute and mediator's recommendation. Based on the standards set forth in subparagraph 16.4 above, the Commission shall decide whether to grant or deny, in whole or in part, the amounts recommended by the mediator. The Commission's decision will be deemed final action on the disputed claim for the purposes of ripening the decision for judicial review. If the mediator recommends that no change order or contract modification be granted, the contractor shall reimburse the county for any amounts paid by the county to the mediator.

16.6 The deadlines for completing the dispute resolution process described in subparagraphs 16.4 and 16.5 may be extended by mutual agreement of the contractor and the county.

ARTICLE 17

OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

17.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Construction Manager claims that a delay or additional cost is involved because of such action by the Owner, the Construction Manager shall make such claim as provided in this Agreement.

17.2 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Construction Manager, who shall cooperate with them. The Construction Manager shall participate with other separate contractors and the Owner in reviewing their construction schedules when directed to do so. The Construction Manager shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute

the schedules to be used by the Construction Manager, separate contractors and the Owner until subsequently revised.

17.3 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights which apply to the Construction Manager under the Conditions of the Contract.

17.4 The Construction Manager shall afford the Owner, and separate contractors, reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities and shall connect and coordinate the Contractor's construction and operations with the Construction Manager, as required.

17.5 If part of the Construction Manager's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Construction Manager shall, prior to proceeding with that portion of the Work, promptly report to the Architect/Engineer or Owner apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Construction Manager to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Construction Manager's Work, except as to defects not then reasonably discoverable.

17.6 Costs caused by delays or by improperly timed activities or defective construction shall be borne by the party responsible thereof.

17.7 The Construction Manager shall promptly remedy damage wrongfully caused by the Construction Manager to completed or partially completed construction or to property of the Owner or separate contractors.

ARTICLE 18

MISCELLANEOUS

18.1 Interest - Any monies not paid when due to either party under this contract shall not bear interest except as may be required by Section 218.70 et seq., Florida Statutes, ("The Florida Prompt Payment Act").

18.2 Harmony - Construction Manager is advised and hereby agrees to exert every reasonable and diligent effort to assure that all labor employed by Construction Manager and his Subcontractors for work on the Project shall work in harmony with and be compatible with all other labor being used by building and Construction Managers now or hereafter on the site of the Project.

Construction Manager further agrees that this provision will be included in all subcontracts of the Subcontractors as well as the Construction Manager's own contract; provided, however, that this provision shall not be interpreted or enforced so as to deny or abridge, on account of membership or non-membership in any labor union or labor organization, the right of any person to work as guaranteed by Article 1, Section 6 of the Florida Constitution.

18.3 Apprentices - If the Construction Manager employs apprentices on the project, the behavior of the Construction Manager and the Owner shall be governed by the provision of Chapter 446, Florida Statutes, and by applicable standards and policies governing apprentice programs and agreements established by the Division of Labor of the State of Florida Department of Labor and Employment Security. The Construction Manager will include a provision similar to the foregoing sentence in each subcontract.

18.4 Minority Participation - The Construction Manager shall *diligently attempt* to award his material contracts, subcontracts and sub-subcontracts to firms having a letter of certification as a minority business from the "Office of Minority Business Assistance, Department of General Services, or any other Federal, Florida County or City certification.

18.5 Minority Employment Information - The Board of County Commissioners requires construction contracts, who would otherwise be required to file and EEO Form 1 Report under Federal Law (currently Federal law requires filing for employers with more than 15 employees), to submit an EEO Form 1 Report with the submission of their GMP. This requirement extends to any subcontractors who are required to submit the EEO Form 1 Report (over 15 employees) under Federal law. Failure to submit an EEO Form 1 Report with your GMP will be reason to declare your proposal "non-responsive" to the proposal requirements. However, the information will be used for statistical purposes only and will not be used in any way as a basis to award a contract. See **Attachment "O"**.

18.6 Public Entity Crime Affidavit attached as **Attachment "P"**.

18.7 Non-Collusion Affidavit of Prime Bidder attached as **Attachment "P"**.

18.8 Copyright Clause No reports, data, programs or other materials produced, in whole or in part for the benefit and use of the Owner, under this agreement shall be subject to copyright by Contractor in the United States or any other Country.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first written above.

ATTEST:

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA

Scott Ellis, Clerk

Jim Barfield
Brevard County Commission

As Approved By the Brevard County Commission:

(Company name here)

W & J CONSTRUCTION BY:
Construction Manager

NICK WITEK
Nick Witek

STATE OF FLORIDA
COUNTY OF BREVARD

The foregoing instrument was acknowledged before me this day of 2016 by whose position is with the firm of, a Florida Corporation, on behalf of the corporation. He/She is personally known to me or has produced as identification.

(SEAL)

NOTARY PUBLIC

Typed, Printed or Stamped Name

ATTACHMENT "A"

CONSTRUCTION TEAM ASSIGNED REPRESENTATIVES

Owner
Brevard County Facilities Department

Joan Van Sickle	Project Director
	Construction Coordinator
Mary Bowers	Support Services Manager/Contracts
Anissa Pratte	Special Projects Coordinator II

Architect-Engineer

Construction Manager

President
Vice President/Principal-In-Charge
Project Manager
Project Administrator
Project Superintendent
Estimator/Cost Control
Schedules

ATTACHMENT "B"

PROJECT SCOPE OF WORK

ATTACHMENT "C"

DIRECT PURCHASING PROCEDURE
CONSTRUCTION MANAGEMENT AGREEMENT

INTENT: The Owner of this Project, Brevard County, Florida, intends that these procedures govern the County's direct purchases of selected materials so that the County may take advantage of its tax exempt status. All monies which would have been payable as taxes, if not for Owner direct purchase under these procedures, will inure solely to the benefit of the Owner. The Owner's direct purchase of materials will not minimize or conflict with the Construction Manager's responsibility for the purchase, installation, coordination, storage, protection, warranty, etc. of the materials as described herein and in the plans and specifications of the Contract.

Definitions: For the purpose of these Procedures, the following words have the following definitions.

a) Contract: Construction Management Agreement by and between Construction Manager and Brevard County Board of County Commissioners, Viera, Florida for the construction of _____.

b) County Purchased Materials: Materials purchased directly by the Owner through execution and delivery of a Purchase Order.

c) GMP - Guaranteed Maximum Price established under the Contract.

d) Materials: Tangible Personal Property necessary for completion of the Project.

e) Materials Deduction Summary: Written document signed by Owner's representative and Construction Manager setting forth the amounts of County Purchased Materials, plus applicable taxes were the purchase not exempt from such taxes, as reflected in the parties' previously executed deductive change order(s) to the Contract showing deduction of such Materials from the GMP.

f) Owner: See Definition in Article I, section 1.3.

g) Owner's Representative: See Definition in Article I, section 1.3.

h) Project: See Definition in Article I, section 1.3.

i) Purchase Order: The Owner's request for Materials from a particular vendor or supplier when fully executed and delivered to the Construction Manager, and the Owner's promise to pay for the Material specified upon delivery and acceptance at the Project Site, and presentation of an invoice by the Construction Manager to the Owner certifying payment of same.

j) Material Requisition: A request by the Construction Manager to the Owner that the Owner directly purchase specific items described in sufficient detail, including quantity, grade, brand, etc., along with the vendor or material supplier and that

vendor or material supplier's quoted price for the Materials.

Overview: The Owner requires the Construction Manager (hereinafter, "Manager") to notify the Owner's Representative of Materials needed for the Project exceeding $5,000.00 in value, through a Material Requisition form. For the purpose of these Procedures, the Manager will assign to the Owner any rights the Manager may have under quotes, contracts or commitments received from the particular vendor or supplier for the Materials described in the Material Requisition. Any Materials purchased by Owner pursuant to these Procedures shall be referred to as "County Purchased Materials", and the responsibilities of the Owner and Manager relating to such County Purchased Materials shall be governed by the terms and conditions of these Procedures, which shall take precedence over other conditions and terms of the Contract Documents where inconsistencies or conflicts exist. The invoiced amount of County Purchased Materials and applicable sales tax had the purchases not been tax exempt, once finalized through the Owner's Purchase Order and after confirmation of completed delivery and acceptance pursuant to this Procedure, will be deducted from the GMP, as defined in the Contract, by deductive change order.

Owner Direct Purchasing Requirements and Procedures: When a Materials purchase for the Project is estimated to be $5,000 or greater and time will allow for an Owner Direct Purchase, Manager shall prepare a Material Requisition form, *(to be provided by the Owner)*, acceptable to Owner, and which specifically identifies the Materials which Owner may, in its discretion, elect to purchase directly. The Material Requisition form shall be complete when submitted, and all information requested provided. Along with the Material Requisition the Construction Manager must provide:

a) The name, address, telephone and fax number and contact person for the material supplier;
b) Manufacturer or brand, model or specification number of the item;
c) Quantity needed as estimated by Manager;
d) The price quoted by the supplier for the Materials identified therein;
e) Any sales tax associated with such quote if it were not purchased by a tax exempt entity;
f) Shipping and handling cost, including associated insurance;
g) Delivery dates as established by the Manager;
h) Subcontractor's written acknowledgment of these Procedures for Owner Direct Purchase of Materials.

After receipt of the Material Requisition, the Owner's Representative will determine whether the Owner will directly purchase the Materials described in the Material Requisition, and communicate consent or decline to purchase the materials to the Manager within twenty four (24) hours. Brevard County's Purchasing Division shall be the Owner's approving authority on Purchase Orders of County Purchased Materials. If the Owner consents to purchase the Materials, the Owner shall issue a Purchase Order for same. The Owner shall issue the original Purchase Order, and the Manager shall deliver the Purchase Order to the subcontractor. The Purchase Order shall require (1) that the supplier provide the required shipping, (2) that the supplier provide the required shipping and handling insurance, and (3) delivery of the County Purchased Materials on the delivery dates provided by the Manager in the Material Requisition.

The Manager shall be fully responsible for all matters relating to the receipt of County Purchased Materials under these Procedures, including, but not limited to, preparation of shop

drawings and submittals, verifying correct quantities, verifying documents of orders in a timely manner, coordinating purchases, providing and obtaining all warranties and guarantees required by the Contract Documents, inspection and acceptance of the goods at the time of delivery, and loss or damage to equipment and materials due to the negligence of the Manager. The Manager shall coordinate delivery schedules, sequence of delivery, loading orientation, and other arrangements normally required by the Manager for the Materials furnished. The Manager shall provide all services required for the unloading, handling and storage of Materials through installation. The Manager agrees to indemnify and hold the Owner harmless from any and all claims of whatever nature resulting from non-payment of goods to suppliers arising from the actions of Manager.

The Manager shall insure that County Purchased Materials conform to the Specifications, and determine prior to incorporation into the Work, if such Materials are patently defective, and whether such Materials are identical to the Material ordered and match the description on the bill of lading. As County Purchased Materials are delivered to the job site, the Manager shall inspect all shipments from the suppliers, and, if in conformance with the Purchase Order, approve the vendor's invoice for materials delivered. The Manager shall assure that each delivery of County Purchased Material is accompanied by documentation adequate to identify the Purchase Order against which the purchase is made. This documentation may consist of an itemized delivery ticket, packing slip or invoice from the supplier conforming to the Purchase Order against which the purchase is made, together with such additional information as the Owner may require. The Manager will then forward the documentation to the Owner.

If the Manager discovers defective or non-conformities in County Purchased Material upon inspection, the Manager shall not use such non-conforming or defective Materials in the Work and instead shall promptly notify the Owner of the defective or non-conforming conditions and coordinate the repair or replacement of those Materials without any undue delay or interruption to the Project. All repair, maintenance or damage-repair calls shall be forwarded to the Manager for resolution with the appropriate supplier, vendor, or subcontractor. If the Manager fails to perform such inspection, the condition of which the Manager either knew or should have known by performance of an inspection, Manager shall be responsible for all damages to the County resulting from Manager's incorporation of such Materials into the Project, including liquidated or delay damages.

On a bi-weekly basis, Manager shall be required to review invoices submitted by all suppliers of County Purchased Materials delivered to the Project Site during that month and either concur or object to the Owner's issuance of payment to the suppliers, based on Manager's records of materials delivered to the site. In order to arrange for the prompt payment to the supplier, the Manager shall provide to the Owner a list indicating the acceptance of the goods or materials within fifteen (15) days of receipt of said invoice for goods or materials. The list shall reference the applicable purchase order and include a copy of the invoices, delivery tickets, written acceptance of the delivered items, and such other documentation as may be reasonably required by the Owner. Upon receipt of the appropriate documentation in duplicate, the Owner shall prepare a check drawn to the supplier based upon the receipt of data provided. This check will be delivered directly to the supplier. If any discounts are available from the supplier or vendor, they shall accrue to the benefit of the Owner, and the amount quoted by the vendor, plus applicable tax, shall be deducted from the GMP. The Manager agrees to assist the Owner to immediately obtain partial or final releases or waivers as appropriate.

Following performance of the Purchase Orders by the suppliers, and submittal of documentation

confirming same to Owner with an invoice for payment by Owner, the Manager shall execute and deliver to the Owner at the end of each month along with the Manager's regular pay requests, a Materials Deduction Summary setting forth the full value of all County Purchased Materials, plus all taxes which would have been payable on the purchase of the Materials had they not been Owner purchased. The Materials Deduction Summary shall show all sums to be deducted by an appropriate deductive change order, and ultimately the GMP, to date. The Board of County Commissioners, or their authorized representative, shall be the approving authority for the Owner on the Materials Deduction Summary for County Purchased Materials.

The Manager shall maintain records of all County Purchased Materials incorporated into the Work. These records shall be available for inspection by the Owner upon request.

Notwithstanding the delivery of County Purchased Materials to the Project Site for the Manager's inspection, custody and incorporation into the Work, the Owner shall retain legal and equitable title to any and all County Purchased Materials. The transfer of possession of County Purchased Materials from the Owner to the Manager shall constitute a bailment for the mutual benefit of the owner and the Manager solely for the purposes set forth herein. The Owner shall be considered the bailer and the Manager the bailee of the County Purchased Materials. County Purchased Materials shall be considered returned to the Owner for purposes of their bailment at such time as they are incorporated into the Project or are returned to the vendor or supplier at the discretion of the Manager prior to payment for the Purchase Order by Owner.

The Owner shall purchase and maintain Builder's Risk Insurance sufficient to protect against any loss or damage to County Purchased Materials. Such insurance shall cover the full value of any County Purchased Materials not yet incorporated into the Project from the time the Owner first takes title to any of such County Purchased Materials and the time when the last of such County Purchased Materials is incorporated into the Project, or are returned to the vendor at the Manager's discretion prior to Owner's payment for same.

The Owner shall in no way be liable for any interruption or delay in the Project, for any defects or other problems with the Project, or any extra costs or time resulting from any delay in the delivery of, or defects in, County Purchased Materials.

ATTACHMENT "D"

DRAWINGS AND SPECIFICATIONS

ATTACHMENT "E"

CONSTRUCTION MANAGER'S
PRELIMINARY CONSTRUCTION SCHEDULE

ATTACHMENT "F"

ORDINANCE 98-37

AN ORDINANCE AMENDING CHAPTER 2 OF THE BREVARD COUNTY CODE TO CREATE ARTICLE VII, A PROCEDURE FOR PREQUALIFYING CONSTRUCTION CONTRACTORS, FOR COMPETITIVE BIDDING CRITERIA AND FOR DEBARMENT OF CONSTRUCTION CONTRACTORS AND SURETIES; PROVIDING FOR ALTERNATIVE CONSTRUCTION DELIVERY METHODS; PROVIDING FOR PREQUALIFICATION AND COMPETITIVE BIDDING CRITERIA, PROCEDURE, AND FOR A STANDARD OF PROOF; PROVIDING FOR EDITING OF THE ORDINANCE FOR INCLUSION WITHIN THE BREVARD COUNTY CODE; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Section 255.20, Fla. Stat. (1997) requires that standards and procedures for determining the lowest qualified and responsive bidder or award of a construction contract under any delivery method be established if a bidder is selected for any reason other than price; and

WHEREAS, the Board has determined that it is in the public's best interest to provide such standards and procedures so that the Board may select the most qualified and responsive bidder; and

WHEREAS, the Board has determined that it is in the public's best interest to prevent construction firms and sureties who have defaulted on a previous contract with the County from future bidding on County projects through a debarment procedure;

THEREFORE, be it ordained by the Board of County Commissioners of Brevard County, Florida as follows:

Section 1: Chapter 2 of the Brevard County Code shall be amended to create Article VII as follows:

1. DEFINITIONS: The following words shall have these meanings throughout this article:

   "AFFECTED PARTY" means an individual or business which has submitted a bid, offer, proposal, quotation, or response which is rejected, or is found unqualified under the provisions of this article, or which would be selected if a low bidder was found unqualified or nonresponsive.

   "BOARD" means the Board of County Commissioners of Brevard County, Florida.

"COMMITTEE" means two or more persons designated to evaluate prequalification and responsiveness criteria. Committees established by the County Manager may be intradepartmental, or include representatives of several departments interested in the administration and success of the construction project.

"DEBARMENT" means the exclusion for cause of a vendor or contractor, or subcontractor from bidding or doing business with the County on a temporary or permanent basis.

"MINOR IRREGULARITY" means a variation from the Invitation to Bid which does not affect the price of the bid, or give the bidder an advantage or benefit not enjoyed by other bidders, or does not adversely impact the interests of the agency.

"QUALIFIED BIDDER" means an individual or business which has submitted a bid, offer, proposal, quotation, or response, which has the capability in all respects to fully perform the contract requirements, and has the financial stability, honesty, integrity, skill, business judgement, experience, facilities and reliability necessary to give reasonable assurance of good faith and performance.

"REQUEST FOR QUALIFICATION" ("RFQ") means the process by which the County may prequalify individuals or businesses for a particular project before requesting bids for the project, thereby limiting the pool of bidders to these prequalified.

"RESPONSIVE BIDDER" means an individual or business which has submitted a bid, offer, proposal, quotation, or response, which conforms in all material respects to the solicitation, including but not limited to compliance with the submittal of specified insurance and bond requirements.

1. Any County contract for the construction or improvement of a public building, structure, or other public construction work that is estimated in accordance with general accounting principles to have construction costs of more than fifty thousand dollars ($50,000.00) shall be competitively awarded to the lowest, qualified and responsive bidder in accordance with this article, unless the project (1) fits within exceptions set forth in s. 255.20, Fla. Stat., as amended from time to time, (2) is a contract governed by the Consultant's Competitive Negotiation Act, or (3) is awarded under another contract delivery method authorized by this article. Nothing in this article shall be construed to require competitive award of every County construction work, nor to prohibit the Board from rejecting all bids if competitively bid, or to prevent the Board from waiving minor irregularities in any bid.

2. (a) Potential lump sum bidders responding to a request for qualifications are required to submit information required by this article and as identified in the RFQ

package. A committee identified in the RFQ package will determine whether a potential bidder is qualified and responsive as defined in this article.

(b) For projects advertised for lump sum bid without prior prequalification, the apparent low bidder, after the formal bid opening, will be required to submit the following prequalification information identified in the bid package within five (5) business days after the bid opening. Failure to provide prequalification information within this time frame may be considered as grounds for finding the apparent low bidder nonresponsive. If the apparent low bidder cannot provide adequate documents for review, or the submitted documents indicate the apparent low bidder or any subcontractors are not qualified, or if the bidder's package is determined to be nonresponsive, the Committee will reject the bidder or any of its subcontractors. In the event the bidder is found unqualified or non-responsive, the apparent second low bidder will be contacted and afforded the previous mentioned five (5) days to submit pre-qualification documents. This process will continue until the lowest qualified and responsive bidder is established. In the event that a subcontractor is found unqualified or non-responsive, the potential bidder or prime contractor will have five (5) business days to submit a substitute subcontractor for the same bid price or withdraw the original bid.

(c) In addition to lump sum contracts for construction, the Board may use the following delivery methods for construction or improvement of a public building, structure, or other public construction work: construction manager, design/build, or continuing contracts based on unit prices. The Board may also enter into continuing contracts with construction managers using the pre-qualification procedure set forth herein for potential lump sum bidders. The individual projects shall be awarded under a continuing contract using the following criteria:

> Ability of professional personnel given project's special characteristics; past performance; willingness to meet time and budget requirements; location; recent, current and projected workloads of the firms available under continuing contract; volume of work previously awarded to each firm under a continuing contract provided distribution does not violate the principle of selection of the most qualified firm for the project; previous experience on County projects.

The County Manager will establish procedures for the Board to hear any affected party with a complaint or appeal as to any recommendation or finding made pursuant to this article. Any affected party's complaint or appeal must be presented, in writing, to the County Manager's office within five (5) business days of the posting of a committee's decision.

(d) At the completion of each competitively awarded County construction project, the County department which administered the construction contract shall

complete an evaluation of the contractor's performance on a form to be established by the County Manager. The department may also complete evaluations of critical subcontractors using the same form. All such records shall be copied to the party evaluated and maintained by County Purchasing. Any party evaluated may submit a written response of any length, which response shall be filed with the evaluation.

3. Potential bidders, the apparent lowest bidder, or the person providing services under any other contract delivery method, and applicable subcontractors identified in the bid or request for qualification package for any County construction project which is to be competitively awarded shall be evaluated to determine whether the bidder and its subcontractors are qualified. In evaluating qualifications, the County shall consider the following information:

   - A Contractor's Pre-Qualification Statement for the prime contractor and subcontractors performing parts of work identified in the bidding documents as critical to the project's success. The Pre-Qualification Statement shall be provided on a form to be established by the County Manager;

   - Most current financial statement, but not more than one (1) year old, indication of bondability, or, if project is under $100,000, other evidence of financial capability as identified in the bid documents;

   - Resumes of Contractor and Subcontractor's key personnel, including project manager and superintendent levels, showing job history, education related to work to be performed and any license, training, and experience related to the work which that individual will perform;

   - List of subcontractors and suppliers, and items of work to be performed by the Contractor's own work force;

   - County evaluations of the performance on County projects;

   - References obtained from individuals or businesses with whom the contractor or subcontractor has performed work or conducted business;

   - Any other relevant qualifications, data or information identified in the bidding documents to be critical to the success of the project.

4. The County Manager will establish committees which may debar a contractor, contractor's key personnel, contractor's surety, subcontractor and subcontractor's key personnel, or any entity which key personnel are later employed or retained by in a supervisory position, from bidding on any County project under the circumstances enumerated below. The decision to disbar is

discretionary, the seriousness of the offense and all mitigating factors should be considered in making the decision to disbar. The notice of debarment shall state the time when such debarment will be lifted, if ever, and the contractor's right to appeal such debarment to the Board of County Commissioners under the Board's regular agenda. The Board reserves the power to waive or lift any committee imposed suspension or debarment.

An individual or business may be *permanently* debarred for any of the following reasons:

- Conviction or a judgment obtained in a court of competent jurisdiction for:
- Commission of a fraud or a criminal offense as an incident to obtaining, attempting to obtain, or in the performance of a pubic contract
- Violation of any Federal or State of Florida anti-trust or anti-racketeering statutes arising out of submission of bids or proposals;
- Commission of embezzlement, theft, forgery, bribery, falsification of or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which seriously and directly affects the question of present responsibility as a County contractor, subcontractor or vendor;
- If the conviction or judgment is reversed on appeal, the debarment shall be removed upon receipt of notification thereof.

Competent and substantial evidence of a violation of a County contract provision, as set forth below, when the violation is of a character so as to justify debarment action such as:

- Failure to perform in accordance with the specifications or delivery requirements in a contract;
- A history of failure to perform, or of unsatisfactory performance, in accordance with the terms of one or more contracts; provided, that such failure or unsatisfactory performance is within a reasonable period of time preceding the determination to debar. Failure to perform for unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered as a basis of debarment.

