

**F. Consent Agenda - Parks and Recreation Department
ITEM 5.**



**AGENDA REPORT
April 9, 2019**

**Approval, Re: Construction Manager Contract with Ivey's Construction, Inc.
for renovations to the gymnasium at Gibson Complex (District 1)**

SUBJECT:

Approval, Re: Construction Manager Contract with Ivey's Construction, Inc. for renovations to the gymnasium at Gibson Complex.

FISCAL IMPACT:

Approval of this action will result in an expenditure of \$338,303.00 from North Area Parks Operations, Fund 1010, Cost Center 250010.

DEPT/OFFICE:

Parks and Recreation

REQUESTED ACTION:

It is requested the Board of County Commissioners authorize the Chair to execute all related contracts and authorize the County Manager to approve all necessary budget change requests for renovations to the gymnasium at Gibson Complex.

SUMMARY EXPLANATION and BACKGROUND:

The Gibson Complex, located at 835 Sycamore Street in Titusville, is a 32.64 acre community park with 2 lighted football fields and a concession stand. The complex also includes a gymnasium and community facility. The gymnasium is a multi-purpose facility that serves year-round as a site for youth and adult activities, leagues, and programs.

The proposed renovations to the gymnasium include:

- Repairing the ceiling and walls
- Painting the ceiling and walls
- Demolition and removal of existing gym floor
- Installation of a new multi-purpose/sport floor
- Installation of ADA ramps doorways to gymnasium

Anticipated time frame for completion is five months from the issue of the Notice to Proceed.

The Parks and Recreation Department will utilize a Construction Manager Contract with

Ivey's Construction, Inc. to perform the work associated with the renovations to the gymnasium. The guaranteed maximum price of \$338,303.00 requires the Chair to execute the contract. The Construction Management contract has been reviewed and approved by both the County Attorney's Office and Risk Management.

CLERK TO THE BOARD INSTRUCTIONS:

Upon execution of the 2 originals by the Chair and the Clerk, please call Melissa at 633-2046 x15 to arrange for pick up the contract.

ATTACHMENTS:

Description

- ▢ **Construction Manager Contract with Ivey's for Gym Renovations at Gibson**
- ▢ **CAO Approval - Construction Manager Contract with Ivey's for Gym Renovations at Gibson**
- ▢ **RM Approval - Construction Manager Contract with Ivey's for Gym Renovations at Gibson**



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

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April 10, 2019

M E M O R A N D U M

TO: Mary Ellen Donner, Parks and Recreation Director

RE: Item F.5., Construction Manager Contract with Ivey's Construction, Inc. for Renovations to the Gymnasium at Gibson Complex

The Board of County Commissioners, in regular session on April 9, 2019, executed and approved the Construction Manager Contract with Ivey's Construction, Inc., for the renovations to the gymnasium at Gibson Complex; and authorized the County Manager to approve all the necessary budget change requests. Enclosed are two fully-executed Contracts.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Rowe

Tammy Rowe, Deputy Clerk

/ds

Encls. (2)

cc: Contracts Administration
County Manager
Finance
Budget



Parks and Recreation Department



Construction Manager Contract

This Contract made by and 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 **Ivey's Construction, Inc., 4060 N. Courtenay Parkway, Merritt Island, Florida 32953-8111** (hereinafter referred to as "Contractor"), a company licensed to do business in the State of Florida.

Whereas, the Board of County Commissioners recognizes the need to renovate the gymnasium at the Gibson Complex (hereinafter referred to as "Project"); and

Whereas, at this time the Board of County Commissioners desires to enter into a Contract with the Contractor to complete said Project.

Now, Therefore, in consideration of the premises and mutual covenants contained herein, the parties hereby agree, as follows:

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 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, and the County 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 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

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.

Contractor/Construction Manager – Ivey’s Construction, Inc., 4060 N. Courtenay Parkway, Merritt Island, Florida 32953-8111.

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.

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.

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

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/install and complete the Scope of Work identified in Attachment “B” (Scope of Work).

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.

Site – The gymnasium located at the Gibson Complex, 835 Sycamore Street, Titusville, Florida 32780.

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 renovations of the gymnasium at the Gibson Complex between the County and the Contractor – supersedes any prior negotiations, representations or agreements, whether oral or written.

The Contractor shall:

- A. obtain from the County three sets of signed, sealed and dated drawings, specifications and other documents upon which the Guaranteed Maximum Price is based;
- B. 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 Contractor.**

Article 2

Construction Manager's Responsibilities

Contractor shall perform all services described in this Article. The services to be provided under Subsection 2.1 constitute the Pre-Construction Phase services. The services to be provided under Subsections 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 identifying options for systems and components that are cost effective, more easily maintained, and otherwise more efficient.

Contractor has scheduled and attended, and shall 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. Contractor has and will continue to consult with County 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 "D"**. Contractor shall coordinate and integrate the