Upon adequate evidence, an individual or business may be *temporarily* debarred for a period up to three (3) years based upon substantial evidence of involvement in any of the causes cited in paragraph (b) above.

Section 2: Inclusion in Code: It is the intention of the Board of County Commissioners that the provisions of this ordinance shall become and be made a part of the Brevard County Code; and that the sections of this ordinance may be renumbered or relettered to accomplish such intentions.

Section 3: Severability: If any provision of this ordinance is held to be illegal or invalid,

the other provisions shall remain in full force and effect.

Section 4: Effective Date: This ordinance shall become effective upon filing as provided by law. A certified copy of the ordinance shall be filed with the Office of the Secretary of State, State of Florida within ten (10) days of enactment.

ATTACHMENT "G"

PUBLIC CONSTRUCTION PAYMENT BOND

BY THIS BOND, We _____ as Principal and _____, a corporation as Surety, are bound to Brevard County Board of County Commissioners, Brevard County, Florida, herein called Owner, in the sum of _____ ($), for payment of which we bind ourselves, our heirs, personal representatives, successors and assigns, jointly and severally.

THE CONDITIONS OF THIS BOND are that if Principal:

1. Promptly makes payments to all claimants, as defined in Section 255.05(1), Florida Statutes, supplying Principal with labor, materials, or supplies, used directly or indirectly by Principal in the prosecution of the work provided for in the contract dated _____, 20____, between Principal and Owner for construction of _____, the contract being attached hereto and made a part of this bond by reference, in such time and without delay, and in the manner prescribed in the contract; and
2. Pays Owner all losses, damages, expenses, costs, and attorney's fees, including appellate proceedings, that Owner sustains because of a default by Principal under the contract, then this bond is void; otherwise it remains in full force.

   Any changes in or under the contract documents and compliance or noncompliance with any formalities connected with the contract does not affect Surety's obligation under this bond.

Signed and sealed this _____ day of _____, 20___.

Witness:

_____

_____
Principal Seal

Its: _____
Title

Witness:

_____

_____
Surety Seal

Its: _____
Title

ATTACHMENT "H"

PUBLIC CONSTRUCTION PERFORMANCE BOND

BY THIS BOND, We _____, as Principal and _____, a corporation as Surety, are bound to Brevard County Board of County Commissioners, Brevard County, Florida, herein called Owner, in the sum of _____ ($_____), for payment of which we bind ourselves, our heirs, personal representatives, successors and assigns, jointly and severally.

THE CONDITIONS OF THIS BOND are that if Principal:

1. Performs promptly, completely and faithfully the contract dated _____, 2010 between Principal and Owner for construction of _____, the contract being attached hereto and made a part of this bond by reference, in such time and without delay, and in the manner prescribed in the contract including the delivery, execution and performance of any warranty work required by the contract; and
2. Pays Owner all losses, damages, expenses, costs, and attorney's fees, including appellate proceedings, that Owner sustains because of default by Principal under the contract; and
3. Performs the guarantee of all work and materials furnished under the contract for the time specified in the contract, then this bond is void; otherwise it remains in full force.

Any changes in or under the contract documents and compliance or noncompliance with any formalities connected with the contract does not affect Surety's obligation under this bond.

Signed and sealed this _____ day of _____, 20___.

Witness:

_____

_____
Principal Seal

Its: _____
Title

Witness:

_____

_____
Surety Seal

Its: _____
Title

ATTACHMENT "I"

CONSTRUCTION MANAGER'S
GUARANTEED MAXIMUM PRICE

ATTACH HERE

ATTACHMENT "J"

CERTIFICATE OF SUBSTANTIAL COMPLETION

(Insert Form Here)

ATTACHMENT "K"

CERTIFICATE OF FINAL COMPLETION

PROJECT NO. & TITLE:
ARCHITECT: CONTRACTOR:
CONTRACT DATE: DATE OF FINAL COMPLETION:

CERTIFICATE OF ARCHITECT/ENGINEER

Based on my inspections and investigation of the Contractor's work under the above referenced contract, I certify that the work, in general, has been completed in accordance with the contract documents, that all matters previously brought to the Contractor's attention as incomplete or defective have been resolved pursuant to my direction, and that the Contractor has submitted the attached sworn affidavit as evidence that the Contractor has paid all labor, materials, and other charges against the project in accordance with the terms of the Contract.

A/E Firm Name: _____ By: _____

TO BE COMPLETED BY ARCHITECT/ENGINEER: DATE: DAYS:

THROUGH THE SUBSTANTIAL COMPLETION PHASE

1. Notice to Proceed (N.T.P.)
2. Time Specified in Original Contract for Substantial Completion (S.C.)
3. Extension Granted By Change Orders (Days Between Original Contract S.C. and Final Contract S.C.)
4. Total Days Allowable to Substantial Completion (Add Lines 2 and 3)
5. Project Substantially Completed as Certified by A/E (Total Days from NTP through Date Certified by A/E)
6. Substantial Completion Overrun (Subtract Line 4 from 5 and Enter Overrun)

THROUGH THE FINAL COMPLETION PHASE

1. Time Specified in Contract, Between Substantial and Final Completion
2. Extensions Granted by Change Orders (Days Between S.C. and Final Completion)
3. Total Days Allowable Between Substantial Completion and Final Completion (Add Lines 1 and 2)
4. Date Actually Completed and Total Days Between and Date Certified by A/E as Actually being Finally Completed).
5. Final Completion Overrun (Subtract Line)

Architect: _____ Date: _____

Project Manager: _____ Date: _____

Facilities Construction Manager: _____ Date: _____

ATTACHMENT "L"

ALLOWABLE COSTS, OVERHEAD

DESCRIPTION	EST QUANTITY	UNITS	UNIT COST	BUDGET VALUE	QUANTITY TO DATE	QUANTITY TO COMP
OFFICE PHONES						
OFFICE SUPPLIES						
POSTAGE						
GAS/OIL/LUBRICATION						
AUTOMOBILES/TRUCKS						
PROJECT MANAGER						
ESTIMATING COSTS						
EXECUTIVE LABOR COST						
ASST PROJECT MANAGER						
IN HOUSE SECRETARY						
TRAVEL EXPENDITURES						
WARRANTY EXPENSE						

ATTACHMENT "M"
(Direct Cost Items)
GENERAL CONDITIONS

SUPERINTENDENT

JOB SITE SECRETARY/CLERK

QUALITY CONTROL

SURVEY

PERMITS

IMPACT/CONNECTION FEES

CONSTRUCTION DRAWINGS/SPECS

PROGRESS PHOTOGRAPHS *(IF REQUESTED BY THE OWNER)*

JOB SITE SIGN *(IF REQUESTED BY THE OWNER)*

SPECIAL SECURITY *(IF REQUESTED BY THE OWNER)*

PAYMENT & PERFORMANCE BONDS

BUILDERS RISK INSURANCE

JOBSITE TRAILER AND SUPPORT *(IF REQUESTED BY THE OWNER)*

TEMPORARY UTILITIES *(AS APPROVED BY THE OWNER)*

TEMPORARY JOBSITE FENCING *(INITIAL INSTALLATION ONLY)*

TRASH REMOVAL/DUMP FEES, AND RECYCLING *(AS APPROVED BY THE OWNER)*

ATTACHMENT "N"

CERTIFICATE FOR PAYMENT

(INSERT FORM HERE)

ATTACHMENT "O"

MINORITY EMPLOYMENT INFORMATION

The Board of County Commissioners requires construction contracts, who would otherwise be required to file and EEO Form 1 Report under Federal Law (currently Federal law requires filing for employers with more than 15 employees), to submit an EEO Form 1 Report with the submission of their GMP. This requirement extends to any subcontractors who are required to submit the EEO Form 1 Report (over 15 employees) under Federal law. Failure to submit an Acknowledgment and/or EEO Form 1 Report with your GMP will be reason to declare your proposal "non-responsive" to the proposal requirements. However, the information will be used for statistical purposes only and will not be used in any way as a basis to award a contract.

Please fill out and sign one (1) of the following statements:

1. My Company or subcontractors are required to submit the EEO Form 1 Report and they are attached.

   Company Name:
   Signature: _____ Date: _____

2. My Company or subcontractors are not required to submit the EEO Form 1 Report.

   Company Name:
   Signature: _____ Date: _____

Company Name: _____

Company Address: _____

Company Telephone: _____

Signature: _____ Printed Signature: _____

ATTACHMENT "P"

PUBLIC ENTITY CRIME ACKNOWLEDGMENT

A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid/quote/proposal on a contract to provide goods or services to a public entity, may not submit a bid/quote/proposal on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids/quotes/proposals on leases of rental property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for Category Two ($15,000) for a period of thirty six (36) months from the date of being placed on the convicted vendor list.

NON-COLLUSION AFFIDAVIT OF PRIME BIDDER

State of Florida
County of Brevard

_____, being duly sworn, deposes and says that:

(1) Affiant is _____ of _____, the Bidder that has submitted a bid/quote/proposal;

(2) Affiant is fully informed respecting the preparation and contents of the bid/quote/proposal and of all pertinent circumstances respecting such bid/quote/proposal;

(3) Such bid/quote/proposal is genuine and is not a collusive or sham bid/quote/proposal;

(4) Neither the said Bidder nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, has in any way colluded, conspired, connived or agreed, directly or indirectly with any other Bidder, firm or person to submit a collusive or sham bid/quote/proposal in connection with the Contract for which the bid/quote/proposal has been submitted or to refrain from bidding in connection with such Contract, or has in any manner, directly or indirectly, sought by Contract, or has in any manner, directly or indirectly, sought by the agreement or collusion or communication or conference with any other bidder, firm or person to fix the price or prices in the bid/quote/proposal or of any other Bidder, or to fix any overhead, profit or cost element of the bid/quote/proposal price or the bid/quote/proposal price of any other bidder, or to secure through any collusion, conspiracy, connivance or unlawful agreement any advantage against the Board of County Commissioners of Brevard County, Florida, or any person interested in the Contract; and

(5) The price or prices negotiated for the bid/quote/proposal are fair and proper and are not tainted by any collusion, conspiracy, connivance, or unlawful agreement

on the part of the Bidder or any of its agents, representatives, owners, employees, or parties of interest, including affiant.

_____
Signature

_____
Title

Subscribed and sworn to before me this ____ day of _____, 20___.

_____
Notary Public

My Commission expires: _____

CONTINUING
CONSTRUCTION MANAGER (AT RISK)
SERVICES AGREEMENT
(Federally Funded Projects)

THIS AGREEMENT, entered into this _____ day of _____, 2016 by and between **BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS**, a political subdivision of the State of Florida, hereinafter referred to as COUNTY, and **CANAVERAL CONSTRUCTION COMPANY, INC.** whose address is 3475 North US 1, Mims, Florida 32754, a corporation under the laws of the State of Florida, hereinafter referred to as CONSTRUCTION MANAGER.

For and in consideration of the mutual agreement hereinafter contained, the COUNTY hereby retains the CONSTRUCTION MANAGER and the CONSTRUCTION MANAGER hereby covenants to provide Continuing Construction Manager (At Risk) services for Federally Funded County Projects ($1 - $2,000,000 each).

ARTICLE 1

1.1 The CONSTRUCTION MANAGER agrees to furnish its best skill and judgement and to cooperate with the Architect/Engineer, where applicable, in furthering the interest of the COUNTY. The CONSTRUCTION MANAGER agrees to furnish efficient business administration and supervision and to use its best efforts to complete the Project(s) in an expeditious and economical manner consistent with the interests of the COUNTY.

1.2 The Construction Team: The CONSTRUCTION MANAGER, the COUNTY and the Architect/Engineer (the "Construction Team") will work as a team through construction completion. The CONSTRUCTION MANAGER shall provide leadership to the Construction Team on all matters relating to construction. The Architect/Engineer will provide leadership to the Construction Team on all matters relating to design.

ARTICLE 2

2.1 The CONSTRUCTION MANAGER'S basic services under this Agreement include construction management services for federally funded projects ($1-$2,000,000). For each proposed Project, the COUNTY and the CONSTRUCTION MANAGER shall inter into a separate Agreement Between Owner and Construction Manager (**Attachment "A"**).

2.2 Selection for each proposed Project will be per Florida Statute 287.055, and Qualification Based Selection Criteria as follows:

A. Ability of firms professional personnel given the project's special characteristics;
B. Willingness to meet time and budget requirements;
C. Physical Location of Firm;
D. Recent, current and projected workload of the firms available under the continuing contract;

E. Volume of work previously awarded to the firm by the Board of County Commissioners, provided distribution does not violate the principles of selection of the most qualified firm for the project;
F. Previous Board of County Commissioners experience, including staff evaluations on file with Brevard County Facilities and Brevard County Purchasing Services.

2.3 The Contract Time for performance of each proposed Project shall be established in the "Agreement Between Owner and Construction Manager" for each proposed Project, including the Notice to Proceed.

2.4 This Agreement shall remain in effect for a period of one (1) year, and may be renewed for an additional three (3) one-year increments at the COUNTY'S option, based upon satisfactory performance of the CONSTRUCTION MANAGER.

2.5 The Guaranteed Maximum Price (GMP) for each proposed Project shall include the Cost of the Work required by the Contract Documents, and the CONSTRUCTION MANAGER'S fee. The GMP will be negotiated based on Contract Documents, Plans & Specifications for each proposed Project provided by the COUNTY.

2.6 Payment & Performance Bonds will be provided to the COUNTY by the CONSTRUCTION MANAGER for each proposed Project which exceeds $100,000 in construction cost. Insurance must be provided to the COUNTY by the CONSTRUCTION MANAGER for each proposed Project.

ARTICLE 3

3.1 The COUNTY and CONSTRUCTION MANAGER respectively bind themselves, their partners, successors, assigns and legal representatives to this Agreement and to the partners, successors, assigns and legal representatives of other party with respect to all covenants of this Agreement. Neither the COUNTY nor the CONSTRUCTION MANAGER shall assign this Agreement without written consent of the other.

3.2 This Agreement shall be governed by the laws of the State of Florida.

ARTICLE 4

4.1 The CONSTRUCTION MANAGER shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement.

4.2 The CONSTRUCTION MANAGER is required to pay its subcontractors performing work related to this Agreement for satisfactory performance of that work no later than thirty (30) days after the CONSTRUCTION MANAGER'S receipt of payment for that work from COUNTY. In addition, the CONSTRUCTION MANAGER may not hold retainage from its subcontractors.

ARTICLE 5

FEDERAL CLAUSES

5.1 **Fly America Requirements**
Applicability – all contracts involving transportation of persons or property, by air between the U.S. and/or places outside the U.S. These requirements do not apply to micro-purchases ($3,000 or less, except for construction contracts over $2,000).

Contractor shall comply with 49 USC 40118 (the "Fly America" Act) in accordance with General Services Administration regulations 41 CFR 301-10, stating that recipients and sub-recipients of Federal funds and their contractors are required to use US Flag air carriers for US Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a US flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. Contractor shall include the requirements of this section in all subcontracts that may involve international air transportation.

5.2 **Buy America Certification (Steel and Manufactured Products)**
Construction Contracts and Acquisition of Goods or Rolling Stock (valued at more than $100,000)

Contractor shall comply with 49 USC 5323(j) and 49 CFR 661, as amended by MAP-21 stating that Federal funds may not be obligated unless steel, iron and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include final assembly in the US for 15 passenger vans and 15 passenger wagons produced by Chrysler Corp., software, microcomputer equipment and small purchases (currently less than $100,000) made with capital, operating or planning funds. Separate requirements for rolling stock are stated at 5323(j)(2)(C) and 49 CFR 661.11. Rolling stock must be manufactured in the US and have a minimum 60% domestic content. A bidder or offeror shall submit appropriate Buy America certification to the County with all bids on FTA-funded contracts, except those subject to a general waiver. Proposals not accompanied by a completed Buy America certification shall be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

5.3 **Cargo Preference**
Contracts involving equipment, materials or commodities which may be transported by ocean vessels. These requirements do not apply to micro-purchases ($3,000 or less, except for construction contracts over $2,000).

Contractor shall: a. use privately owned US-Flag commercial vessels to ship at least 50% of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners and tankers) involved, whenever shipping any equipment, material or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for US flag commercial vessels; b. furnish within 20 working days following the loading date of shipments originating within the US or within 30 working days following the loading date of shipments originating outside the US, a legible copy of a rated, "on-board" commercial bill-of-lading in English for each shipment of cargo described herein to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the recipient (through contractor in the case of a subcontractor's bill-of-lading.); c. include these requirements in all subcontracts issued pursuant to this contract when the subcontract involves the transport of equipment, material or commodities by ocean vessel.

5.4 **Seismic Safety**

Construction of new buildings or additions to existing buildings. These requirements do not apply to micro- purchases ($3,000 or less, except for construction contracts over $2,000).

Contractor agrees that any new building or addition to an existing building shall be designed and constructed in accordance with the standards required in USDOT Seismic Safety Regulations 49 CFR 41 and shall certify compliance to the extent required by the regulation. Contractor shall also ensure that all work performed under this contract, including work performed by subcontractors, complies with the standards required by 49 CFR 41 and the certification of compliance issued on the project.

5.5 **Energy Conservation**

All Contracts except micro-purchases ($3,000 or less, except for construction contracts over $2,000).

Contractor shall comply with mandatory standards and policies relating to energy efficiency, stated in the state energy conservation plan issued in compliance with the Energy Policy & Conservation Act.

5.6 **Clean Water**

All Contracts and Subcontracts over $100,000.

Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq. Contractor shall report each violation to the County and understands and agrees that the County shall, in turn, report each violation as required to FTA and the appropriate EPA Regional Office. Contractor shall include these requirements in each subcontract exceeding $100,000 financed in whole or in part with FTA assistance.

5.7 **Lobbying**

Construction/Architectural and Engineering/Acquisition of Rolling Stock/Professional Service Contract/Operational Service Contract/Turnkey contracts over $100,000.

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104- 65 [to be codified at 2 U.S.C. § 1601, et seq.] - Contractors who apply or bid for an award of $100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non- Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the County.

5.8 **Access to Records and Reports**

Applicability – As shown below. These requirements do not apply to micro-purchases ($3,000 or less, except for construction contracts over $2,000)

The following access to records requirements apply to this Contract:

1. Where the purchaser is not a State but a local government and is an FTA recipient or a sub-grantee of FTA recipient in accordance with 49 CFR 18.36(i), contractor shall provide the purchaser, the FTA, the US Comptroller General or their authorized representatives access to any books, documents, papers and contractor records which are pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor shall also, pursuant to 49 CFR 633.17, provide authorized FTA representatives, including any PMO contractor, access to contractor's records and construction sites pertaining to a capital project, defined at 49 USC 5302(a)1, which is receiving FTA assistance through the programs described at 49 USC 5307, 5309 or 5311.

2. Where the purchaser is a State and is an FTA recipient or a sub-grantee of FTA recipient in accordance with 49 CFR 633.17, contractor shall provide the purchaser, authorized FTA representatives, including any PMO Contractor, access to contractor's records and construction sites pertaining to a capital project, defined at 49 USC 5302(a)1, which receives FTA assistance through the programs described at 49 USC 5307, 5309 or 5311. By definition, a capital project excludes contracts of less than the simplified acquisition threshold currently set at $100,000.

3. Where the purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is an FTA recipient or a sub-grantee of FTA recipient in accordance with 49 CFR 19.48, contractor shall provide the purchaser, the FTA, the US Comptroller General or their authorized representatives, access to any books, documents, papers and record of the contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.

4. Where a purchaser which is an FTA recipient or a sub-grantee of FTA recipient in accordance with 49 USC 5325(a) enters into a contract for a capital project or improvement (defined at 49 USC 5302(a)(1) through other than competitive bidding, contractor shall make available records related to the contract to the purchaser, the Secretary of USDOT and the US Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

5. Contractor shall permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

6. Contractor shall maintain all books, records, accounts and reports required under this contract for a period of not less than three (3) years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case contractor agrees to maintain same until the recipient, FTA Administrator, US Comptroller General, or any of their authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Re: 49 CFR 18.39(i)(11).

FTA does not require the inclusion of these requirements in subcontracts.

5.9 **Federal Changes**

All Contracts except micro-purchases ($3,000 or less, except for construction contracts over $2,000)

Contractor shall comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the purchaser and FTA, as they may be amended or promulgated from time to time during the term of the contract. Contractor's failure to comply shall constitute a material breach of the contract.

5.10 **Bonding Requirements**

Applicability – For those construction or facility improvement contracts or subcontracts exceeding $100,000, FTA may accept the bonding policy and requirements of the County, provided that they meet the minimum requirements for construction contracts as follows:

1. A bid guarantee from each bidder equivalent to five (5) percent of the bid price. The "bid guarantees" shall consist of a firm commitment such as a bid bond, certifies check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

2. A performance bond on the part to the Contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

3. A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment, as required by law, of all persons supplying labor and material in the execution of the work provided for in the contract.
   i.

The undersigned understands that any material alteration of any of the above or any of the material contained on this form, other than that requested will render the bid unresponsive.

4. Performance and Payment Bonding Requirements (Construction)

   The Contractor shall be required to obtain performance and payment bonds as follows:

   A. Performance Bonds
      i. The penal amount of performance bonds shall be 100 percent of the original contract price, unless the County determines that a lesser amount would be adequate for the protection of the County.

      ii. The County may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The County may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

   B. Payment Bonds
      The penal amount of the payment bonds shall equal 100% of the original contract price.

C. Patent Infringement Bonding Requirements (Patent Indemnity)
The Contractor may be required to obtain a patent indemnity bond if a performance bond is not furnished and the financial responsibility of the Contractor is unknown or doubtful. The County shall determine the amount of the patent indemnity to protect the County.

5.11 **Warranty of the Work and Maintenance Bonds**

1. The Contractor warrants to County, the Architect and/or Engineer that all materials and equipment furnished under this Contract will be of highest quality and new unless otherwise specified by County, free from faults and defects and in conformance with the Contract Documents. All work not so conforming to these standards shall be considered defective. If required by the [Project Manager], the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

2. The Work furnished must be of first quality and the workmanship must be the best obtainable in the various trades. The Work must be of safe, substantial and durable construction in all respects. The Contractor hereby guarantees the Work against defective materials or faulty workmanship for a minimum period of one (1) year after Final Payment by County and shall replace or repair any defective materials or equipment or faulty workmanship during the period of the guarantee at no cost to County. As additional security for these guarantees, the Contractor shall, prior to the release of Final Payment [as provided in Item X below], furnish separate Maintenance (or Guarantee) Bonds in form acceptable to County written by the same corporate surety that provides the Performance Bond and Labor and Material Payment Bond for this Contract. These bonds shall secure the Contractor's obligation to replace or repair defective materials and faulty workmanship for a minimum period of one (1) year after Final Payment and shall be written in an amount equal to ONE HUNDRED PERCENT (100%) of the CONTRACT SUM, as adjusted (if at all).

5.12 **Clean Air**

1. Contractor shall comply with all applicable standards, orders or regulations pursuant to the Clean Air Act, 42 USC 7401 et seq. Contractor shall report each violation to the County and understands and agrees that the County will, in turn, report each violation as required to FTA and the appropriate EPA Regional Office.

2. Contractor shall include these requirements in each subcontract exceeding $100,000 financed in whole or in part with FTA assistance.

5.13 **Recycled Products**
All contracts for items designated by the EPA, when the purchaser or contractor procures $10,000 or more of one of these items during the current or previous fiscal year using Federal funds.

The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive

Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

5.14 Davis-Bacon and Copeland Anti-Kickback Acts

(1) **Minimum wages** –

(i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

1. Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and
2. The classification is utilized in the area by the construction industry; and
3. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and
4. With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(v)(A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

1. The work to be performed by the classification requested is not performed by a classification in the wage determination; and

2. The classification is utilized in the area by the construction industry; and

3. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination with 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(v) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(2) **Withholding** - The County shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the County may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) **Payrolls and basic records –**

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the

commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the County for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

1. That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete;
2. That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;
3. That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) **Apprentices and trainees –**

(i) *Apprentices* - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination.

Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) *Trainees* - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination.

Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices.

Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the

ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) *Equal employment opportunity* - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) **Compliance with Copeland Act requirements** - The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) **Subcontracts** - The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) **Contract termination: debarment** - A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) **Compliance with Davis-Bacon and Related Act requirements** - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) **Disputes concerning labor standards** - Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) **Certification of eligibility** - (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

5.15 **Contract Work Hours & Safety Standards Act**
Applicability – Contracts over $100,000

1. Overtime requirements - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in

which he or she is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

2. Violation; liability for unpaid wages; liquidated damages - In the event of any violation of the clause set forth in para. (1) of this section, contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in para. (1) of this section, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in para. (1) of this section.

3. Withholding for unpaid wages and liquidated damages - the County shall upon its own action or upon written request of USDOL withhold or cause to be withheld, from any moneys payable on account of work performed by contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours & Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in para. (2) of this section.

4. Subcontracts - Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. Prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.

5.15 **No Government Obligation to Third Parties**

Applicability – All contracts except micro-purchases ($3,000 or less, except for construction contracts over $2,000)

1. The County and contractor acknowledge and agree that, notwithstanding any concurrence by the US Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the US Government, the US Government is not a party to this contract and shall not be subject to any obligations or liabilities to the County, the contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

2. Contractor agrees to include the above clause in each subcontract financed in whole or in part with FTA assistance. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

5.16 **Program Fraud and False or Fraudulent Statements or Related Acts**

Applicability – All contracts except micro-purchases ($3,000 or less, except for construction contracts over $2,000)

1. Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC 3801 et seq. and USDOT regulations, "Program Fraud Civil Remedies," 49 CFR 31, apply to its actions pertaining to this project. Upon execution of the underlying contract, contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification, the US Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act (1986) on contractor to the extent the US Government deems appropriate.

2. If contractor makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification to the US Government under a contract connected with a project that is financed in whole or in part with FTA assistance under the authority of 49 USC 5307, the Government reserves the right to impose the penalties of 18 USC 1001 and 49 USC 5307(n)(1) on contractor, to the extent the US Government deems appropriate.

3. Contractor shall include the above two clauses in each subcontract financed in whole or in part with FTA assistance. The clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

5.17 **Termination**

Applicability – All Contracts over $10,000, except contracts with nonprofit organizations and institutions of higher learning, where the threshold is $100,000.

1. Termination for Convenience (General Provision) the County may terminate this contract, in whole or in part, at any time by written notice to contractor when it is in the County's best interest. Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. Contractor shall promptly submit its termination claim to the County. If contractor is in possession of any of the County's property, contractor shall account for same, and dispose of it as the County directs.

2. Termination for Default [Breach or Cause] (General Provision) If contractor does not deliver items in accordance with the contract delivery schedule, or, if the contract is for services, and contractor fails to perform in the manner called for in the contract, or if contractor fails to comply with any other provisions of the contract, the County may terminate this contract for default. Termination shall be effected by serving a notice of termination to contractor setting forth the manner in which contractor is in default. Contractor shall only be paid the contract price for supplies delivered and accepted, or for services performed in accordance with the manner of performance set forth in the contract. If it is later determined by the County that contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of contractor, the County, after setting up a new delivery or performance schedule, may allow contractor to continue work, or treat the termination as a termination for convenience.

3. Opportunity to Cure (General Provision) the County in its sole discretion may, in the case of a termination for breach or default, allow contractor an appropriately short period of time in which to cure the defect. In such case, the notice of termination

shall state the time period in which cure is permitted and other appropriate conditions If contractor fails to remedy to the County's satisfaction the breach or default or any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by contractor or written notice from the County setting forth the nature of said breach or default, the County shall have the right to terminate the Contract without any further obligation to contractor. Any such termination for default shall not in any way operate to preclude the County from also pursuing all available remedies against contractor and its sureties for said breach or default.

4. Waiver of Remedies for any Breach In the event that the County elects to waive its remedies for any breach by contractor of any covenant, term or condition of this Contract, such waiver by the County shall not limit its remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

5. Termination for Convenience (Professional or Transit Service Contracts) the County, by written notice, may terminate this contract, in whole or in part, when it is in the County's interest. If the contract is terminated, the County shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

6. Termination for Default (Supplies and Service) If contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the contractor fails to comply with any other provisions of this contract, the County may terminate this contract for default. The County shall terminate by delivering to contractor a notice of termination specifying the nature of default. Contractor shall only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract. If, after termination for failure to fulfill contract obligations, it is determined that contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the County's convenience.

7. Termination for Default (Transportation Services) If contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if contractor fails to comply with any other provisions of this contract, the County may terminate this contract for default. The County shall terminate by delivering to contractor a notice of termination specifying the nature of default. Contractor shall only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract. If this contract is terminated while contractor has possession of the County goods, contractor shall, as directed by the County, protect and preserve the goods until surrendered to the County or its agent. Contractor and the County shall agree on payment for the preservation and protection of goods. Failure to agree on an amount shall be resolved under the Dispute clause. If, after termination for failure to fulfill contract obligations, it is determined that contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the County's convenience.

8. Termination for Default (Construction) If contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified, or any extension, or fails to complete the work within this time, or if contractor fails to comply with any other provisions of this contract, the County may terminate this contract for default. the County shall terminate by delivering to contractor a notice of termination specifying the nature of default. In this event, the

County may take over the work and compete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. Contractor and its sureties shall be liable for any damage to the County resulting from contractor's refusal or failure to complete the work within specified time, whether or not contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the County in completing the work.

Contractor's right to proceed shall not be terminated nor shall contractor be charged with damages under this clause if:

1. Delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of contractor. Examples of such causes include: acts of God, acts of the County, acts of another contractor in the performance of a contract with the County, epidemics, quarantine restrictions, strikes, freight embargoes; and

2. Contractor, within 10 days from the beginning of any delay, notifies the County in writing of the causes of delay. If in the County's judgment, delay is excusable, the time for completing the work shall be extended. The County's judgment shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses. If, after termination of contractor's right to proceed, it is determined that contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if termination had been issued for the County's convenience.

3. Termination for Convenience or Default (Architect & Engineering) the County may terminate this contract in whole or in part, for the County's convenience or because of contractor's failure to fulfill contract obligations. The County shall terminate by delivering to contractor a notice of termination specifying the nature, extent, and effective date of termination. Upon receipt of the notice, contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the County all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process. If termination is for the County's convenience, it shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services. If termination is for contractor's failure to fulfill contract obligations, the County may complete the work by contact or otherwise and contractor shall be liable for any additional cost incurred by the County. If, after termination for failure to fulfill contract obligations, it is determined that contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the County's convenience.

4. Termination for Convenience or Default (Cost-Type Contracts) the County may terminate this contract, or any portion of it, by serving a notice or termination on contractor. The notice shall state whether termination is for convenience of the County or for default of contractor. If termination is for default, the notice shall state the manner in which contractor has failed to perform the requirements of the contract. Contractor shall account for any property in its possession paid for from funds received from the County, or property supplied to contractor by the County. If termination is for default, the County may fix the fee, if the contract provides for a fee, to be paid to contractor in proportion to the value, if any, of work performed up to the time of termination. Contractor shall promptly submit its termination claim to the

County and the parties shall negotiate the termination settlement to be paid to contractor. If termination is for the County's convenience, contractor shall be paid its contract close- out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination. If, after serving a notice of termination for default, the County determines that contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of contractor, the County, after setting up a new work schedule, may allow contractor to continue work, or treat the termination as a termination for convenience.

5.18 **Government Wide Debarment and Suspension (Non Procurement)**

The County agrees to the following: (1) It will comply with the requirements of 2 C.F.R. part 180, subpart C, as adopted and supplemented by U.S. DOT regulations at 2 C.F.R. part 1200, which include the following: (a) It will not enter into any arrangement to participate in the development or implementation of the Project with any Third Party Participant that is debarred or suspended except as authorized by: 1 U.S. DOT regulations, "Non-procurement Suspension and Debarment," 2 C.F.R. part 1200, 2 U.S. OMB, "Guidelines to Agencies on Government wide Debarment and Suspension (Non procurement)," 2 C.F.R. part 180, including any amendments thereto, and 3 Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101 note, (b) It will review the U.S. GSA "System for Award Management," https://www.sam.gov, if required by U.S. DOT regulations, 2 C.F.R. part 1200, and (c) It will include, and require each of its Third Party Participants to include, a similar provision in each lower tier covered transaction, ensuring that each lower tier Third Party Participant: 1 Will comply with Federal debarment and suspension requirements, and 2 Reviews the "System for Award Management" at https://www.sam.gov, if necessary to comply with U.S. DOT regulations, 2 C.F.R. part 1200, and (2) If the County suspends, debars, or takes any similar action against a Third Party Participant or individual, the County will provide immediate written notice to the: (a) FTA Regional Counsel for the Region in which the County is located or implements the Project, (b) FTA Project Manager if the Project is administered by an FTA Headquarters Office, or (c) FTA Chief Counsel.

5.19 **Contracts Involving Federal Privacy Act Requirements**

When a grantee maintains files on drug and alcohol enforcement activities for FTA, and those files are organized so that information could be retrieved by personal identifier, the Privacy Act requirements apply to all contracts except micro-purchases ($3,000 or less, except for construction contracts over $2,000)

The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

1. The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

2. The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

5.20 **Civil Rights Requirements**

Applicability – All contracts except micro-purchases ($3,000 or less, except for construction contracts over $2,000)

The following requirements apply to the underlying contract:

The County understands and agrees that it must comply with applicable Federal civil rights laws and regulations, and follow applicable Federal guidance, except as the Federal Government determines otherwise in writing. Therefore, unless a Recipient or Program, including an Indian Tribe or the Tribal Transit Program, is specifically exempted from a civil rights statute, FTA requires compliance with that civil rights statute, including compliance with equity in service:

1. Nondiscrimination in Federal Public Transportation Programs. The County agrees to, and assures that each Third Party Participant will, comply with Federal transit law, 49 U.S.C. § 5332 (FTA's "Nondiscrimination" statute):

   A. FTA's "Nondiscrimination" statute prohibits discrimination on the basis of: (a) Race, (b) Color, (c) Religion, (d) National origin, (e) Sex, (f) Disability, or (g) Age, and (2) The FTA "Nondiscrimination" statute's prohibition against discrimination includes: (a) Exclusion from participation, (b) Denial of program benefits, or (c) Discrimination, including discrimination in employment or business opportunity, (3) Except as FTA determines otherwise in writing: (a) General. Follow: 1 The most recent edition of FTA Circular 4702.1, "Title VI Requirements and Guidelines for Federal Transit Administration Recipients," to the extent consistent with applicable Federal laws, regulations, and guidance, and 2 Other applicable Federal guidance that may be issued, but (b) Exception for the Tribal Transit Program. FTA does not require an Indian Tribe to comply with FTA program-specific guidelines for Title VI when administering its projects funded under the Tribal Transit Program:

   B. Nondiscrimination – Title VI of the Civil Rights Act. The County agrees to, and assures that each Third Party Participant will: (1) Prohibit discrimination based on: (a) Race, (b) Color, or (c) National origin, (2) Comply with: (a) Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d et seq., (b) U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964," 49 C.F.R. part 21, and (c) Federal transit law, specifically 49 U.S.C. § 5332, as stated in the preceding section a, and (3) Except as FTA determines otherwise in writing, follow: (a) The most recent edition of FTA Circular 4702.1, "Title VI and Title VI-Dependent Guidelines for Federal Transit Administration Recipients," to the extent consistent with applicable Federal laws, regulations, and guidance. (b) U.S. DOJ, "Guidelines for the enforcement of Title VI, Civil Rights Act of 1964," 28 C.F.R. § 50.3, and (c) Other applicable Federal guidance that may be issued,

   C. Equal Employment Opportunity. (1) Federal Requirements and Guidance. The County agrees to, and assures that each Third Party Participant will, prohibit discrimination on the basis of race, color, religion, sex, or national

origin, and: (a) Comply with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq., (b) Facilitate compliance with Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order No. 11246, Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note, (c) Comply with Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a, and (d) Comply with other applicable EEO laws and regulations, as provided in Federal guidance, including laws and regulations prohibiting discrimination on the basis of disability, except as the Federal Government determines otherwise in writing, (2) General. The County agrees to: (a) Ensure that applicants for employment are employed and employees are treated during employment without discrimination on the basis of their: 1 Race, 2 Color, 3 Religion, 4 Sex, 5 Disability, 6 Age, or 7 National origin, (b) Take affirmative action that includes, but is not limited to: 1 Recruitment advertising, 2 Recruitment, 3 Employment, 4 Rates of pay, 5 Other forms of compensation, 6 Selection for training, including apprenticeship, 7 Upgrading, 8 Transfers, 9 Demotions, 10 Layoffs, and 11 Terminations, but (b) Indian Tribe. Title VII of the Civil Rights Act of 1964, as amended, exempts Indian Tribes under the definition of "Employer".

D. Equal Employment Opportunity Requirements for Construction Activities. In addition to the foregoing, when undertaking "construction" as recognized by the U.S. Department of Labor (U.S. DOL), the County agrees to comply, and assures the compliance of each Third Party Participant, with: (a) U.S. DOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and (b) Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order No. 11246, Relating to Equal Employment Opportunity," 42 U.S.C.§ 2000e note,

E. Disadvantaged Business Enterprise. To the extent authorized by applicable Federal law, the County agrees to facilitate, and assures that each Third Party Participant will facilitate, participation by small business concerns owned and controlled by socially and economically disadvantaged individuals, also referred to as "Disadvantaged Business Enterprises" (DBEs), in the Project as follows: 1) Requirements. The County agrees to comply with: (a) Section 1101(b) of MAP-21, 23 U.S.C. § 101 note, (b) U.S. DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 C.F.R. part 26, and (c) Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a, (2) Assurance. As required by 49 C.F.R. § 26.13(a), (b) DBE Program Requirements. Recipients receiving planning, capital and/or operating assistance that will award prime third party contracts exceeding $250,000 in a Federal fiscal year must: 1 Have a DBE program meeting the requirements of 49 C.F.R. part 26, 2 Implement a DBE program approved by FTA, and 3 Establish an annual DBE participation goal, (c) Special Requirements for a Transit Vehicle Manufacturer. The County understands and agrees that each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, must certify that it has complied with the requirements of 49 C.F.R. part 26, (d) the County provides assurance that: The County shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 C.F.R. part 26. The County shall take all necessary and reasonable steps under

49 C.F.R. part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The County's DBE program, as required by 49 C.F.R. part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the County of its failure to carry out its approved program, the Department may impose sanctions as provided for under 49 C.F.R. part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. § 1001 and/or the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. § 3801 et seq., (2) Exception for the Tribal Transit Program. FTA exempts Indian tribes from the Disadvantaged Business Enterprise regulations at 49 C.F.R. part 26 under MAP-21 and previous legislation,

F. Nondiscrimination on the Basis of Sex. The County agrees to comply with Federal prohibitions against discrimination on the basis of sex, including: (1) Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 et seq., (2) U.S. DOT regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. part 25, and (3) Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a,

G. Nondiscrimination on the Basis of Age. The County agrees to comply with Federal prohibitions against discrimination on the basis of age, including: (1) The Age Discrimination in Employment Act (ADEA), 29 U.S.C. §§ 621 – 634, which prohibits discrimination on the basis of age, (2) U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, which implements the ADEA, (3) The Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., which prohibits discrimination against individuals on the basis of age in the administration of programs or activities receiving Federal funds, (4) U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, which implements the Age Discrimination Act of 1975, and (5) Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a,

H. Nondiscrimination on the Basis of Disability. The County agrees to comply with the following Federal prohibitions pertaining to discrimination against seniors or individuals with disabilities: (1) Federal laws, including: (a) Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of disability in the administration of federally funded programs or activities, (b) The Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. § 12101 et seq., which requires that accessible facilities and services be made available to individuals with disabilities, 1 General. Titles I, II, and III of the ADA apply to FTA Recipients, but 2 Indian Tribes. While Titles II and III of the ADA apply to Indian Tribes, Title I of the ADA exempts Indian Tribes from the definition of "employer," (c) The Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., which requires that buildings and public accommodations be accessible to individuals with disabilities, (d) Federal transit law, specifically 49 U.S.C. § 5332, which now includes disability as a prohibited basis for discrimination, and (e) Other applicable laws and amendments pertaining to access for elderly individuals or individuals with disabilities, (2) Federal regulations, including: (a) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. part 37, (b) U.S. DOT

regulations, "Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. part 27, (c) U.S. DOT regulations, "Transportation for Individuals with Disabilities: Passenger Vessels," 49 C.F.R. part 39, (d) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB) and U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. part 1192 and 49 C.F.R. part 38, (e) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. part 35, (f) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. part 36, (g) U.S. EEOC, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. part 1630, (h) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities," 47 C.F.R. part 64, Subpart F, (i) U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. part 1194, and (j) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. part 609, and (3) Other applicable Federal civil rights and nondiscrimination guidance,

I. Drug or Alcohol Abuse - Confidentiality and Other Civil Rights Protections. The County agrees to comply with the confidentiality and civil rights protections of: (1) The Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. § 1101 et seq., (2) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. § 4541 et seq., and (3) The Public Health Service Act, as amended, 42 U.S.C. §§ 290dd – 290dd-2,

J. Access to Services for People with Limited English Proficiency. Except as the Federal Government determines otherwise in writing, the County agrees to promote accessibility of public transportation services to people whose understanding of English is limited by following: 1) Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," August 11, 2000, 42 U.S.C. § 2000d-1 note, and (2) U.S. DOT Notice, "DOT Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficiency (LEP) Persons," 70 Fed. Reg. 74087, December 14, 2005,

K. Other Nondiscrimination Laws. Except as the Federal Government determines otherwise in writing, the County agrees to: (1) Comply with other applicable Federal nondiscrimination laws and regulations, and (2) Follow Federal guidance prohibiting discrimination.

L. Remedies. Remedies for failure to comply with applicable Federal Civil Rights laws and Federal regulations may be enforced as provided in those Federal laws or Federal regulations.

5.21 **Breaches and Dispute Resolution**
All contracts over $100,000

Disputes arising in the performance of this contract which are not resolved by agreement of the parties shall be decided in writing by the County's authorized representative. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, contractor mails or otherwise furnishes a written appeal to the County's CEO.

In connection with such appeal, contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the County's CEO shall be binding upon contractor and contractor shall abide by the decision. FTA has a vested interest in the settlement of any violation of Federal law including the False Claims Act, 31 U.S.C. § 3729.

Performance During Dispute - Unless otherwise directed by the County, contractor shall continue performance under this contract while matters in dispute are being resolved.

Claims for Damages - Should either party to the contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within ten days after the first observance of such injury or damage.

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the County and contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the residing State.

Rights and Remedies - Duties and obligations imposed by the contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the County or contractor shall constitute a waiver of any right or duty afforded any of them under the contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

5.22 **Disadvantaged Business Enterprise**

Contracts over $3,000 awarded on the basis of a bid or proposal offering to use DBEs

1. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 7%.

2. The contractor shall not discriminate on the basis of race, color, religion, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the municipal corporation deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

3. If a separate contract goal has been established, Bidders/offerors are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53.

4. If no separate contract goal has been established, the successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

5. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from the County. In addition, the contractor may not hold retainage from its subcontractors or must return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed or must return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor's work by the County and contractor's receipt of the partial retainage payment related to the subcontractor's work.

6. The contractor must promptly notify the County whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the County.

5.23 **Prompt payment**

Applicability – All contracts except micro-purchases ($3,000 or less, except for construction contracts over $2,000)

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contract receives from the County. The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractors work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the County. This clause applies to both DBE and non-DBE subcontracts.

5.24 **Incorporation of Federal Transit Administration (FTA) Terms**

All contracts except micro-purchases ($3,000 or less, except for construction contracts over $2,000)

The preceding provisions include, in part, certain Standard Terms & Conditions required by USDOT, whether or not expressly stated in the preceding contract provisions. All USDOT-required contractual provisions, as stated in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The contractor shall not perform any act, fail to perform any act, or refuse to comply with any request that would cause the County to be in violation of FTA terms and conditions.

5.25 **Other Federal Requirements**

The following requirements are not federal clauses.

1. **Full and Open Competition**

In accordance with 49 U.S.C. § 5325(a) all procurement transactions shall be conducted in a manner that provides full and open competition.

2. **Prohibition Against Exclusionary or Discriminatory Specifications**

Apart from inconsistent requirements imposed by Federal statute or regulations, the contractor shall comply with the requirements of 49 USC 5323(h)(2) by refraining

from using any FTA assistance to support procurements using exclusionary or discriminatory specifications.

5.26 **Conformance with ITS National Architecture**
Contractor shall conform, to the extent applicable, to the National Intelligent Transportation Standards architecture as required by SAFETEA-LU Section 5307(c), 23 U.S.C. Section 512 and as amended by MAP-21 23 U.S.C. § 517(d), note and follow the provisions of FTA Notice, "FTA National Architecture Policy on Transit Projects," 66 Fed. Reg.1455 et seq., January 8, 2001, and any other implementing directives FTA may issue at a later date, except to the extent FTA determines otherwise in writing.

5.27 **Access Requirements for Persons with Disabilities**
Contractor shall comply with 49 USC 5301(d), stating Federal policy that the elderly and persons with disabilities have the same rights as other persons to use mass transportation services and facilities and that special efforts shall be made in planning and designing those services and facilities to implement that policy. Contractor shall also comply with all applicable requirements of Sec. 504 of the Rehabilitation Act (1973), as amended, 29 USC 794, which prohibits discrimination on the basis of handicaps, and the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments thereto.

5.28 **Notification of Federal Participation**
To the extent required by law, in the announcement of any third party contract award for goods and services (including construction services) having an aggregate value of $500,000 or more, contractor shall specify the amount of Federal assistance to be used in financing that acquisition of goods and services and to express that amount of Federal assistance as a percentage of the total cost of the third party contract.

5.29 **Interest of Members or Delegates to Congress**
No members of, or delegates to, the US Congress shall be admitted to any share or part of this contract nor to any benefit arising therefrom.

5.30 **Ineligible Contractors and Subcontractors**
Any name appearing upon the Comptroller General's list of ineligible contractors for federally-assisted contracts shall be ineligible to act as a subcontractor for contractor pursuant to this contract. If contractor is on the Comptroller General's list of ineligible contractors for federally financed or assisted construction, the County shall cancel, terminate or suspend this contract.

5.31 **Other Contract Requirements**
To the extent not inconsistent with the foregoing Federal requirements, this contract shall also include those provisions attached hereto, and shall comply with the County's Procurement Guidelines, available upon request from the County.

5.32 **Compliance with Federal Regulations**
Any contract entered pursuant to this solicitation shall contain the following provisions: All USDOT-required contractual provisions, as set forth in FTA Circular 4220.1F, are incorporated by reference. Anything to the contrary herein notwithstanding, FTA mandated terms shall control in the event of a conflict with other provisions contained in this Agreement. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any grantee request that would cause the County to be in violation of FTA terms and conditions. Contractor shall comply with all applicable FTA regulations,

policies, procedures and directives, including, without limitation, those listed directly or incorporated by reference in the Master Agreement between the County and FTA, as may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

5.33 **Real Property**

Any contract entered into shall contain the following provisions: Contractor shall at all times comply with all applicable statutes and USDOT regulations, policies, procedures and directives governing the acquisition, use and disposal of real property, including, but not limited to, 49 CFR 18.31-18.34, 49 CFR 19.30-19.37, 49 CFR Part 24, 49 CFR 5326 as amended by MAP-21, 49 CFR part 18 or 19, 49 USC 5334, applicable FTA Circular 5010, and FTA Master Agreement, as they may be amended or promulgated during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

5.34 **Access to Services for Persons with Limited English Proficiency**

To the extent applicable and except to the extent that FTA determines otherwise in writing, the County agrees to comply with the policies of Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," 42 U.S.C. § 2000d 1 note, and with the provisions of U.S. DOT Notice, "DOT Guidance to Recipients on Special Language Services to Limited English Proficient (LEP) Beneficiaries," 70 Fed. Reg. 74087, December 14, 2005.

5.35 **Environmental Justice**

Except as the Federal Government determines otherwise in writing, the County agrees to promote environmental justice by following: (1) Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low- Income Populations," February 11, 1994, 42 U.S.C. § 4321 note, as well as facilitating compliance with that Executive Order, and (2) DOT Order 5610.2, "Department of Transportation Actions To Address Environmental Justice in Minority Populations and Low-Income Populations," 62 Fed. Reg. 18377, April 15, 1997, and (3) The most recent and applicable edition of FTA Circular 4703.1, "Environmental Justice Policy Guidance for Federal Transit Administration Recipients," August 15, 2012, to the extent consistent with applicable Federal laws, regulations, and guidance,

5.36 **Environmental Protections**

Compliance is required with any applicable Federal laws imposing environmental and resource conservation requirements for the project. Some, but not all, of the major Federal laws that may affect the project include: the National Environmental Policy Act of 1969; the Clean Air Act; the Resource Conservation and Recovery Act; the comprehensive Environmental response, Compensation and Liability Act; as well as environmental provisions with Title 23 U.S.C., and 49 U.C. chapter 53. The U.S. EPA, FHWA and other federal agencies may issue other federal regulations and directives that may affect the project. Compliance is required with any applicable Federal laws and regulations in effect now or that become effective in the future.

5.37 **Geographic Information and Related Spatial Data**

Any project activities involving spatial data or geographic information systems activities financed with Federal assistance are required to be consistent with the National Spatial Data Infrastructure promulgated by the Federal Geographic Data Committee, except to the extent that FTA determines otherwise in writing.

5.38 **Geographic Restrictions**

The County agrees that it will not use any State or local geographic preference, except: (1) A preference expressly mandated by applicable Federal law, or (2) A preference permitted by FTA; for example, a contractor's geographic location may be a selection criterion for a County that is procuring architectural engineering or related services, provided that a sufficient number of qualified firms are eligible to compete for that contract, or (3) As provided in section 418 of the Consolidated and Further Continuing Appropriations Act, 2015, Public Law No. 113-235, December 15, 2014, geographic preferences in construction hiring are protected from enforcement under former 49 C.F.R. § 18.36(c)(2), in accordance with any applicable federal regulations, requirements, and guidance and as implemented by FTA.

5.39 **Organizational Conflicts of Interest**

The County agrees that it will not enter into a procurement that involves a real or apparent organizational conflict of interest described as follows: (1) When It Occurs. An organizational conflict of interest occurs when the Project work, without appropriate restrictions on certain future activities, results in an unfair competitive advantage: (a) To that Third Party Participant or another Third Party Participant performing the Project work, and (b) That impairs that Third Party Participant's objectivity in performing the Project work, or (2) Other. An organizational conflict of interest may involve other situations resulting in fundamentally unfair competitive conditions, (3) Disclosure Requirements. Consistent with FTA policies, the County must disclose to FTA, and each of its Sub-recipients must disclose to the Recipient: (a) Any instances of organizational conflict of interest, or (b) Violations of federal criminal law, involving fraud, bribery, or gratuity violations potentially affecting the federal award, and (4) Failure to Disclose. Failure to make required disclosures can result in remedies for noncompliance, including debarment or suspension.

5.40 **Federal Single Audit Requirements for State Administered Federally Aid Funded Projects Only**

Non Federal entities that expend $750,000 or more in a year in Federal awards from all sources are required to comply with the Federal Single Audit Act provisions contained in U.S. Office of Management and Budget (OMB) Circular No. A 133, Audits of States, Local Governments, and Non Profit Organizations and (2 CFR § 200.501). Non Federal entities that expend Federal awards from a single source may provide a program specific audit, as defined in the Circular. Non Federal entities that expend less than $750,000 in a year in Federal awards from all sources are exempt from Federal audit requirements for that year, except as noted in '3052.215(a), but records must be available for review or audit by appropriate officials of the Federal and State agencies.

5.41 **Catalog of Federal Domestic Assistance (CFDA) Identification Number**

The municipal project sponsor is required to identify in its accounts all Federal awards received and expended, and the Federal programs under which they were received. Federal program and award identification shall include, as applicable, the CFDA title and number, award number and year, name of the Federal agency, and name of the pass through entity.

5.42 **CFDA number for the Federal Transportation Administration**

A Recipient covered by the Single Audit Act Amendments of 1996 and OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations," agrees to separately identify the expenditures for Federal awards under the Recovery Act on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by OMB Circular A-133. The County agrees to accomplish this by identifying expenditures for Federal awards made under Recovery Act separately on the

SEFA, and as separate rows under Item 9 of Part III on the SF-SAC by CFDA number, and inclusion of the prefix "ARRA" in identifying the name of the Federal program on the SEFA and as the first characters in Item 9d of Part III on the SF-SAC.

5.43 BUY AMERICA CERTIFICATION
(STEEL OR MANUFACTURED PRODUCTS)
[61 FR 6302, Feb. 16, 1996, as amended at 74 FR 30239, June 25, 2009]

General Requirement (as stated in 49 CFR661.5)

Except as provided in 49 CFR 661.7 and 49 CFR 661.11, no funds may be obligated by FTA for a grantee project unless all iron, steel, and manufactured products used in the project are produced in the United States.

All steel and iron manufacturing processes must take place in the United States, except metallurgical processes involving refinement of steel additives.

The steel and iron requirements apply to all construction materials made primarily of steel or iron and used in infrastructure projects such as, transit or maintenance facilities, rail lines, and bridges. These items include, but are not limited to, structural steel or iron, steel or iron beams and columns, running rail and contact rail. These requirements do not apply to steel or iron used as components or subcomponents of other manufactured products or rolling stock, or to bimetallic power rail incorporating steel or iron components.

For a manufactured product to be considered produced in the United States:

(1) All of the manufacturing processes for the product must take place in the United States; and

(2) All of the components of the product must be of U.S. origin. A component is considered of U.S. origin if it is manufactured in the United States, regardless of the origin of its subcomponents.

If steel, iron, or manufactured products (as defined in 49 CFR 661.3 and 661.5) are being procured, the appropriate certificate as set forth below shall be completed and submitted by each bidder or offeror in accordance with the requirement contained in 49 CFR 661.13(b).

☐ **Certificate of Non-Compliance with Buy America Steel or Manufactured Products Requirements** The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j), but it may qualify for an exception to the requirement pursuant to 49 U.S.C. 5323(j)(2), as amended, and the applicable regulations in 49 C.F.R. 661.7.

☐ **Certificate of Compliance with Buy America Requirements.**
The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(1), and the applicable regulations in 49 CFR part 661.

Signature _____ Date 4/21/16

Company Canaveral Construction Co. Inc.

IN WITNESS WHEREOF, the parties have affixed their signatures, effective on the date first above written.

ATTEST:

Scott Ellis, Clerk

BREVARD COUNTY

BOARD OF COUNTY COMMISSIONERS

By: _____
Jim Barfield, Chairman

As approved by the Board on: 1/27/15

ATTEST:

CANAVERAL CONSTRUCTION (Seal)

By: J. David Nash Pres.
Printed Name & Title

ATTACHMENT "A"
AGREEMENT
BETWEEN OWNER AND CONSTRUCTION MANAGER

THIS AGREEMENT made the __ day of _____ in the year Two Thousand Sixteen between the **BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS**, a political subdivision of the State of Florida whose address is 2725 Judge Fran Jamieson Way, Viera, Florida 32940 (hereinafter referred to as "Owner"), and _____ whose address is _____ (hereinafter referred to as "Construction Manager"), a company licensed to do business in the State of Florida.

ARTICLE 1

THE CONSTRUCTION TEAM AND EXTENT OF AGREEMENT

The Construction Manager accepts the relationship of trust and confidence established between him and the Owner by this Agreement. The Construction Manager covenants with the Owner to furnish the best skill and judgment and to cooperate with the Architect/Engineer in furthering the interests of the Owner. The Construction Manager agrees to furnish efficient business administration and superintendence and use its best efforts to complete the Project in the best and soundest way, and in the most expeditious and economical manner consistent with the interest of the Owner.

1.1 The Construction Team - The Construction Manager, the Owner and the Architect/Engineer, called the "Construction Team", shall work jointly during design and through final construction completion and shall be available thereafter should additional services be required. The Architect/Engineer will provide leadership during the Design Phase, with support from the Construction Manager, and the Construction Manager shall provide leadership to the Construction Team on all matters relating to construction.

The specific representatives of the Construction Team are shown in **Attachment "A"** attached.

1.2 Scope of Work – A general description of the Work/Project to be built/constructed/installed under this Agreement (**Attachment "B"**).

1.3 Definitions:

Project - The Project is the total work to be performed under this Agreement. The Project consists of planning, design review, permitting, construction (which includes all labor, equipment, material and supervision) and code inspection necessary to build/construct and complete the Scope of Work identified in Attachment "B" (Scope of Work).

Owner - Brevard County Board of County Commissioners, Central Services Department - Facilities, 2725 Judge Fran Jamieson Way, Building A, 2nd Floor, Viera, Florida 32940, (321) 633-2050; facsimile (321) 633-2101. For the purposes of this agreement, the Owner may also include the County Manager or the Project Director with regard to the performance of designated functions and duties specified for each under the terms and provisions of this agreement.

Contract Documents - Consist of this Agreement with attachments, Scope of Work, the drawings, the specifications, the GMP, any Conditions of the Contract between the Owner and the Construction Manager (General, Special, Supplementary and other conditions), permit conditions, if any, grant specifications, any addenda to the foregoing listed documents and all change orders, amendments or modifications as provided in Article 10, whether or not any of the foregoing listed documents have been attached hereto.

Permitting Authority - All applicable Federal, State, County and local agencies responsible for permitting and code inspections on projects administered by the Owner.

Construction Manager –

Architect/Engineer –

Project Director - The person designated by the Owner to provide direct interface with the Construction Manager with respect to the Owner's responsibilities. Joan Van Sickle is the designated Project Director, and _____ is the designated Construction Coordinator.

Owner's Representatives - The Project Director and his/her supervisors and/or designees.

Estimate - The Construction Manager's latest estimate of probable Project construction cost.

Guaranteed Maximum Price (GMP) - The Guaranteed Maximum Price for the construction of the project, which shall be subject to adjustments only as provided herein. GMP includes Cost of the Work and Construction Manager's fee for Construction Phase services. The Guaranteed Maximum Price does include the cost for Owner direct purchases, however, all Owner direct purchases will be deducted in one deductive change order in accordance with **Attachment "C"** (Direct Purchasing Procedure) at the end of the project.

Substantial Completion - the point in the construction where all essential elements of the Project are sufficiently complete in conformance with the Contract, that the OWNER has both the occupancy of the Project, as evidenced by a Certificate of Occupancy issued by the governmental authority with

jurisdiction and the beneficial use of the Project for its intended purpose where only minor punch list items are required for final completion. Substantial Completion shall not be deemed to have occurred where 1) latent defects are revealed subsequent to use and occupation of the project by the OWNER or 2) where the scope of substantial defects in workmanship or materials are not readily observable or discoverable when use and occupancy of the project commenced or 3) the failure to meet grant specifications, if any.

1.4 Extent of Agreement - This Agreement for Construction Management services for the construction of the _____ between the Owner and the Construction Manager supersedes any prior negotiations, representations or agreements. The drawings, specifications and other descriptive documents defining the work to be included under this construction contract are identified in **Attachment "D"**. The Construction Manager shall obtain from the Owner three (3) sets of signed, sealed and dated drawings, specifications and other documents upon which the GMP is based; shall acknowledge on the face of each document of each set that it is the set upon which he based his GMP; and shall send one (1) set of the documents to the Project Director along with his GMP proposal, while keeping one (1) set for himself and returning one (1) set to the Architect/Engineer.

This Agreement shall not be superseded by any provisions of the documents for construction and may be amended only by written instrument signed by both Owner and Construction Manager.

ARTICLE 2

CONSTRUCTION MANAGER'S RESPONSIBILITIES

Construction Manager shall perform all services described in this Article. The services to be provided under Paragraph 2.1 constitute the Pre-Construction Phase services. The services to be provided under Paragraph 2.2 thru 2.9 constitute the Construction Phase services. The parties acknowledge the Construction Phase shall commence before the Pre-Construction Phase is completed, and to a certain extent both phases shall proceed concurrently.

2.1 PRE-CONSTRUCTION PHASE

2.1.1 Preliminary Evaluation - Construction Manager shall provide a preliminary evaluation of Owner's program and Project budget requirements, each in terms of the other.

2.1.2 Consultation - Construction Manager will provide Design Disciplines Construction Documents Plans and Specifications review at all design milestones and a final constructability review. The review at each milestone will identify areas of omission, overlapping and identify documents to be modified in order to clarify

the construction details. The review will also include the coordination and interface of the contract document's General Conditions, Special Conditions, trade contractor bid packages and site utilization planning during construction. Reviews shall be completed and comments provided within five (5) business days. As part of the design review, Construction Manager will provide Value Engineering and construction alternatives, identifying to the Owner and Architect options for systems and components that are cost effective, ease of maintainability and efficiency to be considered.

Construction Manager, with Architect, has scheduled and attended, and will continue to jointly schedule and attend, **weekly** progress meetings (*or as determined by the Project Director or Project Manager*) with Owner and Architect. Construction Manager has and will continue to consult with Owner and Architect regarding site use and improvements, and the selection of materials, building systems and equipment. Construction Manager has provided and will continue to provide recommendations on construction feasibility; actions designated to minimize adverse effects of labor or material shortages; time requirements for procurement, installation and construction completion; and factors related to construction cost including estimates of alternative designs or materials, preliminary budgets and possible economies.

2.1.3 Preliminary Project Schedule - Construction Manager has prepared a Preliminary Project Schedule, a copy of which is attached as **Attachment "E"**. Construction Manager shall coordinate and integrate the Preliminary Project Schedule with the services and activities of Owner, Architect and Construction Manager. The Construction Manager shall provide current scheduling information and provide direction and coordination regarding milestones, beginning and finishing dates, responsibilities for performance and the relationships of the Construction Manager's work to the work of his subcontractors and suppliers to enable them to perform their respective tasks so that the development of construction progresses in a smooth and efficient manner in conformance with the overall Total Project Schedule. The schedule shall include all phases of construction work, material supplies, long lead procurement, approval of shop drawings, change orders in progress, schedules for change orders, and performance of testing requirements. The Construction Manager shall advise the Owner, its representatives and the Architect/Engineer of their required participation in any meeting or inspection giving each at least one (1) week notice unless such notice is made impossible by conditions beyond the Construction Manager's control. The Construction Manager shall hold jobsite meetings at least once each week with the Construction Team and at least once each week with the subcontractors and the Architect/Engineer field representatives, and Owner or more frequently as required by work progress, to review progress, discuss problems and their solutions and coordinate future work with all subcontractors.

2.1.4 Subcontractors and Suppliers - Construction Manager shall continue to develop subcontractor interest in the Project and shall furnish to Owner and Architect for

their information a list of possible subcontractors, including suppliers who are to furnish materials or equipment fabricated to a special design, from whom proposals will be requested for each principal portion of the Project. Owner will promptly reply in writing to Construction Manager if Owner has an objection to any such subcontractor or supplier. The receipt of such list shall not require Owner to investigate the qualifications of proposed subcontractors or suppliers, nor shall it waive the rights of Owner to later object to or reject any proposed subcontractor or supplier.

2.1.5 Long Lead and Owner Direct Procurement - The Construction Manager shall review the design for the purpose of identifying long lead and Owner direct procurement items (machinery, equipment, materials and supplies). When each item is identified the Construction Manager shall notify the subcontractors, the Project Director, and the Owner of the required procurement and schedule. Such information shall be included in the bid documents and made a part of all affected subcontracts. As soon as the Architect/Engineer has completed drawings and technical specifications and the Construction Manager has obtained permitting approval, the Construction Manager shall prepare Invitation for Bids. The Construction Manager shall keep informed of the progress of the respective subcontractors and/or suppliers, manufacturing or fabricating such items and notify the Project Director, Owner and Architect/Engineer of any problems or prospective delay in delivery.

2.1.6 Extent of Responsibility - The recommendations and advice of Construction Manager concerning design alternatives shall be subject to the review and approval of Owner and Owner's professional consultants. It is not Construction Manager's responsibility to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations. However, if Construction Manager recognizes that portions of the Drawings and Specifications are at variance therewith, Construction Manager shall promptly notify Owner and Architect in writing.

2.1.7 Equal Employment Opportunity and Affirmative Action - Construction Manager shall comply with applicable laws, regulations and special requirements of the Contract Documents regarding equal employment opportunity and affirmative action programs.

2.1.8 Separate Contracts Planning - The Construction Manager shall review the design with the Architect/Engineer and make recommendations to the Owner and to the Architect/Engineer with respect to dividing the work in such manner as will permit the Construction Manager to take bids and award separate construction subcontracts on the current schedule while the design is being completed. The Construction Manager shall take into consideration such factors as natural and practical lines of severability, sequencing, effectiveness, access and availability constraints, total time for completion, construction market conditions, availability of labor and materials, community relations and any other factors pertinent to

saving time and cost by overlapping design and construction that are authorized by the Owner.

2.2 CONSTRUCTION PHASE

2.2.1 Interfacing -

(1) The Construction Manager shall take such measures as are appropriate to provide that all construction requirements will be covered in the separate subcontracts for procurement of long lead items, the separate construction subcontracts and the general conditions items performed without duplication or overlap, sequenced to maintain completion of all work on schedule. Particular attention shall be given to provide that each bid package clearly identifies the work included in that particular separate subcontract, its schedule for start and completion and its relationship to other separate subcontractors.

(b) Subcontractor Interfacing - The Construction Manager shall be the single point of interface with all Subcontractors for the Owner, and all of its agents and representatives, including the Architect/Engineer. The Construction Manager shall negotiate all change orders, field orders and request for proposals, with all affected Subcontractors and shall review the costs of those proposals and advise the Owner and Architect/Engineer of their validity and reasonableness, acting in the Owner's best interest prior to requesting approval of each change order from the Owner. Before any work is begun on any change order, an executed Authorization to Initiate Work form from the Owner must be issued. However, when health and safety are threatened, the Construction Manager shall act immediately to remove the threat to health and safety. The Construction Manager shall also carefully review all shop drawings and then forward the same to the Architect/Engineer for review and actions. The Architect/Engineer will transmit them back to the Construction Manager who will then issue the shop drawings to the affected Subcontractor for fabrication or revision. The Construction Manager shall maintain a suspense control system to promote expeditious handling. The Construction Manager shall request the Architect/Engineer to make interpretations of the drawings or specifications requested of the Construction Manager by the Subcontractors and shall maintain a suspense control system to promote timely response. The Construction Manager shall advise the Project Director and Architect/Engineer when timely response is not occurring on any of the above.

2.2.2 Solicitation of Bids

(1) Without assuming responsibilities of the Architect/Engineer, the Construction Manager shall prepare Invitations for Bids (or Request For

Proposals, when applicable) for all procurements of long lead times, materials and services for Subcontractor contracts and for site utilities.

(2) As part of such preparation, the Construction Manager shall review the specifications and drawings prepared by the Architect/Engineer. Ambiguities, conflicts or lack of clarity of language, use of illegally restrictive requirements, and any other defects in the specifications or in the drawings noted by the Construction Manager shall be brought to the attention of the Project Director and Architect/Engineer in written form.

(3) For each separate subcontractor or construction trade contract used in this project, the Construction Manager shall, unless waived by the Owner, conduct a pre-bid conference with prospective bidders, the Architect/Engineer and Project Director. In the event questions are raised which require an interpretation of the bidding documents or otherwise indicate a need for clarification or correction of the invitation, the Construction Manager shall transmit these to the Architect/Engineer and upon receiving clarification or correction in writing shall prepare an addendum to the bidding document, and issue same to all of the prospective bidders.

(4) In accordance with Article 2.4.2 the Construction Manager shall open and review all bids and enter into contract(s) with those low bidders determined to be most qualified by the Construction Manager. The Construction Manager shall make every effort to follow the County's Pre-Qualification Ordinance 98-37 (**Attachment "F"**) for applicable subcontract trades.

2.2.3 Bonds - For those projects where the cost will exceed $100,000.00, in accordance with the provisions of Section 255.05, Florida Statutes, the Construction Manager shall provide to the Owner, on forms furnished by the Owner (**Attachment "G" and "H"**), certified copies of the recorded 100% Public Construction Performance Bond and 100% Public Construction Payment Bond each in an amount not less than the total construction cost (GMP) as defined in Article 9 and inclusive of the construction fee. *Payment and Performance Bonds shall be recorded (by the Construction Manager) in the official record of the County in which the project is located.* The Contractor must provide a copy of the bond(s) to all subcontractors and notify them of deadlines to make claims under the bonds.

2.2.4 Quality Control - The Construction Manager shall develop and maintain a program, acceptable to the Owner and Architect/Engineer, to assure quality control of the construction (*this may include personnel if approved by the Owner*). The Construction Manager shall have a qualified and competent Superintendent to supervise the work of all Subcontractors providing instructions to each when

their work does not conform to the requirements of the plans and specifications and shall continue to exert influence and control over each Subcontractor to ensure that corrections are made in a timely manner so as to not affect the efficient progress of the work. Should disagreement occur between the Construction Manager and Architect/Engineer over acceptability of work and conformance with the requirements of the specifications and plans, the Owner shall be the final judge of performance and acceptability.

2.3 Guaranteed Maximum Price (GMP) and Contract Time

2.3.1 Construction Manager acknowledges and agrees the Drawings and Specifications are sufficiently complete for Construction Manager to propose a Guaranteed Maximum Price (GMP), which is the total not to exceed sum of the Construction Manager's Fee and the Cost of the Project. Accordingly, the Guaranteed Maximum Price (GMP) is hereby established at $_____. *The final approved GMP spread sheet is hereby attached as* **Attachment "I"** *to and shall become a part of this Agreement between Owner and Construction Manager.*

2.3.2 The Cost of the Work shall include Construction Manager's contingency, a sum agreed to by all parties for the Manager's use to cover costs arising from unforeseen conditions in the project. Construction Manager's contingency is hereby established as a separate line item of $_____ within the Guaranteed Maximum Price.

2.3.3 Basis of Guaranteed Maximum Price (GMP)
The Guaranteed Maximum Price, herein established is based upon the following:

.1 The list of the Drawings and Specifications, including all addenda thereto, and the Conditions of the Contract, which are identified in the Attachments to this Agreement.

.2 The list of clarifications and assumptions made by Construction Manager in the preparation of its Guaranteed Maximum Price proposal to supplement the information contained in the Drawings and Specifications.

.3 The Preliminary Construction Schedule (**Attachment "E"**). As reflected in said Schedule, Construction Manager is to achieve Substantial Completion of the Work within ____ calendar days from issuance of Notice to Proceed. Final Completion shall be achieved within an additional ____ calendar days.

2.3.4 Included within the Guaranteed Maximum Price is the Construction Manager's fee. The Construction Manager's Fee is hereby established as $_____ for services provided in this Agreement. The sum of the Cost of the Project and the Construction Manager's Fee shall not exceed the Guaranteed Maximum

Price. The Construction Manager's Fee shall constitute Construction Manager's total compensation for profit. All costs in excess of the final approved GMP (as reduced by Owner direct purchases, if any, in accordance with **Attachment "C"**) are the responsibility of the Construction Manager. Any savings between the GMP (as reduced by Owner direct purchases) and the sum of the actual cost of the Project plus the Construction Manager's fee will be returned to the Owner.

2.3.5 Prior to issuance of the Construction Phase Notice to Proceed, Construction Manager shall not incur any costs to be reimbursed as part of the Cost of the Project, except as Owner may specifically authorize in writing.

2.3.6 The Guaranteed Maximum Price and date of Substantial Completion shall be subject to additions and deductions by a Change Order as provided in the Contract Documents.

2.3.7 The Guaranteed Maximum Price shall include in the Cost of the Project only those taxes which are enacted and in effect at the time the GMP was determined.

2.4 Construction Phase

2.4.1 General

2.4.1.1 The Construction Phase shall commence on the date identified in the Notice to Proceed to be issued by the Owner.

2.4.1.2 The Construction Manager shall cause all Work required by the Contract Documents to be properly completed in accordance with the terms of the Contract Documents and within the Contract Time.

2.4.1.3 Construction Manager's Staff - The Construction Manager shall maintain sufficient off-site support staff, and competent full time staff at the Project site authorized to act on behalf of the Construction Manager and to coordinate, inspect and provide general direction of the work and progress of the subcontractors, and the Construction Manager shall provide no less than those personnel during the respective phases of construction. The Construction Manager shall not change any of those designated persons unless mutually agreed to by the Owner and Construction Manager. In such case, the Owner shall have the right of approval of the qualifications of replacement personnel. Such approval will not be reasonably withheld.

2.4.1.3.1 The Construction Manager shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during the progress of the work. The superintendent shall represent the Construction Manager and all communications given to the superintendent shall be as binding as if given to the Construction Manager.

2.4.1.3.2 The superintendent shall be in attendance at the Project site not less than eight (8) hours per day, five (5) days per week, and any time work is being performed at the jobsite, unless the job is closed down due to a general strike or conditions beyond the control of the Construction Manager or until completion or termination of the Contract. It is understood that such superintendent shall be acceptable to the Owner and the Architect and shall be the one who will be continued in that capacity for the duration of the project, unless the Owner otherwise agrees. The superintendent shall not be employed on any other project for or by Construction Manager or any other entity during the course of the work.

2.4.1.4 Lines of Authority - The Construction Manager shall establish and maintain lines of authority for its personnel, and shall provide this description/definition to the Owner and all other affected parties such as the code inspectors of the permitting authorities, the subcontractors, the Architect/Engineer and the Owner's representatives, to provide general direction of the work and progress of the various phases and subcontractors. The Owner and the Architect/Engineer may attend meetings between the Construction Manager and subcontractors, however, such attendance shall not diminish either the authority or responsibility of the Construction Manager to administer the subcontractor.

2.4.2 Administration

2.4.2.1 Those portions of the Project that Construction Manager does not customarily perform with Construction Manager's own personnel shall be performed under subcontracts or by other appropriate written agreements with Construction Manager. Construction Manager shall obtain bids from subcontractors and from suppliers of materials or equipment fabricated to a special design for the Project from the list previously reviewed and, after analyzing such bids, shall deliver such bids to the Owner and Architect for review and comment. Based upon that review and comment, Construction Manager shall then determine, subject to the reasonable objection of Architect or Owner, which bids will be accepted. Construction Manager shall not be required to contract with anyone to whom Construction Manager has reasonable objection. Notwithstanding anything herein to the contrary, Construction Manager covenants and agrees that it shall competitively bid all subcontracts. Further, with respect to all such subcontracts, Construction Manager covenants and agrees that it shall select and contract with the lowest, responsive and qualified bidder, unless otherwise consented to in writing by Owner.

2.4.2.2 Subcontracts and agreements with suppliers furnishing materials or equipment fabricated to a special design shall conform with payment provisions and shall not be awarded on the basis of cost plus a fee without

prior written consent of Owner.

2.4.2.3 Construction Manager shall schedule and conduct weekly meetings at which Owner, Architect, Construction Manager and appropriate Subcontractors can discuss the status of the Project. Construction Manager shall prepare and promptly distribute meeting minutes within two (2) business days after any such meeting is held.

2.4.2.4 Promptly after Owner's issuance of the Notice to Proceed, Construction Manager shall prepare a more detailed Project Schedule, based upon the preliminary Project Construction Schedule attached as **Attachment "E"**, including Owner's occupancy requirements. Construction Manager will submit monthly updates to the Schedule until the project is completed.

2.4.2.5 Construction Manager shall provide Monthly Written Reports to Owner on the progress of the entire Work. Construction Manager shall maintain a daily log containing a record of weather, subcontractors working on the site, number of workers, Work accomplished, problems encountered and other similar relevant data as Owner may require. The log shall be available to Owner at all times.

2.5 Professional Services - Construction Manager shall not be required to provide professional services which constitute the practice of architecture or engineering, unless such services are specifically required by the Contract Documents for a portion of the Project, or unless Construction Manager has specifically agreed in writing to provide such services. In such event, Construction Manager shall cause such services to be performed by appropriately licensed professionals.

2.6 Unsafe Materials - If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance encountered but not created or brought on the site Construction Manager shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to Owner and Architect in writing. Owner shall be responsible for obtaining the services of a licensed laboratory to verify the presence or absence of the material or substance reported by Construction Manager and, in the event such material or substance is found to be present, to verify that it has been rendered harmless.

In accordance with Florida Statute 255.40, the Owner will require that the Contractor certify (at project completion) that to the best of his/her knowledge and ability no asbestos-containing materials and/or supplies have been purchased and/or installed on this Project.

(Florida Statute 255.40 Use of asbestos in new public buildings or buildings newly constructed for lease to governmental agencies; prohibition - The use of asbestos or asbestos-based fiber materials is prohibited in any building, construction of which is commenced

after September 30, 1983, which is financed with public funds or is constructed for the express purpose of being leased to any governmental entity.)

2.7 Weather Protection - The Construction Manager will be responsible to ascertain what temporary enclosures, if any, of building areas should be provided for and may be provided as a practical matter, in order to assure orderly progress of the work in periods when extreme weather conditions are likely to be experienced. All costs associated with this shall be the responsibility of the Construction Manager.

2.8 Job Site Requirements

(1) The Construction Manager shall provide for each of the following activities as a part of the Construction Manager's Construction Phase services:

a. Maintain a log of daily activities, including manpower records, weather, delays, major decisions, etc. and require the same of subcontractors
b. Maintain a directory of companies on the Project with names, addresses, telephone numbers, emergency telephone numbers and fax numbers of key personnel.
c. Establish and enforce job rules governing parking, clean-up, use of facilities and worker discipline.
d. Provide labor relations management for a harmonious, productive Project.
e. Provide a safety program for the Project to meet OSHA requirements. Monitor for Subcontractor compliance without relieving them of responsibilities to perform work in accordance with the best acceptable practice.
f. Provide a quality control program.
g. Miscellaneous office supplies that support the construction efforts which are consumed by his own forces.

2.9 Job Site Administration - The Construction Manager shall provide as part of the Construction Manager's Construction Phase services, administrative functions during construction, including but not limited to, the following:

(1) Job Meetings - Hold weekly progress and coordination meetings to provide for an easy flowing Project. Implement procedures and assure timely submittals, expedite processing approvals and return of shop drawings, samples, etc. Coordinate and expedite critical ordering and delivery of materials, work sequences, inspection and testing, labor allocations, etc. Review and coordinate each Subcontractor's work. Review and implement revisions to the Schedule. Monitor and promote safety requirements.

Use the job site meeting as a tool for preplanning of work and enforcing schedules and for establishing procedures, responsibilities, and identification of authority for all to clearly understand.

Identify party or parties responsible for follow-up on any problems, delay items or questions and document and implement the course for solution. Revisit each pending item at each subsequent meeting until resolution is achieved. Require all present to make any problems or delaying event known to those present for appropriate attention and resolution.

(2) Shop Drawing Submittals/Approvals - Check Shop Drawings and implement procedures for submittal and transmittal to the Architect/Engineer of such drawings for action, and closely monitor their submittal and approval process. Provide copy of all correspondence to Owner. Construction Manager will provide one (1) approved Submittal or Shop Drawing to Owner.

(3) Material and Equipment Expediting - Closely monitor material and equipment deliveries; implement inspection and follow-up procedures on commitments of all Suppliers and Subcontractors.

(4) Payments to Subcontractor - Develop and implement a procedure for review, processing, and payment of applications by Subcontractors for progress and final payments.

(5) Document Interpretation - Refer all questions for interpretation of the documents prepared by the Architect/Engineer to the Architect/Engineer.

(6) Reports and Project Site Documents - Record the progress of the Project. Submit written progress reports to the Owner and the Architect/Engineer including information on the Subcontractor's work, and the percentage of completion. Keep a daily log available to the Owner, the Architect/Engineer and the Permitting Authority inspectors.

(7) Substantial Completion - The Construction Manager shall secure the Certificate of Occupancy and notify the Owner and Architect/Engineer, in writing, that the Project will be ready for inspection to determine if it is substantially complete and ready for inspection on or after a specific date, which date shall be stated in the notice. The notice shall be given at least seven (7) calendar days in advance of said date. Inspection and testing shall take place at time(s) mutually agreeable to the Construction Manager, Architect/Engineer and Owner. The inspection will be conducted jointly between the Architect/Engineer, Owner and Construction Manager's representative. The inspection shall determine if substantial completion has been accomplished and the Architect/Engineer shall

produce a Certificate of Substantial Completion (**Attachment "J"**) and a written list of unfinished Work and defective work, commonly referred to as a "Punch List", which must be finished and corrected to obtain final completion.

At the Owner's option a specific area or segment of the project may be inspected and/or determined substantially complete.

(8) Final Completion - The Construction Manager shall notify the Architect/Engineer and Owner, in writing, that the Project will be ready for final inspection on or after a specific date, which date shall be stated in the notice. This notice shall be given at least seven (7) calendar days in advance. That inspection and any necessary testing shall be conducted in the same manner as the inspection for Substantial Completion. When the Project is finally and totally complete, including the elimination of all defects, a Certificate of Final Completion (**Attachment "K"**) will be issued by the Architect/Engineer and the Project shall be submitted to the Owner for final acceptance.

The Owner and Architect/Engineer shall conduct the inspections. The Owner may elect to have other persons of its choosing also participate in the inspections. If one or more re-inspections are required, the Construction Manager shall reimburse the Owner for all costs of re-inspection or, at the Owner's option, the costs may be deducted from payments due to the Construction Manager. The Total Project Schedule shall include these notices and inspections as activities.

The Construction Manager shall secure and transmit to the Architect/Engineer all required guarantees, affidavits, releases, bonds and waivers, manuals, record drawings, and maintenance books as part of final completion (in triplicate) unless stated otherwise in the Project specifications.

(9) Start-Up - With the Owner's personnel, direct the checkout of utilities, operations, systems and equipment for readiness and assist in their initial start-up and testing by the subcontractors.

(10) Record Drawings - The Construction Manager shall monitor the progress of Work on marked-up field prints which, at Substantial Completion, shall be submitted to the Architect/Engineer who will prepare the final record drawings.

(11) Administrative Records - The Construction Manager will maintain at the job site on a current basis, files and records such as, but not limited to the following:

Contracts and Purchase Orders
Shop Drawing Submittal/Approval Logs
Equipment Purchase/Delivery Logs
Contract Drawings and Specifications with Addenda
Cost Proposal Requests
Meeting Minutes
Lab Test Reports
Contract Changes
Material Purchase Delivery Logs
"As-Built" Marked Prints
Monthly Progress Reports
Correspondence Files
Transmittal Records
Inspection Reports
Punch Lists

The Project records shall be available at all times to the Owner and Architect/Engineer for reference or review.

(12) Owner Occupancy:
The Construction Manager shall provide services during the Construction Phase which will provide a smooth and successful Owner occupancy of the Project. The Construction Manager shall provide consultation and project management to facilitate Owner occupancy and provide transitional services to get the work, as completed by the contractors "on line" in such conditions as will satisfy Owner operational requirements.

The Construction Manager shall conduct the Construction Manager's preliminary punch list inspection and coordinate the completion of all punch list work to be done with Owner occupancy requirements in mind.

The Construction Manager shall catalog operational and maintenance requirements of equipment to be operated by maintenance personnel and convey these to the Owner in such a manner as to promote their usability (in triplicate). The Construction Manager shall provide operational training, in equipment use, for building operators to a maximum of eight (8) hours.

The Construction Manager shall secure required guarantees and warranties, assembled and organized (in a binder) and deliver same, in triplicate, to the Owner in a manner that will facilitate their maximum enforcement and assure their meaningful implementation.

The Construction Manager shall continuously review "As-Built" Drawings and mark-up progress prints to provide as much accuracy as possible.

(13) Warranty - Where any work is performed by the Construction Manager's

own forces or by Subcontractors under contract with the Construction Manager, the Construction Manager shall warrant that all materials and equipment included in such Work will be new except where indicated otherwise in Contract Documents, and that such Work will be of good quality, free from improper workmanship and defective materials and in conformance with the Drawings and Specifications. With respect to the same Work, the Construction Manager further agrees to correct all work found by the Owner to be defective in material and workmanship or not in conformance with the Drawings and Specifications for a period of one (1) year from the Date of Final Completion or as may be set forth with respect to specific warranties contained in the trade sections of the Specifications. The Construction Manager shall collect and deliver to the Owner any specific written warranties given by others as required by the Contract Documents. **Also, the Construction Manager shall conduct, jointly with the Owner and the Architect/Engineer, a warranty inspection nine (9) months after the date of Owner Occupancy. This warranty inspection will be scheduled by a representative of the Owner**.

ARTICLE 3

OWNER'S RESPONSIBILITIES

3.1 Owner's Information - The Owner shall provide full information regarding Owner's requirements for the Project.

3.2 Owner's Representative/Project Director - The Owner shall designate a representative who shall be fully acquainted with the Project and shall define the lines of Owner authority to approve Project Construction Budgets, and changes in Project. The Owner's representative shall render decisions promptly and furnish information expeditiously.

3.3 Architect and Engineer's Agreement - The Owner shall retain an Architect/Engineer for design and to prepare construction documents for the Project. The Architect/Engineer's services, duties and responsibilities are described in the Agreement between the Owner and the Architect/Engineer, a copy of which will be furnished to the Construction Manager upon request.

3.4 Approvals and Easements - The Owner shall pay for necessary approvals, easements, assessments and charges required for the construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

3.5 Legal Services - The Owner shall furnish such legal services as may be necessary for providing the items set forth in Article 3 and such auditing services as the Owner may require.

3.6 Drawings and Specifications - The Owner will provide to the Construction Manager a reproducible set of all drawings and specifications reasonably necessary and ready for printing.

3.7 Cost of Surveys & Reports - The services, information, surveys and reports required by the above paragraphs shall be furnished with reasonable promptness in accordance with the approved schedule at the Owner's expense, and the Construction Manager shall be entitled to rely upon the accuracy and completeness thereof.

3.8 Project Fault or Defects - If the Owner becomes aware of any fault or defect in the Project or non-conformance with the drawings and specifications, the Owner shall give prompt written notice thereof to the Construction Manager and Architect/Engineer.

3.9 Funding - The Owner shall furnish, in accordance with the established schedule, reasonable evidence satisfactory to the Construction Manager that sufficient funds will be available and committed for the cost of each part of the Project.

3.10 Lines of Communication - The Owner and Architect/Engineer shall communicate with the Subcontractors or Suppliers only through the Construction Manager while such method of communication is effective in maintaining Project schedules and quality.

3.11 Lines of Authority - The Owner shall establish and maintain lines of authority for Owner's personnel and shall provide this definition to the Construction Manager and all other affected parties.

3.12 Permitting & Code Inspections - The Owner recognizes and coordinates with the Permitting Authority and expects the Construction Manager to do the same.

ARTICLE 4

PERMITTING AND INSPECTION

4.1 Permits, Fees and Notices - Unless otherwise provided in the Contract Documents, the Construction Manager shall secure and the Owner shall pay for any Brevard County building permit or other County permits and governmental fees and licenses necessary for proper execution of the Contract and which are legally required. Any other entity/jurisdiction permits (i.e.: City of Titusville, City of Melbourne, etc.) shall be included in the Guaranteed Maximum Price and secured and paid for by the Construction Manager. County Impact and Solid Waste fees will also be paid by the Owner. Copies of all permits shall be submitted to the Owner.

4.2 The Construction Manager shall comply with and give notices required by laws,

ordinances, rules and regulations and lawful orders of public authorities bearing on performance of the work required for the Project.

4.3 It is not the Construction Manager's responsibility to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations. However, if the Construction Manager observes that portions of the Contract Documents are at variance therewith, and such variance was not discoverable during the Construction Manager's review of these documents for the purpose of determining the GMP, the Construction Manager shall promptly notify the Architect and Owner, in writing, and necessary changes shall be accomplished by appropriate modification.

4.4 If the Construction Manager performs Work knowing it to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without such notice to the Architect and Owner, the Construction Manager shall assume full responsibility for such Work and shall bear the attributable costs.

ARTICLE 5

SUBCONTRACTS

5.1 Definition - A Subcontractor is a person or organization who has a direct contract with the Construction Manager to perform any of the work. Nothing contained in the Contract Document shall create any contractual relation between the Owner or Architect/Engineer and any Subcontractor.

5.2 Bids/Proposals - The Construction Manager shall request and make every attempt to receive, at a minimum, three (3) bids/proposals from Subcontractors and Suppliers and will award those contracts to the most qualified and responsive low bidder after the Construction Manager and Owner have reviewed each bid/proposal and agree that the Subcontractor is qualified to perform the work.

5.3 Required Subcontractor and Subcontract Conditions.

5.3.1 Subcontractual Relations - By an appropriate written agreement, the Construction Manager shall require each Subcontractor to the extent of the work to be performed by the Subcontractor, to be bound to the Construction Manager by the terms of the Contract Documents, and to assume toward the Construction Manager all the obligations and responsibilities which the Construction Manager by this Agreement, assumes toward the Owner and the Architect/Engineer. Said agreements shall preserve and protect the rights of the Owner and Architect/Engineer under the Contract Documents with respect to the work to be performed by the Subcontractor so that the subcontracting thereof will not prejudice such rights. Where appropriate, the Construction Manager shall require each Subcontractor to enter into similar agreements with his Subcontractor's

Subcontractor.
The Construction Manager shall make available to each proposed Subcontractor, prior to the execution of the Subcontract, copies of the Contract Documents to which the Subcontractor will be bound by this Article 5.3 and identify to the Subcontractor any terms and conditions of the proposed Subcontract which may be at variance with the Contract Documents. Each Subcontractor shall similarly make copies of such Documents available to his Sub-subcontractor.

(1) Subcontractors must submit a complete pre-qualification form demonstrating their work experience, financial condition, and adherence to schedule. The Subcontractors financial condition must demonstrate that adequate fixed and liquid assets and equipment are available to properly perform the subcontract.

(2) Workforce - The Subcontractor must agree to perform no less than fifty 50%) percent of the Project construction work utilizing its own forces.

(3) All subcontracts shall provide:

a. LIMITATION OF REMEDY - NO DAMAGES FOR DELAY
That the Subcontractor's exclusive remedy for delays in the performance of the contract caused by events beyond its control, including delays claimed to be caused by the Owner or Architect/Engineer or attributable to the Owner or Architect/Engineer and including claims based on breach of contract or negligence, shall be an extension of its contract time.

In the event of a change in the work the Subcontractor's claim for adjustments in the contract sum are limited exclusively to its actual cost for such change, plus, no more than five percent (5%) for profit, and five percent (5%) for overhead.

The subcontract shall require the Subcontractor expressly agree that the foregoing constitute its sole and exclusive remedies for delays and changes in the work and thus eliminate any other remedies for claim for increase in the contract price, damages, loss or additional compensation.

b. Each subcontract shall require that any claims by Subcontractor for delays or additional cost must be submitted to Construction Manager within the time and in the manner in which the Construction Manager must submit such claims to the Owner, and that failure to comply with the conditions for giving notice and submitting claims shall result in the waiver of such claims.

5.4 Responsibilities for Acts and Omissions - The Construction Manager shall be responsible to the Owner for the acts and omissions of its employees and agents and its Subcontractors, agents and employees, and all other persons performing

any of the work or supplying materials under this contract to the Construction Manager.

ARTICLE 6

SCHEDULE, TIME OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

6.1 At the time a Guaranteed Maximum Price (GMP) is established, as provided for in Article 7, a Project Substantial Completion Date, a Project Final Completion Date and an Owner Occupancy Date for completion of the Project in accordance with the master Project schedule, shall also be established by the Construction Team. The Construction Manager agrees to complete the construction in accordance with the agreed upon Substantial Completion Date, Final Completion Date and Owner Occupancy Date. The Construction Manager acknowledges that failure to complete the Project within the construction time set forth in the approved schedule will result in substantial damages to the Owner.

It is specifically agreed by and between the parties that the Owner may deduct a sum in the amount scheduled below from the amount of compensation to be paid the Construction Manager, Sundays and Holidays included, that the Project remains uncompleted. This amount as scheduled and agreed upon as a proper measure of liquidated damages, which the Owner will sustain per day by failure of the Construction Manager to complete the Project by the time stipulated in this Agreement, is not to be construed in any sense as a penalty provision.

Project Substantial Completion	$500 per day
Project Final Completion	$250 per day

Liquidated Damages will be assessed for each day beyond the contracted project Substantial Completion date, until actual project Substantial Completion is achieved. From the date of Substantial Completion, the Construction Manager shall be granted thirty (30) days for completion of punch list items, associated inspections and approvals, and submission and approval of required closeout documentation, at which time Final Completion shall be obtained. Final Completion liquidated damages will be assessed for each day beyond the thirty (30) days period from actual Substantial Completion.

6.2 The date of Owner Occupancy shall occur as described in Article 2.9(7) and Article 1.3, hereinabove. Warranties called for by this Agreement or by the Drawings and Specifications shall commence on the Date of Final Completion of the Project unless specified otherwise in the Project Specifications.

ARTICLE 7

GUARANTEED MAXIMUM PRICE FOR CONSTRUCTION

7.1 The Construction Manager will establish and submit in writing a Guaranteed Maximum Price to the Owner for its approval, guaranteeing the maximum price to

the Owner, for the construction cost of the Project or designated part thereof, based on a review of the contract drawings and specifications. Such Guaranteed Maximum Price will be subject to increase or deduction for changes in the Project as provided in Article 10 and for Owner direct purchases, if any, in accordance with **Attachment "C"**. All costs in excess of the final approved GMP, as adjusted up or down in accordance with the terms of this agreement, are the responsibility of the Construction Manager. Any savings between the GMP, as adjusted, and the sum of the actual cost of the Project plus the Construction Manager's fees, will be returned to the Owner. The GMP includes all taxes in the Cost of the Project which were legally enacted and in effect at the time the GMP was established.

7.2 Owner-Direct Purchases - In the event the Owner opts to make Owner Direct Purchases, as outlined in **Attachment "C"**, the Guaranteed Maximum Price shall be reduced by the cost of the materials plus applicable sales tax so that all sales tax savings accrue to the benefit of the project contingency. The Construction Manager shall diligently process all Owner Direct Purchase invoices for the project in order for the Owner to benefit from applicable vendor discounts. The Construction Manager will be required to submit all invoices to Owner in sufficient amount of time in order for the project to benefit from the vendor discount. All costs associated with missed discounts by the Construction Manager will be deducted from the Construction Manager's contract via deductive change order at project completion. Owner reserves the right to waive the Construction Manager's responsibility for missing discounts.

7.3 At the time of execution of the contract, the Construction Manager will verify the time schedule for activities and work which is adopted by the Construction Team and used to determine the Construction Manager's cost of work. Surplus funds from bids received below the applicable line items, including line items within the General Conditions, in the GMP will be set aside for contingency. Construction contingency funds will be used for the purpose of defraying the expenses due to unforeseen circumstances relating to construction. The Construction Manager will be required to furnish documentation evidencing expenditures charged to this contingency prior to the release of funds by the Owner. Documentation for use of the Contingency shall be determined by the Construction Team. The Architect/Owner shall verify and approve the actual costs.

If bids are received above the applicable line item in the GMP the deficiency will be taken from the contingency via an approved Authorization to Initiate Work/GMP Realignment form; however, such events shall not be cause to increase the GMP. If bids are not received for a portion of the work at or below the applicable line item amount in the GMP, the Construction Manager reserves the right to perform that portion of the work or negotiate for its performance for the specified line item lump sum amount or less.

ARTICLE 8

CONSTRUCTION MANAGER'S FEE

8.1 In consideration of the performance of the contract, the Owner agrees to pay the Construction Manager as compensation for his services fees as set forth in Subparagraphs 8.1.2 and 8.1.3. subject to the retainage specified in 8.1.1 below.

8.1.1 Construction Phase Fee - Prior to commencement of the Construction Phase, the Owner will direct the Construction Manager in writing to proceed into the Construction Phase. The Owner retains the right to review the need and effectiveness of any employee or employees assigned by the Construction Manager, should the Project Director question the need for the employee or employees. A percentage of the agreed upon Construction Phase Fee shall be paid monthly based on percentage (%) of work completed, less retainage, in accordance with subsection 12.1 below. The Construction Manager's first monthly Certificate for Payment shall be submitted no earlier than thirty (30) days following the issuance of the Notice to Proceed, and the final monthly payment shall be paid only when construction of the Project is finally completed, all original, final release of liens are received, closeout documentation has been submitted and occupancy of the Project accepted by the Owner. If construction is authorized only for a part of the Project, the fee paid shall be proportionate to the amount of work authorized by the Owner.

(1) Adjustments in Fee - For changes in the Project as provided in Article 10, the Construction Phase fee shall be adjusted as follows:

(a) The Construction Manager shall be paid an additional fee subject to negotiation if the Construction Manager is placed in charge of reconstruction of an insured or uninsured loss excluding any condition that may have been caused from negligent acts by the Construction Manager, subcontractors or others for whose acts the Construction Manager is responsible.

(2) Costs and Expenses Included in Construction Manager's Construction Phase Fee - The following are included in the Construction Manager's fee for services during the Construction Phase and are included in the GMP (See **Attachment "L"** for Allowable Costs, Overhead associated with the Construction Manager's Construction Phase Fee referenced in Article 8):

(a) Corporate costs including expenses and overhead and profit related to this project by the Construction Manager's principal and branch offices.
(b) Costs of all data processing, accounting, purchasing and associated staff which is performed at the home office.
(c) General operating expenses incurred in the management and supervision of the project, except as expressly included in Article 9.

(d) Salaries or other compensation of the Construction Manager's employees at his principal and branch offices.
(e) Those services set forth in Paragraph 2.1, 2.2, 2.3 and 2.4; except as expressly included in Article 9.
(f) Relocation expenses for Construction Manager's personnel.
(g) Costs of all project estimating, safety, scheduling and accounting staff.

8.1.3 The Construction Manager will establish and submit in writing to the Owner for his approval a Guaranteed Maximum Price, guaranteeing the maximum price to the Owner, for the construction cost of the Project or designated part thereof, based on a review of the contract drawings and specifications. Such Guaranteed Maximum Price will be subject to modification for changes in the Project as provide in Article 10. However, the actual price paid for the Work by the Owner shall be (1) the Cost of the Project as defined in Article 9, plus the Construction Manager's fees, or (2) the GMP, whichever is less, when the Work is complete. All costs in excess of the final approved GMP are the responsibility of the Construction Manager.

ARTICLE 9

COST OF THE PROJECT

9.1 Definition - The term Cost of the Project shall mean costs reasonably and necessarily incurred in the Project during the Construction Phase for construction services and paid by the Construction Manager which are included in the Construction Phase Fee, less Owner direct purchases made in accordance with **Attachment "C"** upon completion of the Project. Such costs shall include the items set forth below in this Article, and shall also include, but are not limited to, those set forth in **Attachment "M"** - "Allowable General Conditions".

The Owner agrees to pay the Construction Manager for the Cost of the Project subject to the limits set forth in Articles 9.2 and 9.3 plus the Construction Manager's fees stipulated in Article 8, provided the total does not to exceed the GMP.

9.2 Direct Cost Items (See **Attachment "M"** - "Allowable General Conditions")

(1) Labor wages paid for the on-site Project Superintendent directly responsible for the operation and supervision of the project, clerical and Quality Control personnel (as opposed to wages paid to management or supervisory personnel who are not part of the on-site project management) in the direct employ of the Construction Manager in the performance of the Construction Manager's work under this Agreement, acceptable salary or wage schedules and such fringe benefits, if any, as

may be payable with respect thereto (labor burden not to exceed 40% for payroll and 15% for per diem).

(2) Payments due to Subcontractors from the Construction Manager or made by the Construction Manager to Subcontractors for their work performed pursuant to contract under this Agreement.

(3) Cost of the premiums for insurance above and beyond the minimum required by Brevard County ($1 million) and cost of premiums for bonds which the Construction Manager is required to procure by this Agreement specifically for the construction of this project.

(4) Sales, use, gross receipts or similar taxes related to allowable direct costs of the Project imposed by a governmental authority, and for which the Construction Manager is liable. No costs shall be paid by the Owner to the Construction Manager for any expenses made necessary to correct defective workmanship or to correct any work not in conformance with the Plans and Specifications or to correct any deficiency or damage caused by negligent acts by the Construction Manager.

(5) If approved by the Owner, the Construction Manager, when qualified, may self perform all or a portion of the work for any item listed on the estimate or GMP breakdown where it is deemed advantageous due to schedule or economic benefit for the direct cost of the work.

(6) Legal costs reasonably and properly resulting from prosecution of the Project for the Owner, including handling claims for changes by subcontractors and vendors, subject to the following limitations:

(a) The Owner approved incurring such costs in advance, which approval shall not be unreasonably denied; and
(b) The legal costs were not incurred as result of the Construction Manager's own negligence or default.

(7) Costs for such temporary facilities during construction, as approved by the Owner, including temporary water, heat, power, sanitary facilities, telephones, radios and computers with software.

9.3 Allowances

Within the GMP, there may be specific items which the Construction Manager and Owner have agreed to include as allowances in the estimates until such time as the cost and schedule impact of these items can be more specifically ascertained. At the time that the Costs of the Work of allowance items becomes known (either through a subcontract price or by virtue of either (A) scope of work and cost agreed to by Construction Manager and Owner or (B) an actual buyout of the item), the GMP and Scheduled Completion Date will be adjusted (either

increased or decreased) by the actual Costs of the Work and schedule impact of the item. With respect to increases and decreases to the amount of an allowance item, Construction Manager shall be entitled to the Construction Manager's fee, subject to the limits set forth in Article 8, on the adjusted amount of such allowance, and the GMP shall be adjusted by reason thereof, by Change Order. Allowances must be agreed to by both parties. Allowances included within the GMP constitute approval of said allowances at the time the Guaranteed Maximum Price is approved.

9.4 Public Records Law and Audit Requirements

In the performance of this Contract, the Construction Manager shall keep books, records and accounts of all activities related to the Contract in compliance with generally accepted accounting procedures and in compliance with the Public Records Laws of the State of Florida (Including, but not limited to Chapter 119, Florida Statutes).

All records or documents created by Construction Manager or provided to Construction Manager by the County in connection with the activities or services provided by Construction Manager under the terms of this agreement, are public records and Construction Manager agrees to comply with any request for such public records or documents made in accordance with section 119.07 Florida Statutes.

Records, documents, books and accounts ordinarily and necessarily required for the performance of this Contract shall be kept, maintained and open to inspection by the Owner, Owner's representative, and members of the public during regular business hours.

The Construction Manager shall provide the public with access to public records on the same terms and conditions that the public agency provides the records and at a cost that does not exceed the cost provided for in Florida Statute Chapter 119 or as otherwise provided by law (see also County Administrative Order, AO-47).

The Construction Manager shall also ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.

No reports, data, programs or other materials produced, in whole or in part for the benefit and use of the County, under this Contract shall be subject to copyright by Construction Manager in the United States or any other country.

The Construction Manager shall meet all requirements for retaining public

records and shall transfer, at no cost, to the Owner/County all public records in possession of the Construction Manager upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the Owner/County in a format that is compatible with the information technology systems of the Owner/County.

Failure to comply with the provisions of this Section 9.4, shall result in the Owner taking enforcement action against the Construction Manager including the cost to the Owner for gaining the Construction Manager's compliance which will include, but are not limited to, the gross hourly rate of the Owner's employee(s) contacts to the Construction Manager to obtain compliance with this section, litigation filing fees and attorney's fees.

ARTICLE 10

CHANGES IN THE PROJECT

10.1 Change Orders - The Owner, without invalidating this Agreement, may order Changes in the Project within the general scope of this Agreement consisting of additions, deletions or other revisions which may cause an increase or decrease in the GMP, and/or the Construction Completion Date. All changes in the Project GMP or Construction Completion Date not covered by an authorized contingency, as described in Article 7.3 must be authorized by a written Change Order or Construction Change Directive, and signed by the Owner, Architect and Construction Manager before the change is implemented. It shall be the Owner's discretion as to whether each change order requires the A/E signature. **Maximum allowable mark-up on any change order is 5% Profit, 5% Overhead, and a 2% Bond.**

10.1.1 A Construction Change Directive is a change directive signed by the Project Director and the County Manager directing an addition, deletion, or revision in the scope of work and/or schedule. The Construction Change Directive is necessary when no Agreement exists among the Architect/Engineer of record, Brevard County and the Construction Manager on the dollar amount of a necessary change in the scope of work and/or an extension of time to the construction contract. The Construction Change Directive is used (1) when an unsafe, hazardous or other similar condition exists, (2) when failure to achieve prompt resolution of the change will result in a demobilization of the Construction Manager, its subcontractors and/or agents, (3) when failure to achieve prompt resolution will result in additional cost, and/or a significant delay in completing the project. A Construction Change Directive does not change the contract price or the contract time, but is evidence that the parties

expect that the change will be incorporated in a subsequently issued Change Order or be covered by an authorized contingency.

10.1.2 A Change Order is a written order to the Construction Manager signed by the Owner, Architect, and Construction Manager, issued after the execution of this Agreement, authorizing a change in the Project and/or an adjustment in the construction authorization, the Construction Manager's fee, or the Construction Completion date. Each adjustment in the GMP resulting from a change order shall be documented clearly to separate the amount attributable to the cost of the change in the Project from the original cost of the Project.

10.1.3 The increase or decrease in the Guaranteed Maximum Price resulting from Change Orders in the Project shall be determined by one of the following ways:

(1) by mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation by the Architect/Engineer and Owner;
(2) by unit prices stated in the Agreement or subsequently agreed upon;
(3) by cost as defined in Article 9 plus a mutually acceptable fixed or percentage fee; or
(4) by the method provided in Subparagraph 10.1.4.

10.1.4 If none of the methods set forth in Clause 10.1.3 is agreed upon, the Construction Manager, provided he receives a written order signed by the Owner, shall promptly proceed with the work required by the Construction Change Directive involved. The cost of such work shall then be determined on the basis of the reasonable expenditures and savings of those performing the work attributed to the change. However, in the event a Change Order is issued under these conditions, the Architect/Engineer will establish an estimated cost of the work and the Construction Manager shall not perform any work whose cost exceeds that estimate without prior written approval by the Owner. In such case, and also under Article 10.1.3 above, the Construction Manager shall keep and present, in such forms as the Owner may prescribe, an itemized accounting together with appropriate supporting data of the increase in the Cost of the Project as outlined in Article 9. The amount of decrease in the Guaranteed Maximum Price to be allowed by the Construction Manager to the Owner for any deletion or change which results in a net decrease in cost will be the amount of the actual net decrease in the Cost of the Project and the Construction Manager's fee subject to the limits set forth in Article 7.

10.1.5 If unit prices are stated in the Agreement or subsequently agreed upon and if the quantities originally contemplated are so changed in a proposed

Change Order that application of the agreed unit prices to the quantities of Work proposed will cause substantial inequity to the Owner or the Construction Manager, the applicable unit prices and Guaranteed Maximum Price shall be equitably adjusted.

10.1.6 Should the Construction Manager or his contracted subcontractors encounter:

(1) concealed conditions in the performance of the Work below the surface of the ground; or
(2) concealed or unknown conditions in an existing structure be at variance with the conditions indicated by the Drawings, Specifications, or Owner furnished information; or
(3) unknown physical conditions below the surface of the ground; or
(4) concealed or unknown conditions in an existing structure of an unusual nature;

differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Agreement, then the Guaranteed Maximum Price and the Construction Completion date shall be equitably adjusted by Change Order upon a request for Change Order in accordance with Article 10.2. and Article 11.

Upon discovery of concealed or unknown conditions, the Construction Manager shall notify the Owner and Architect/Engineer within twenty four (24) hours of discovery, and not proceed with Work until such notice has been given and a response is issued by the Owner. The Architect/Engineer will evaluate the alleged unknown or concealed condition and, if warranted, recommend to the Owner that the GMP and schedule be increased or decreased accordingly. No claim under this Article may be made unless notice, as herein provided, is given prior to Work being performed. No equitable adjustment shall be permitted if this notice provision is not complied with.

Within ten (10) calendar days of submitting its Notice, the Construction Manager shall submit to the Owner its Request for Change Order, which shall include a written statement of all details of the claim, including a description of the work affected. Within thirty (30) days from Notice, the Construction Manager shall submit detailed schedule impact and detailed cost analysis indicating quantities, unit prices, etc.

10.1.7 The Construction Manager shall review any Owner directed change and shall respond in writing within seven (7) calendar days after receipt of the proposed change (or such other reasonable time as the Owner may direct), stating the effect of the proposed change upon the Construction Manager's Work, including any increase or decrease in the contract time

or price. The Construction Manager shall furnish to the Owner an itemized breakdown of the quantities and prices used in computing the change in Contract price.

The Owner and Architect/Engineer shall review the Construction Manager's proposal and respond to the Construction Manager within seven (7) calendar days of receipt. If a change to the Contract price and time for performance are agreed upon, both parties shall sign the Change Order. Changes to the Contract time and/or price shall be effective when signed by both parties. It shall be the Owner's discretion as to whether each change order requires the A/E signature.

10.2 **Claims for Additional Cost or Time**

All claims for additional cost or time shall be made by request for a change order submitted as provided in Article 16.

10.2.1 If the Construction Manager is delayed at any time in the progress of the work by any act or neglect of the Owner or the Architect or of any employee of either or by any separate Construction Manager employed by the Owner or by any changes ordered in the work by labor disputes, fire, or unusual delay in transportation, unavoidable casualties or any causes beyond the Construction Manager's control or by delay authorized by the Owner pending resolution or disputes, and such delay extends the completion date, the Substantial Completion shall be extended by Change Order for such reasonable time as the Construction Team may determine.

10.2.2 All change orders must indicate that the Contract Time for Completion is not changed or is either increased or decreased by a specific number of days. The previous Time for Completion and, if there is one, the new Time for Completion must be stated. The Construction Manager must provide written justification for an extension of the Time for Completion to the Architect/Engineer and to the Owner. The written justification must demonstrate an anticipated actual increase in the time required to complete the Work beyond that allowed by the Contract as adjusted by prior change orders or amendments to the Contract, not just an increase or decrease in the time needed to complete some portion of the total Work. No increase to the Time for Completion shall be allowed unless the additional or changed Work increases the length of the critical path. Approved increases in time required to complete the Work shall be added to the Time for Completion. Decreases in time as a result of the change order shall be demonstrated by a decrease in the critical path of the Work if CPM scheduling is properly used and updated by the Construction Manager. If no CPM is used the Owner shall determine the appropriate decrease by the best means possible. Approved decreases in the time needed to complete the Work shall be deducted from the Contract completion date. The change to time and Contract price allowed by each

change order shall include all time and monetary impacts of the change, whether the change order is considered alone or with all other changes during the course of the project. Failure to include a change to time and Contract price in a change order shall waive any change to the time and Contract price unless the parties mutually agree in writing to postpone a determination of the change to time and price resulting from the change order. Such a determination may be postponed not more than forty five (45) days to give the Construction Manager an opportunity to demonstrate a change in the time and price needed to complete the Work.

Only delays which are determined to extend the critical path for the schedule for constructing the Project will result in a time extension. Neither the Owner nor the Construction Manager shall be considered to own the schedule float time.

10.3 Minor Changes in the Project (Realignment of Work)
The Owner and/or Architect/Engineer will have authority to order minor changes in the Project not involving an adjustment in the Guaranteed Maximum Price or an extension of the Construction Completion Date and not inconsistent with the intent of the Drawings and Specifications. Such changes shall be affected by written order. Documentation of changes shall be determined by the Construction Team, and included in the Project Manual. Changes shall be approved by the Project Director, Architect/Engineer. It shall be the Owner's discretion as to whether a Realignment of Work requires the A/E signature. All changes or realignments of work performed within the Guaranteed Maximum Price will not include overhead, profit or General Condition additional costs, since costs are absorbed within the Guaranteed Maximum Price (GMP).

10.4 In any emergency affecting the safety of persons or property, the Construction Manager shall act at his discretion, to prevent threatened damage, injury or loss. Any increase in the Guaranteed Maximum Price or extension of time claimed by the Construction Manager on account of emergency work shall be determined as provided in Article 10.

ARTICLE 11

DISCOUNTS

11.1 All discounts for prompt payment shall accrue to the Owner to the extent the Cost of the Project is paid directly by the Owner or from a fund made available by the Owner to the Construction Manager for such payments.

To the extent the Cost of the Project is paid with funds of the Construction Manager, all cash discounts shall accrue to the Construction Manager. All trade discounts, rebates and refunds, and all returns from sale of surplus materials and equipment, shall be credited to the Cost of the Project.

ARTICLE 12

PAYMENTS TO THE CONSTRUCTION MANAGER

12.1 Monthly Statements - The Construction Manager shall submit to the Owner a sworn statement along with the Certificate for Payment, showing in detail all monies paid out, cost accumulated or costs incurred on account of the Cost of the Project during the previous period and the amount of the Construction Manager's fees due as provided in Article 8. This data shall be attached to the Certificate for Payment Form shown in **Attachment "N"**, and shall include, but not be limited, to the following:

- Daily Reports;
- Updated Project Schedule;
- Daily Red line As-Builts review;
- Provide a billing report with each payment application that shows a breakdown of costs incurred by line item. This report should correspond with the amounts being charged on the Schedule of Values.
- Provide backup copies of all invoices that the County is being billed for, including vendor invoices, payments to subcontractors, cell phone statements, insurance, petty cash receipts, etc. These invoices should be coded by the line item that they correspond to on the billing report and Schedule of Values.
- Provide backup copies and documentation of all costs incurred under General Conditions.
- Provide backup copies of all payroll that details which labor amounts were paid to whom on a weekly basis.
- Provide copies of all subcontractor agreements.
  * The amounts charged on the Payment Application must be accurate and correspond with the total dollar amount of backup provided by the Construction Manager.

Payment by the Owner to the Construction Manager of the statement amount shall be made in accordance with Florida Statute 218.735.

Ten percent of each payment shall be held by the OWNER as retainage until 50-percent completion of such Project, which shall be deemed to have occurred when 50% of the GMP, as increased or decreased from time to time, has been expended. At that time, the retainage shall be reduced to 5% and the Construction Manager shall be entitled to request payment or release of up to 50% of the previously withheld retainage amounts, provided the retainage is not the subject of a good faith dispute, the subject of a

claim brought pursuant to s. 255.05, Florida Statutes or otherwise the subject of a claim or demand by the OWNER.

Owner may refuse to certify payment and withhold a Certificate for Payment in whole or in part, in accordance with subsection(s) above, to such extent as may be reasonably necessary to protect the Owner from loss because of:

(1) defective work not remedied;
(2) third party claims filed or reasonable evidence indicating probably filing of such claims;
(3) failure of Construction Manager to make payments properly to subcontractors, consultants, or for labor, materials or equipment;
(4) evidence that the Project cannot be completed for the unpaid balance of the GMP, as adjusted;
(5) evidence that the Work will not be completed by the Scheduled Completion Date, as adjusted, and that the unpaid balance would not be adequate to cover the liquidated damages for the anticipated delay;
(6) failure to carry out the Work of the Project in accordance with the Contract Documents; or

If the Owner is unwilling to certify payment in the amount of the Application for Payment submitted by the Construction Manager, Owner will provide Construction Manager with written reasons for its refusal, within three (3) calendar days. If Construction Manager and Owner cannot agree on a revised amount, Owner will, within one (1) day of the aforesaid notification, promptly issue a Certificate for Payment as to the undisputed amount with respect to which Owner concurs.

12.2 Final Payment - Final payment constituting the unpaid balance of the Cost of the Project and the Construction Manager's fee, shall be due and payable in accordance with Florida Statutes after an *acceptable* Certificate of Final Completion has been issued **and all contractual closeout obligations have been met by the Construction Manager**. Before issuance of final payment, the Construction Manager, subcontractors and agents shall submit original, sworn, notarized statements that all payrolls, material bills, and other indebtness connected with the Project have been paid or otherwise satisfied, warranty information is complete, Final As-Builts in AutoCad format acceptable to the Owner, have been submitted and instruction and documentation for the Owner's operating and maintenance personnel is complete.

12.3 Payments for Materials and Equipment - Payments will be made for material and equipment not incorporated in the work but insured, itemized, delivered and suitably stored at the site or another location subject to prior approval and acceptance by the Owner on each occasion.

12.4 Withholding Payments to Subcontractors - The Construction Manager shall not

withhold payments to Subcontractors if such payments have been made to the Construction Manager. Should this occur for any reason, the Construction Manager shall immediately return such monies to the Owner, adjusting pay requests and project bookkeeping, as required.

ARTICLE 13

INSURANCE, INDEMNITY WAIVER OF SUBROGATION

13.1 (1) Indemnification - The Construction Manager agrees to indemnify and hold harmless the County and their employees from all claims, losses and expenses, arising out of or resulting from the performance of the products or services to be contracted, provided such claim, damage, loss or expense (1) is attributable to bodily injury, sickness, disease, death or personal injury, or to property damage, including loss of use resulting therefrom, (but not loss of use for which liquidated damages are assessed under the Agreement) and (2) is caused in whole or in part by any negligent act or omission of the Construction Manager, any subcontractor, any of their employees and/or agents in the performance of this contract. The Construction Manager agrees that it will pay the costs of the County's legal defense, including fees of attorneys as may be selected by the County, and shall defend, satisfy, and pay any judgments which may be rendered against the County in connection with the above hold harmless agreement. The Construction Manager acknowledges specific consideration has been received for this hold harmless/indemnification provision.

(2) The Owner shall cause any other Construction Manager who may have a contract with the Owner to perform construction or installation work in the area where work will be performed under this Agreement, to agree to indemnify the Owner and the Construction Manager and hold them harmless from all claims for bodily injury and property damage (other than property insured under Paragraph 13.2(3)) that may arise from the Construction Manager's operations.

Loss Deductible Clause - Brevard County Board of County Commissioners shall be exempt from, and in no way liable for, any sums of money which may represent a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of the Construction Manager and/or Subcontractor providing such insurance.

13.2 Insurance

(1) The Construction Manager shall not commence any construction work in connection with this Agreement until the Construction Manager has obtained all of the following types of insurance and such insurance

certificate(s) have been submitted to the Owner and have been approved by the Owner, nor shall the Construction Manager allow any Subcontractor to commence work on his subcontract until all insurance required of the Subcontractor has been so obtained and approved. All insurance policies shall be with insurers qualified and doing business in the State of Florida.

a. Worker's Compensation - Provide Worker's Compensation Insurance on behalf of all employees who are to provide a service for this project, as required under Florida Laws.

b. Commercial General Liability - Including but not limited to bodily injury, property damage and personal injury with limits of not less than $1,000,000.00 combined single limit per occurrence, including products and completed operations, to include:

   1. "XCU" (Explosion, Collapse, Underground Damage) - The Construction Manager's Liability Policy shall provide "XCU" coverage.

   2. Broad Form Property Damage Coverage, Products and Completed Operations Coverage - The Construction Manager's Liability Policy shall include Broad Form Property Damage Coverage, Products and Completed Operations Coverages.

   3. Contractual Liability Work Contracts - The Construction Manager's Liability Policy shall include Contractual Liability Coverage designed to protect the Construction Manager for contractual liabilities assumed by the Construction Manager in the performance of this Agreement.

c. Automobile Liability - Including bodily injury, property damage liability for all vehicles owned, hired, leased and non-owned with limits of not less than $1,000,000.00 combined single limit, per accident.

d. Performance and Payment Bonds - With limits of not less than 100% of the total construction cost of this project. Payment and Performance Bond shall be recorded in the official record of the County in which the project is located. These bonds shall remain in effect at least until one (1) year after the date when the final payment is approved. Any bonding company submitting a Bid Bond, Performance Bond or Payment Bond to Brevard County must be licensed to transact a fidelity and surety business in the State of Florida, and hold a Certificate of Authority from the Secretary of the Treasury under Act of Congress, approved by July

30, 1947 (U.S.C. 613), and approved by Brevard County. Acceptable surety companies shall be licensed to do business in Florida and shall have an A.M. Best Rating of "A-" and financial size V or higher.

e. Builder's Risk Coverage - The Construction Manager shall take out and maintain during the life of this Agreement a "Builder's Risk Policy" completed value form as a cost of the Project, issued to provide coverages on an "all risk" basis including theft. This coverage shall not be lapsed or canceled because of partial occupancy by the Owner prior to final acceptance of the Project.

The Construction Manager shall require each of his Subcontractors to procure and maintain insurance during the life of the respective subcontracts.

(2) Certificate of Insurance - The Owner shall be furnished proof of coverage of Insurance as follows:

Certificate(s) of Insurance will be furnished to the Owner within five (5) days of Notice to Proceed. These shall be completed and signed by the authorized Resident Agent, and shall be dated and show:

(1) The name of the insured Construction Manager, the specific job by name and job number, the name of the insurer, the number of the policy, its effective date, and its termination date.

(2) The General Liability and Auto Liability certificates of insurance shall indicate that the policies have been endorsed to cover the County as an additional insured to the extent of liability assumed by the Construction Manager under this Agreement, and that these policies may not be canceled or modified without thirty (30) days prior written notice to the County.

(3) The insurance coverages enumerated above constitute the minimum requirements and shall in no way lessen or limit the liability of the Construction Manager under the terms of the Contract.

*Certificates of Insurance shall be submitted to the Owner within five (5) days of Notice to Proceed, and no work shall commence on site until all submitted Certificates of Insurance are acceptable to the Owner.

13.3 Waiver of Subrogation

13.3.1 The Owner and the Construction Manager waive all rights against each

other, for damages caused by perils covered by insurance provided under Article 13.2 to the extent covered by such insurance except such rights as they may have to the proceeds of such insurance held by the Owner and Construction Manager as trustees. The Construction Manager shall require similar waivers from all Subcontractors and their Sub-subcontractors.

13.3.2 The Owner and Construction Manager waive all rights against each other for loss or damage to any equipment used in connection with the Project and covered by any property insurance. The Construction Manager shall require similar waivers from all subcontractors and their sub-subcontractors.

13.3.3 The Owner waives subrogation against the Construction Manager on all property and consequential loss policies carried by the Owner on adjacent properties and under property and consequential loss policies purchased for the Project after its completion.

13.3.4 If the policies of insurance referred to in this Article require an endorsement to provide for continued coverage where there is a waiver of subrogation, the Owner of such policies will cause them to be so endorsed. Failure to obtain proper endorsement nullifies the waiver of subrogation.

ARTICLE 14

TERMINATION OF THE AGREEMENT AND OWNER'S RIGHT TO PERFORM CONSTRUCTION MANAGER'S OBLIGATION

14.1 Termination by the Construction Manager - If the Project is stopped for a period of thirty (30) days under an order of any court or other public authority having jurisdiction or as a result of an act of government, such as a declaration of a national emergency making materials unavailable, through no act or fault of the Construction Manager, or if the Project should be stopped for a period of thirty (30) days by the Owner, then the Construction Manager may, upon seven (7) days written notice to the Owner, request undisputed payment for all work executed, the Construction Manager's fee earned to date, and for any proven loss sustained upon any materials, equipment, tools, construction equipment, and machinery, including reasonable profit, damages and terminal expenses incurred by the Construction Manager.

14.2 Owner's Right to Perform Construction Manager's Obligations and Termination by Owner for Cause -

(1) If the Construction Manager fails to perform any of its obligations under this Agreement, the Owner may, after seven (7) days written notice during

which period the Construction Manager fails to perform such obligations, make good such deficiencies. The GMP, or the actual cost of the Project, whichever is less, shall be reduced by the cost to the Owner to making good such deficiencies and the Construction Manager's Construction Phase Fee shall be reduced by an amount required to manage the making good of such deficiencies.

(2) If the Construction Manager is adjudged a bankrupt, or if he makes a general assignment for the benefit of his creditors, or if a receiver is appointed on account of his insolvency, or if he persistently or repeatedly refuses or fails, except in case for which extension of time is provided, to supply enough properly skilled workmen or proper materials and fails to maintain an established schedule (failure to maintain schedule shall be defined as any activity on the critical path that falls forty-five (45) days or more behind schedule) which has been adopted by the Construction Team, or if he fails to make prompt payment to subcontractors for materials or labor, or persistently disregards laws, rules, ordinances, regulations, or orders of any public authority having jurisdiction, or otherwise is guilty of a substantial violation of a provision of the Agreement, then the Owner may, without prejudice to any right or remedy and after giving the Construction Manager and his surety, if any, seven (7) days written notice, during which period Construction Manager fails to cure the violation, terminate the employment of the Construction Manager and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Construction Manager, and may finish the Project by whatever method he may deem expedient. In such case, the Construction Manager shall not be entitled to receive any further payment until the Project is finished nor shall he be relieved from his obligations assumed under Article 7. Reasonable termination expenses incurred by the Owner may be deducted from any payments left owing the Construction Manager (excluding monies owed the Construction Manager for subcontract work).

14.3 Termination by Owner for Convenience

(1) If the Owner terminates this Agreement other than pursuant to Article 14.2(2) or Article 14.3(2), he shall reimburse the Construction Manager for any unpaid cost of the Project due him under Article 9, plus that part of the unpaid balance of the Construction Phase Fee in an amount as will increase the payment on account of his fee to a sum which bears the same ratio to the Construction Phase Fee as the Cost of the Project at the time of termination bears to the Guaranteed Maximum Price, if established, otherwise to the Owner's Construction Budget. The Owner shall also pay to the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment

retained. In case of such termination of Agreement the Owner shall reimburse the Construction Manager for obligations and commitments made before notice of termination was received by the Construction Manager.

(2) After the establishment of the Guaranteed Maximum Price or at the completion of the Construction Phase, if the final cost estimates or lack of legislative funding make the Project no longer feasible from the standpoint of the Owner, the Owner may terminate this Agreement and pay the Construction Manager his proportionate fee due in accordance with Article 8.1, plus any costs incurred pursuant to Articles 9 and 10.

(3) Any termination by Owner for cause which is later determined to be invalid shall be considered a termination by Owner for convenience.

ARTICLE 15

ASSIGNMENT AND GOVERNING LAW

15.1 Neither the Owner nor the Construction Manager shall assign his interest in this Agreement without the written consent of the other except as to the assignment of proceeds.

15.2 This Agreement shall be governed by the Laws of the State of Florida.

15.3 Venue and Attorney's Fees: Venue for any legal action brought by any party to this Agreement to interpret, construe or enforce this Agreement shall be in a court of competent jurisdiction in and for Brevard County, Florida. In the event of any legal action to enforce the terms of this Agreement, each party shall bear its own attorney's fees and costs and any trial shall be non-jury.

15.4 Severability: If any provision of this Agreement is held by a Court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired.

ARTICLE 16

NOTICE OF CLAIM: WAIVER OF REMEDIES; NO DAMAGES FOR DELAY; DISPUTE RESOLUTION

16.1 The Owner's liability to Construction Manager for any claims arising out of or related to the subject matter of this contract, whether in contract or tort, including, but not limited to, claims for extension of construction time, for payment by the Owner of the costs, damages or losses because of changed conditions under which the work is to be performed, or for additional work, shall be governed by

the following provisions:

(a) All claims must be submitted as a Request for Change Order in the manner as provided herein;

(b) If the Construction Manager claims that any instructions given to him by the Architect/Engineer or by the Owner, by drawings or otherwise, involve extra Work not covered by the Contract and not discoverable with a review of the plans and specifications, then, except in emergencies endangering life or property, Construction Manager shall give the Architect/Engineer and the Owner written notice thereof before proceeding to execute the Work. Said notice shall be given promptly enough to avoid delaying the Work and in no instance later than twenty (20) calendar days after the receipt of such instructions.

The Construction Manager must submit a Notice of Claim to the Owner and to the Architect/Engineer within twenty (20) days of when the Construction Manager was or should have been aware of the occurrence of the event giving rise to the claim; and

(c) Within ten (10) days of submitting its Notice of Claim, the Construction Manager shall submit to the Owner its Request For Change Order, which shall include a written statement of all details of the claim, including a description of the work affected. Within thirty (30) days from the Notice of Claim the Construction Manager shall submit a detailed schedule impact and detailed cost analysis indicating quantities, unit prices, etc. establishing the basis for the amount of the claim.

The Construction Manager agrees that the Owner shall not be liable for any claim that the Construction Manager fails to submit as a Request for Change Order as provided in this section.

16.2 After receipt of a Request for Change Order, the Owner, in consultation with the Architect/Engineer, shall deliver to the Construction Manager its written determination of the claim. As to disputed matters subject to the determination by final Owner action (not actions for breach of contract or tort) the Owner's written decision following compliance with the dispute resolution procedure set forth in sections 16.4 through 16.6 below shall be final Owner action.

16.3 For work the Construction Manager performs with its own forces, and in addition to the adjustments provided for in Article 8, the Construction Manager's exclusive remedy for delays in performance of the construction caused by events beyond its control, including delays claimed to be caused by or attributable to the Owner or the Architect/Engineer, including claims based on breach of contract or negligence, shall be a claim submitted in compliance with Article 16.1 above, for an extension of the scheduled construction time. In the event of a change in

such work that will modify the GMP, the Construction Manager's claim for adjustment in contract sum are limited exclusively to its actual costs for such changes, including costs involved in claim preparation, plus five percent (5%) overhead, five percent (5%) profit and a two percent (2%) bond in the General Conditions. The Construction Manager expressly agrees that the foregoing constitute its sole and exclusive remedies for delays and changes in such work, and eliminate any other remedies for claim for increase in the contract price, delays, changes in the work, damages, losses or additional compensation.

16.4 In the event of any dispute over a proposed change order or any other matter arising out of the implementation or interpretation of this contract the following dispute resolution process shall apply.

(a) Within three (3) days after denial of a contractor's change order or contract modification request in an amount, individually or in total, less than the authorized purchasing level approved for the County Manager by the County Commission (currently at $100,000) the contractor may submit to the County Manager or a designee with experience in the oversight of construction projects for a department or business other than the department responsible for monitoring the disputed request, documentation of the contractor's position in the dispute or disagreement. The County Manager or designee, within five (5) days after the receipt of the contractor's documentation, shall review the request and make a final determination as to whether denial was arbitrary or capricious based upon the sufficiency of the work under the terms of the contract, applicable regulations and relevant construction standards. Based upon the sufficiency and degree of completion, as well as any defects in the work and the amount reasonably required, if any, to correct or repair defective work, the reviewer shall make the final determination as to whether a written change order or contract modification should be approved by the County Manager.

(b) If the denied request or disputed amount exceeds the County Manager's purchasing authority, the County Manager shall present a report, recommendation and the contractor's claim and documentation, to the County Commission for a final determination within thirty (30) days after receiving the contractor's documentation for the claim. The Commission shall make its decision using the standards specified in subparagraph (a) above.

16.5 Within thirty (30) days after denial of a request for a change order or contract modification by the project manager or engineer involving (1) an amount in excess of the County Manager's expenditure authority or (2) for the amount the contractor claims to be due at the time the project is ready for beneficial use or occupation, the County may, at the County's option in lieu of the procedure

specified in subparagraph 16.4, submit the dispute to a mediator with knowledge or experience in construction management, as agreed upon by the parties. Upon referral to a mediator, the County and contractor shall each pay half the estimated cost of the mediator, up front. Within fifteen (15) days after the date of submittal, the mediator, applying the standards set forth in subparagraph 16.4, shall investigate the dispute and submit a written recommendation for disposition of the dispute to the County Manager or a designee with the qualifications specified in subparagraph 16.4. Within fifteen (15) days after receiving the mediator's recommendation, the County Manager shall submit the recommendation to the County Commission, along with a staff report analyzing the dispute and mediator's recommendation. Based on the standards set forth in subparagraph 16.4 above, the Commission shall decide whether to grant or deny, in whole or in part, the amounts recommended by the mediator. The Commission's decision will be deemed final action on the disputed claim for the purposes of ripening the decision for judicial review. If the mediator recommends that no change order or contract modification be granted, the contractor shall reimburse the county for any amounts paid by the county to the mediator.

16.6 The deadlines for completing the dispute resolution process described in subparagraphs 16.4 and 16.5 may be extended by mutual agreement of the contractor and the county.

ARTICLE 17

OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

17.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Construction Manager claims that a delay or additional cost is involved because of such action by the Owner, the Construction Manager shall make such claim as provided in this Agreement.

17.2 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Construction Manager, who shall cooperate with them. The Construction Manager shall participate with other separate contractors and the Owner in reviewing their construction schedules when directed to do so. The Construction Manager shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute

the schedules to be used by the Construction Manager, separate contractors and the Owner until subsequently revised.

17.3 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights which apply to the Construction Manager under the Conditions of the Contract.

17.4 The Construction Manager shall afford the Owner, and separate contractors, reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities and shall connect and coordinate the Contractor's construction and operations with the Construction Manager, as required.

17.5 If part of the Construction Manager's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Construction Manager shall, prior to proceeding with that portion of the Work, promptly report to the Architect/Engineer or Owner apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Construction Manager to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Construction Manager's Work, except as to defects not then reasonably discoverable.

17.6 Costs caused by delays or by improperly timed activities or defective construction shall be borne by the party responsible thereof.

17.7 The Construction Manager shall promptly remedy damage wrongfully caused by the Construction Manager to completed or partially completed construction or to property of the Owner or separate contractors.

ARTICLE 18

MISCELLANEOUS

18.1 Interest - Any monies not paid when due to either party under this contract shall not bear interest except as may be required by Section 218.70 et seq., Florida Statutes, ("The Florida Prompt Payment Act").

18.2 Harmony - Construction Manager is advised and hereby agrees to exert every reasonable and diligent effort to assure that all labor employed by Construction Manager and his Subcontractors for work on the Project shall work in harmony with and be compatible with all other labor being used by building and Construction Managers now or hereafter on the site of the Project.

Construction Manager further agrees that this provision will be included in all subcontracts of the Subcontractors as well as the Construction Manager's own contract; provided, however, that this provision shall not be interpreted or enforced so as to deny or abridge, on account of membership or non-membership in any labor union or labor organization, the right of any person to work as guaranteed by Article 1, Section 6 of the Florida Constitution.

18.3 Apprentices - If the Construction Manager employs apprentices on the project, the behavior of the Construction Manager and the Owner shall be governed by the provision of Chapter 446, Florida Statutes, and by applicable standards and policies governing apprentice programs and agreements established by the Division of Labor of the State of Florida Department of Labor and Employment Security. The Construction Manager will include a provision similar to the foregoing sentence in each subcontract.

18.4 Minority Participation - The Construction Manager shall *diligently attempt* to award his material contracts, subcontracts and sub-subcontracts to firms having a letter of certification as a minority business from the "Office of Minority Business Assistance, Department of General Services, or any other Federal, Florida County or City certification.

18.5 Minority Employment Information - The Board of County Commissioners requires construction contracts, who would otherwise be required to file and EEO Form 1 Report under Federal Law (currently Federal law requires filing for employers with more than 15 employees), to submit an EEO Form 1 Report with the submission of their GMP. This requirement extends to any subcontractors who are required to submit the EEO Form 1 Report (over 15 employees) under Federal law. Failure to submit an EEO Form 1 Report with your GMP will be reason to declare your proposal "non-responsive" to the proposal requirements. However, the information will be used for statistical purposes only and will not be used in any way as a basis to award a contract. See **Attachment "O"**.

18.6 Public Entity Crime Affidavit attached as **Attachment "P"**.

18.7 Non-Collusion Affidavit of Prime Bidder attached as **Attachment "P"**.

18.8 Copyright Clause No reports, data, programs or other materials produced, in whole or in part for the benefit and use of the Owner, under this agreement shall be subject to copyright by Contractor in the United States or any other Country.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first written above.

ATTEST:

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA

Scott Ellis, Clerk

Jim Barfield
Brevard County Commission

As Approved By the Brevard County Commission:

(Company name here)

BY:
Construction Manager

STATE OF FLORIDA
COUNTY OF BREVARD

The foregoing instrument was acknowledged before me this day of 2016 by whose position is with the firm of, a Florida Corporation, on behalf of the corporation. He/She is personally known to me or has produced as identification.

(SEAL)

NOTARY PUBLIC

Typed, Printed or Stamped Name

ATTACHMENT "A"

CONSTRUCTION TEAM ASSIGNED REPRESENTATIVES

Owner
Brevard County Facilities Department

Joan Van Sickle	Project Director
	Construction Coordinator
Mary Bowers	Support Services Manager/Contracts
Anissa Pratte	Special Projects Coordinator II

Architect-Engineer

Construction Manager

President
Vice President/Principal-In-Charge
Project Manager
Project Administrator
Project Superintendent
Estimator/Cost Control
Schedules

ATTACHMENT "B"

PROJECT SCOPE OF WORK

ATTACHMENT "C"

DIRECT PURCHASING PROCEDURE
CONSTRUCTION MANAGEMENT AGREEMENT

INTENT: The Owner of this Project, Brevard County, Florida, intends that these procedures govern the County's direct purchases of selected materials so that the County may take advantage of its tax exempt status. All monies which would have been payable as taxes, if not for Owner direct purchase under these procedures, will inure solely to the benefit of the Owner. The Owner's direct purchase of materials will not minimize or conflict with the Construction Manager's responsibility for the purchase, installation, coordination, storage, protection, warranty, etc. of the materials as described herein and in the plans and specifications of the Contract.

Definitions: For the purpose of these Procedures, the following words have the following definitions.

a) Contract: Construction Management Agreement by and between Construction Manager and Brevard County Board of County Commissioners, Viera, Florida for the construction of _____.

b) County Purchased Materials: Materials purchased directly by the Owner through execution and delivery of a Purchase Order.

c) GMP - Guaranteed Maximum Price established under the Contract.

d) Materials: Tangible Personal Property necessary for completion of the Project.

e) Materials Deduction Summary: Written document signed by Owner's representative and Construction Manager setting forth the amounts of County Purchased Materials, plus applicable taxes were the purchase not exempt from such taxes, as reflected in the parties' previously executed deductive change order(s) to the Contract showing deduction of such Materials from the GMP.

f) Owner: See Definition in Article I, section 1.3.

g) Owner's Representative: See Definition in Article I, section 1.3.

h) Project: See Definition in Article I, section 1.3.

i) Purchase Order: The Owner's request for Materials from a particular vendor or supplier when fully executed and delivered to the Construction Manager, and the Owner's promise to pay for the Material specified upon delivery and acceptance at the Project Site, and presentation of an invoice by the Construction Manager to the Owner certifying payment of same.

j) Material Requisition: A request by the Construction Manager to the Owner that the Owner directly purchase specific items described in sufficient detail, including quantity, grade, brand, etc., along with the vendor or material supplier and that

vendor or material supplier's quoted price for the Materials.

Overview: The Owner requires the Construction Manager (hereinafter, "Manager") to notify the Owner's Representative of Materials needed for the Project exceeding $5,000.00 in value, through a Material Requisition form. For the purpose of these Procedures, the Manager will assign to the Owner any rights the Manager may have under quotes, contracts or commitments received from the particular vendor or supplier for the Materials described in the Material Requisition. Any Materials purchased by Owner pursuant to these Procedures shall be referred to as "County Purchased Materials", and the responsibilities of the Owner and Manager relating to such County Purchased Materials shall be governed by the terms and conditions of these Procedures, which shall take precedence over other conditions and terms of the Contract Documents where inconsistencies or conflicts exist. The invoiced amount of County Purchased Materials and applicable sales tax had the purchases not been tax exempt, once finalized through the Owner's Purchase Order and after confirmation of completed delivery and acceptance pursuant to this Procedure, will be deducted from the GMP, as defined in the Contract, by deductive change order.

Owner Direct Purchasing Requirements and Procedures: When a Materials purchase for the Project is estimated to be $5,000 or greater and time will allow for an Owner Direct Purchase, Manager shall prepare a Material Requisition form, *(to be provided by the Owner)*, acceptable to Owner, and which specifically identifies the Materials which Owner may, in its discretion, elect to purchase directly. The Material Requisition form shall be complete when submitted, and all information requested provided. Along with the Material Requisition the Construction Manager must provide:

a) The name, address, telephone and fax number and contact person for the material supplier;
b) Manufacturer or brand, model or specification number of the item;
c) Quantity needed as estimated by Manager;
d) The price quoted by the supplier for the Materials identified therein;
e) Any sales tax associated with such quote if it were not purchased by a tax exempt entity;
f) Shipping and handling cost, including associated insurance;
g) Delivery dates as established by the Manager;
h) Subcontractor's written acknowledgment of these Procedures for Owner Direct Purchase of Materials.

After receipt of the Material Requisition, the Owner's Representative will determine whether the Owner will directly purchase the Materials described in the Material Requisition, and communicate consent or decline to purchase the materials to the Manager within twenty four (24) hours. Brevard County's Purchasing Division shall be the Owner's approving authority on Purchase Orders of County Purchased Materials. If the Owner consents to purchase the Materials, the Owner shall issue a Purchase Order for same. The Owner shall issue the original Purchase Order, and the Manager shall deliver the Purchase Order to the subcontractor. The Purchase Order shall require (1) that the supplier provide the required shipping, (2) that the supplier provide the required shipping and handling insurance, and (3) delivery of the County Purchased Materials on the delivery dates provided by the Manager in the Material Requisition.

The Manager shall be fully responsible for all matters relating to the receipt of County Purchased Materials under these Procedures, including, but not limited to, preparation of shop

drawings and submittals, verifying correct quantities, verifying documents of orders in a timely manner, coordinating purchases, providing and obtaining all warranties and guarantees required by the Contract Documents, inspection and acceptance of the goods at the time of delivery, and loss or damage to equipment and materials due to the negligence of the Manager. The Manager shall coordinate delivery schedules, sequence of delivery, loading orientation, and other arrangements normally required by the Manager for the Materials furnished. The Manager shall provide all services required for the unloading, handling and storage of Materials through installation. The Manager agrees to indemnify and hold the Owner harmless from any and all claims of whatever nature resulting from non-payment of goods to suppliers arising from the actions of Manager.

The Manager shall insure that County Purchased Materials conform to the Specifications, and determine prior to incorporation into the Work, if such Materials are patently defective, and whether such Materials are identical to the Material ordered and match the description on the bill of lading. As County Purchased Materials are delivered to the job site, the Manager shall inspect all shipments from the suppliers, and, if in conformance with the Purchase Order, approve the vendor's invoice for materials delivered. The Manager shall assure that each delivery of County Purchased Material is accompanied by documentation adequate to identify the Purchase Order against which the purchase is made. This documentation may consist of an itemized delivery ticket, packing slip or invoice from the supplier conforming to the Purchase Order against which the purchase is made, together with such additional information as the Owner may require. The Manager will then forward the documentation to the Owner.

If the Manager discovers defective or non-conformities in County Purchased Material upon inspection, the Manager shall not use such non-conforming or defective Materials in the Work and instead shall promptly notify the Owner of the defective or non-conforming conditions and coordinate the repair or replacement of those Materials without any undue delay or interruption to the Project. All repair, maintenance or damage-repair calls shall be forwarded to the Manager for resolution with the appropriate supplier, vendor, or subcontractor. If the Manager fails to perform such inspection, the condition of which the Manager either knew or should have known by performance of an inspection, Manager shall be responsible for all damages to the County resulting from Manager's incorporation of such Materials into the Project, including liquidated or delay damages.

On a bi-weekly basis, Manager shall be required to review invoices submitted by all suppliers of County Purchased Materials delivered to the Project Site during that month and either concur or object to the Owner's issuance of payment to the suppliers, based on Manager's records of materials delivered to the site. In order to arrange for the prompt payment to the supplier, the Manager shall provide to the Owner a list indicating the acceptance of the goods or materials within fifteen (15) days of receipt of said invoice for goods or materials. The list shall reference the applicable purchase order and include a copy of the invoices, delivery tickets, written acceptance of the delivered items, and such other documentation as may be reasonably required by the Owner. Upon receipt of the appropriate documentation in duplicate, the Owner shall prepare a check drawn to the supplier based upon the receipt of data provided. This check will be delivered directly to the supplier. If any discounts are available from the supplier or vendor, they shall accrue to the benefit of the Owner, and the amount quoted by the vendor, plus applicable tax, shall be deducted from the GMP. The Manager agrees to assist the Owner to immediately obtain partial or final releases or waivers as appropriate.

Following performance of the Purchase Orders by the suppliers, and submittal of documentation

confirming same to Owner with an invoice for payment by Owner, the Manager shall execute and deliver to the Owner at the end of each month along with the Manager's regular pay requests, a Materials Deduction Summary setting forth the full value of all County Purchased Materials, plus all taxes which would have been payable on the purchase of the Materials had they not been Owner purchased. The Materials Deduction Summary shall show all sums to be deducted by an appropriate deductive change order, and ultimately the GMP, to date. The Board of County Commissioners, or their authorized representative, shall be the approving authority for the Owner on the Materials Deduction Summary for County Purchased Materials.

The Manager shall maintain records of all County Purchased Materials incorporated into the Work. These records shall be available for inspection by the Owner upon request.

Notwithstanding the delivery of County Purchased Materials to the Project Site for the Manager's inspection, custody and incorporation into the Work, the Owner shall retain legal and equitable title to any and all County Purchased Materials. The transfer of possession of County Purchased Materials from the Owner to the Manager shall constitute a bailment for the mutual benefit of the owner and the Manager solely for the purposes set forth herein. The Owner shall be considered the bailer and the Manager the bailee of the County Purchased Materials. County Purchased Materials shall be considered returned to the Owner for purposes of their bailment at such time as they are incorporated into the Project or are returned to the vendor or supplier at the discretion of the Manager prior to payment for the Purchase Order by Owner.

The Owner shall purchase and maintain Builder's Risk Insurance sufficient to protect against any loss or damage to County Purchased Materials. Such insurance shall cover the full value of any County Purchased Materials not yet incorporated into the Project from the time the Owner first takes title to any of such County Purchased Materials and the time when the last of such County Purchased Materials is incorporated into the Project, or are returned to the vendor at the Manager's discretion prior to Owner's payment for same.

The Owner shall in no way be liable for any interruption or delay in the Project, for any defects or other problems with the Project, or any extra costs or time resulting from any delay in the delivery of, or defects in, County Purchased Materials.

ATTACHMENT "D"

DRAWINGS AND SPECIFICATIONS

ATTACHMENT "E"

CONSTRUCTION MANAGER'S
PRELIMINARY CONSTRUCTION SCHEDULE

ATTACHMENT "F"

ORDINANCE 98-37

AN ORDINANCE AMENDING CHAPTER 2 OF THE BREVARD COUNTY CODE TO CREATE ARTICLE VII, A PROCEDURE FOR PREQUALIFYING CONSTRUCTION CONTRACTORS, FOR COMPETITIVE BIDDING CRITERIA AND FOR DEBARMENT OF CONSTRUCTION CONTRACTORS AND SURETIES; PROVIDING FOR ALTERNATIVE CONSTRUCTION DELIVERY METHODS; PROVIDING FOR PREQUALIFICATION AND COMPETITIVE BIDDING CRITERIA, PROCEDURE, AND FOR A STANDARD OF PROOF; PROVIDING FOR EDITING OF THE ORDINANCE FOR INCLUSION WITHIN THE BREVARD COUNTY CODE; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Section 255.20, Fla. Stat. (1997) requires that standards and procedures for determining the lowest qualified and responsive bidder or award of a construction contract under any delivery method be established if a bidder is selected for any reason other than price; and

WHEREAS, the Board has determined that it is in the public's best interest to provide such standards and procedures so that the Board may select the most qualified and responsive bidder; and

WHEREAS, the Board has determined that it is in the public's best interest to prevent construction firms and sureties who have defaulted on a previous contract with the County from future bidding on County projects through a debarment procedure;

THEREFORE, be it ordained by the Board of County Commissioners of Brevard County, Florida as follows:

Section 1: Chapter 2 of the Brevard County Code shall be amended to create Article VII as follows:

1. DEFINITIONS: The following words shall have these meanings throughout this article:

   "AFFECTED PARTY" means an individual or business which has submitted a bid, offer, proposal, quotation, or response which is rejected, or is found unqualified under the provisions of this article, or which would be selected if a low bidder was found unqualified or nonresponsive.

   "BOARD" means the Board of County Commissioners of Brevard County, Florida.

"COMMITTEE" means two or more persons designated to evaluate prequalification and responsiveness criteria. Committees established by the County Manager may be intradepartmental, or include representatives of several departments interested in the administration and success of the construction project.

"DEBARMENT" means the exclusion for cause of a vendor or contractor, or subcontractor from bidding or doing business with the County on a temporary or permanent basis.

"MINOR IRREGULARITY" means a variation from the Invitation to Bid which does not affect the price of the bid, or give the bidder an advantage or benefit not enjoyed by other bidders, or does not adversely impact the interests of the agency.

"QUALIFIED BIDDER" means an individual or business which has submitted a bid, offer, proposal, quotation, or response, which has the capability in all respects to fully perform the contract requirements, and has the financial stability, honesty, integrity, skill, business judgement, experience, facilities and reliability necessary to give reasonable assurance of good faith and performance.

"REQUEST FOR QUALIFICATION" ("RFQ") means the process by which the County may prequalify individuals or businesses for a particular project before requesting bids for the project, thereby limiting the pool of bidders to these prequalified.

"RESPONSIVE BIDDER" means an individual or business which has submitted a bid, offer, proposal, quotation, or response, which conforms in all material respects to the solicitation, including but not limited to compliance with the submittal of specified insurance and bond requirements.

1. Any County contract for the construction or improvement of a public building, structure, or other public construction work that is estimated in accordance with general accounting principles to have construction costs of more than fifty thousand dollars ($50,000.00) shall be competitively awarded to the lowest, qualified and responsive bidder in accordance with this article, unless the project (1) fits within exceptions set forth in s. 255.20, Fla. Stat., as amended from time to time, (2) is a contract governed by the Consultant's Competitive Negotiation Act, or (3) is awarded under another contract delivery method authorized by this article. Nothing in this article shall be construed to require competitive award of every County construction work, nor to prohibit the Board from rejecting all bids if competitively bid, or to prevent the Board from waiving minor irregularities in any bid.

2. (a) Potential lump sum bidders responding to a request for qualifications are required to submit information required by this article and as identified in the RFQ

package. A committee identified in the RFQ package will determine whether a potential bidder is qualified and responsive as defined in this article.

(b) For projects advertised for lump sum bid without prior prequalification, the apparent low bidder, after the formal bid opening, will be required to submit the following prequalification information identified in the bid package within five (5) business days after the bid opening. Failure to provide prequalification information within this time frame may be considered as grounds for finding the apparent low bidder nonresponsive. If the apparent low bidder cannot provide adequate documents for review, or the submitted documents indicate the apparent low bidder or any subcontractors are not qualified, or if the bidder's package is determined to be nonresponsive, the Committee will reject the bidder or any of its subcontractors. In the event the bidder is found unqualified or non-responsive, the apparent second low bidder will be contacted and afforded the previous mentioned five (5) days to submit pre-qualification documents. This process will continue until the lowest qualified and responsive bidder is established. In the event that a subcontractor is found unqualified or non-responsive, the potential bidder or prime contractor will have five (5) business days to submit a substitute subcontractor for the same bid price or withdraw the original bid.

(c) In addition to lump sum contracts for construction, the Board may use the following delivery methods for construction or improvement of a public building, structure, or other public construction work: construction manager, design/build, or continuing contracts based on unit prices. The Board may also enter into continuing contracts with construction managers using the pre-qualification procedure set forth herein for potential lump sum bidders. The individual projects shall be awarded under a continuing contract using the following criteria:

> Ability of professional personnel given project's special characteristics; past performance; willingness to meet time and budget requirements; location; recent, current and projected workloads of the firms available under continuing contract; volume of work previously awarded to each firm under a continuing contract provided distribution does not violate the principle of selection of the most qualified firm for the project; previous experience on County projects.

The County Manager will establish procedures for the Board to hear any affected party with a complaint or appeal as to any recommendation or finding made pursuant to this article. Any affected party's complaint or appeal must be presented, in writing, to the County Manager's office within five (5) business days of the posting of a committee's decision.

(d) At the completion of each competitively awarded County construction project, the County department which administered the construction contract shall

complete an evaluation of the contractor's performance on a form to be established by the County Manager. The department may also complete evaluations of critical subcontractors using the same form. All such records shall be copied to the party evaluated and maintained by County Purchasing. Any party evaluated may submit a written response of any length, which response shall be filed with the evaluation.

3. Potential bidders, the apparent lowest bidder, or the person providing services under any other contract delivery method, and applicable subcontractors identified in the bid or request for qualification package for any County construction project which is to be competitively awarded shall be evaluated to determine whether the bidder and its subcontractors are qualified. In evaluating qualifications, the County shall consider the following information:

   - A Contractor's Pre-Qualification Statement for the prime contractor and subcontractors performing parts of work identified in the bidding documents as critical to the project's success. The Pre-Qualification Statement shall be provided on a form to be established by the County Manager;

   - Most current financial statement, but not more than one (1) year old, indication of bondability, or, if project is under $100,000, other evidence of financial capability as identified in the bid documents;

   - Resumes of Contractor and Subcontractor's key personnel, including project manager and superintendent levels, showing job history, education related to work to be performed and any license, training, and experience related to the work which that individual will perform;

   - List of subcontractors and suppliers, and items of work to be performed by the Contractor's own work force;

   - County evaluations of the performance on County projects;

   - References obtained from individuals or businesses with whom the contractor or subcontractor has performed work or conducted business;

   - Any other relevant qualifications, data or information identified in the bidding documents to be critical to the success of the project.

4. The County Manager will establish committees which may debar a contractor, contractor's key personnel, contractor's surety, subcontractor and subcontractor's key personnel, or any entity which key personnel are later employed or retained by in a supervisory position, from bidding on any County project under the circumstances enumerated below. The decision to disbar is

discretionary, the seriousness of the offense and all mitigating factors should be considered in making the decision to disbar. The notice of debarment shall state the time when such debarment will be lifted, if ever, and the contractor's right to appeal such debarment to the Board of County Commissioners under the Board's regular agenda. The Board reserves the power to waive or lift any committee imposed suspension or debarment.

An individual or business may be *permanently* debarred for any of the following reasons:

- Conviction or a judgment obtained in a court of competent jurisdiction for:
- Commission of a fraud or a criminal offense as an incident to obtaining, attempting to obtain, or in the performance of a pubic contract
- Violation of any Federal or State of Florida anti-trust or anti-racketeering statutes arising out of submission of bids or proposals;
- Commission of embezzlement, theft, forgery, bribery, falsification of or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which seriously and directly affects the question of present responsibility as a County contractor, subcontractor or vendor;
- If the conviction or judgment is reversed on appeal, the debarment shall be removed upon receipt of notification thereof.

Competent and substantial evidence of a violation of a County contract provision, as set forth below, when the violation is of a character so as to justify debarment action such as:

- Failure to perform in accordance with the specifications or delivery requirements in a contract;
- A history of failure to perform, or of unsatisfactory performance, in accordance with the terms of one or more contracts; provided, that such failure or unsatisfactory performance is within a reasonable period of time preceding the determination to debar. Failure to perform for unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered as a basis of debarment.

Upon adequate evidence, an individual or business may be *temporarily* debarred for a period up to three (3) years based upon substantial evidence of involvement in any of the causes cited in paragraph (b) above.

Section 2: Inclusion in Code: It is the intention of the Board of County Commissioners that the provisions of this ordinance shall become and be made a part of the Brevard County Code; and that the sections of this ordinance may be renumbered or relettered to accomplish such intentions.

Section 3: Severability: If any provision of this ordinance is held to be illegal or invalid,

the other provisions shall remain in full force and effect.

Section 4: Effective Date: This ordinance shall become effective upon filing as provided by law. A certified copy of the ordinance shall be filed with the Office of the Secretary of State, State of Florida within ten (10) days of enactment.

ATTACHMENT "G"

PUBLIC CONSTRUCTION PAYMENT BOND

BY THIS BOND, We _____ as Principal and _____, a corporation as Surety, are bound to Brevard County Board of County Commissioners, Brevard County, Florida, herein called Owner, in the sum of _____ ($), for payment of which we bind ourselves, our heirs, personal representatives, successors and assigns, jointly and severally.

THE CONDITIONS OF THIS BOND are that if Principal:

1. Promptly makes payments to all claimants, as defined in Section 255.05(1), Florida Statutes, supplying Principal with labor, materials, or supplies, used directly or indirectly by Principal in the prosecution of the work provided for in the contract dated _____, 20____, between Principal and Owner for construction of _____, the contract being attached hereto and made a part of this bond by reference, in such time and without delay, and in the manner prescribed in the contract; and
2. Pays Owner all losses, damages, expenses, costs, and attorney's fees, including appellate proceedings, that Owner sustains because of a default by Principal under the contract, then this bond is void; otherwise it remains in full force.

   Any changes in or under the contract documents and compliance or noncompliance with any formalities connected with the contract does not affect Surety's obligation under this bond.

Signed and sealed this _____ day of _____, 20___.

Witness:

_____

_____
Principal Seal

Its: _____
Title

Witness:

_____

_____
Surety Seal

Its: _____
Title

ATTACHMENT "H"

PUBLIC CONSTRUCTION PERFORMANCE BOND

BY THIS BOND, We _____, as Principal and _____, a corporation as Surety, are bound to Brevard County Board of County Commissioners, Brevard County, Florida, herein called Owner, in the sum of _____ ($_____), for payment of which we bind ourselves, our heirs, personal representatives, successors and assigns, jointly and severally.

THE CONDITIONS OF THIS BOND are that if Principal:

1. Performs promptly, completely and faithfully the contract dated _____, 2010 between Principal and Owner for construction of _____, the contract being attached hereto and made a part of this bond by reference, in such time and without delay, and in the manner prescribed in the contract including the delivery, execution and performance of any warranty work required by the contract; and
2. Pays Owner all losses, damages, expenses, costs, and attorney's fees, including appellate proceedings, that Owner sustains because of default by Principal under the contract; and
3. Performs the guarantee of all work and materials furnished under the contract for the time specified in the contract, then this bond is void; otherwise it remains in full force.

Any changes in or under the contract documents and compliance or noncompliance with any formalities connected with the contract does not affect Surety's obligation under this bond.

Signed and sealed this _____ day of _____, 20___.

Witness:

_____

_____
Principal Seal

Its: _____
Title

Witness:

_____

_____
Surety Seal

Its: _____
Title

ATTACHMENT "I"

CONSTRUCTION MANAGER'S
GUARANTEED MAXIMUM PRICE

ATTACH HERE

ATTACHMENT "J"

CERTIFICATE OF SUBSTANTIAL COMPLETION

(Insert Form Here)

ATTACHMENT "K"

CERTIFICATE OF FINAL COMPLETION

PROJECT NO. & TITLE:
ARCHITECT: CONTRACTOR:
CONTRACT DATE: DATE OF FINAL COMPLETION:

CERTIFICATE OF ARCHITECT/ENGINEER

Based on my inspections and investigation of the Contractor's work under the above referenced contract, I certify that the work, in general, has been completed in accordance with the contract documents, that all matters previously brought to the Contractor's attention as incomplete or defective have been resolved pursuant to my direction, and that the Contractor has submitted the attached sworn affidavit as evidence that the Contractor has paid all labor, materials, and other charges against the project in accordance with the terms of the Contract.

A/E Firm Name: _____ By: _____

TO BE COMPLETED BY ARCHITECT/ENGINEER: DATE: DAYS:

THROUGH THE SUBSTANTIAL COMPLETION PHASE

1. Notice to Proceed (N.T.P.)
2. Time Specified in Original Contract for Substantial Completion (S.C.)
3. Extension Granted By Change Orders (Days Between Original Contract S.C. and Final Contract S.C.)
4. Total Days Allowable to Substantial Completion (Add Lines 2 and 3)
5. Project Substantially Completed as Certified by A/E (Total Days from NTP through Date Certified by A/E)
6. Substantial Completion Overrun (Subtract Line 4 from 5 and Enter Overrun)

THROUGH THE FINAL COMPLETION PHASE

1. Time Specified in Contract, Between Substantial and Final Completion
2. Extensions Granted by Change Orders (Days Between S.C. and Final Completion)
3. Total Days Allowable Between Substantial Completion and Final Completion (Add Lines 1 and 2)
4. Date Actually Completed and Total Days Between and Date Certified by A/E as Actually being Finally Completed).
5. Final Completion Overrun (Subtract Line)

Architect: _____ Date: _____

Project Manager: _____ Date: _____

Facilities Construction Manager: _____ Date: _____

ATTACHMENT "L"

ALLOWABLE COSTS, OVERHEAD

DESCRIPTION	EST QUANTITY	UNITS	UNIT COST	BUDGET VALUE	QUANTITY TO DATE	QUANTITY TO COMP
OFFICE PHONES						
OFFICE SUPPLIES						
POSTAGE						
GAS/OIL/LUBRICATION						
AUTOMOBILES/TRUCKS						
PROJECT MANAGER						
ESTIMATING COSTS						
EXECUTIVE LABOR COST						
ASST PROJECT MANAGER						
IN HOUSE SECRETARY						
TRAVEL EXPENDITURES						
WARRANTY EXPENSE						

ATTACHMENT "M"
(Direct Cost Items)
GENERAL CONDITIONS

SUPERINTENDENT

JOB SITE SECRETARY/CLERK

QUALITY CONTROL

SURVEY

PERMITS

IMPACT/CONNECTION FEES

CONSTRUCTION DRAWINGS/SPECS

PROGRESS PHOTOGRAPHS *(IF REQUESTED BY THE OWNER)*

JOB SITE SIGN *(IF REQUESTED BY THE OWNER)*

SPECIAL SECURITY *(IF REQUESTED BY THE OWNER)*

PAYMENT & PERFORMANCE BONDS

BUILDERS RISK INSURANCE

JOBSITE TRAILER AND SUPPORT *(IF REQUESTED BY THE OWNER)*

TEMPORARY UTILITIES *(AS APPROVED BY THE OWNER)*

TEMPORARY JOBSITE FENCING *(INITIAL INSTALLATION ONLY)*

TRASH REMOVAL/DUMP FEES, AND RECYCLING *(AS APPROVED BY THE OWNER)*

ATTACHMENT "N"

CERTIFICATE FOR PAYMENT

(INSERT FORM HERE)

ATTACHMENT "O"

MINORITY EMPLOYMENT INFORMATION

The Board of County Commissioners requires construction contracts, who would otherwise be required to file and EEO Form 1 Report under Federal Law (currently Federal law requires filing for employers with more than 15 employees), to submit an EEO Form 1 Report with the submission of their GMP. This requirement extends to any subcontractors who are required to submit the EEO Form 1 Report (over 15 employees) under Federal law. Failure to submit an Acknowledgment and/or EEO Form 1 Report with your GMP will be reason to declare your proposal "non-responsive" to the proposal requirements. However, the information will be used for statistical purposes only and will not be used in any way as a basis to award a contract.

Please fill out and sign one (1) of the following statements:

1. My Company or subcontractors are required to submit the EEO Form 1 Report and they are attached.

   Company Name:
   Signature: _____ Date: _____

2. My Company or subcontractors are not required to submit the EEO Form 1 Report.

   Company Name:
   Signature: _____ Date: _____

Company Name: _____

Company Address: _____

Company Telephone: _____

Signature: _____ Printed Signature: _____

ATTACHMENT "P"

PUBLIC ENTITY CRIME ACKNOWLEDGMENT

A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid/quote/proposal on a contract to provide goods or services to a public entity, may not submit a bid/quote/proposal on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids/quotes/proposals on leases of rental property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for Category Two ($15,000) for a period of thirty six (36) months from the date of being placed on the convicted vendor list.

NON-COLLUSION AFFIDAVIT OF PRIME BIDDER

State of Florida
County of Brevard

_____, being duly sworn, deposes and says that:

(1) Affiant is _____ of _____, the Bidder that has submitted a bid/quote/proposal;

(2) Affiant is fully informed respecting the preparation and contents of the bid/quote/proposal and of all pertinent circumstances respecting such bid/quote/proposal;

(3) Such bid/quote/proposal is genuine and is not a collusive or sham bid/quote/proposal;

(4) Neither the said Bidder nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, has in any way colluded, conspired, connived or agreed, directly or indirectly with any other Bidder, firm or person to submit a collusive or sham bid/quote/proposal in connection with the Contract for which the bid/quote/proposal has been submitted or to refrain from bidding in connection with such Contract, or has in any manner, directly or indirectly, sought by Contract, or has in any manner, directly or indirectly, sought by the agreement or collusion or communication or conference with any other bidder, firm or person to fix the price or prices in the bid/quote/proposal or of any other Bidder, or to fix any overhead, profit or cost element of the bid/quote/proposal price or the bid/quote/proposal price of any other bidder, or to secure through any collusion, conspiracy, connivance or unlawful agreement any advantage against the Board of County Commissioners of Brevard County, Florida, or any person interested in the Contract; and

(5) The price or prices negotiated for the bid/quote/proposal are fair and proper and are not tainted by any collusion, conspiracy, connivance, or unlawful agreement

on the part of the Bidder or any of its agents, representatives, owners, employees, or parties of interest, including affiant.

_____
Signature

_____
Title

Subscribed and sworn to before me this ____ day of _____, 20___.

_____
Notary Public

My Commission expires: _____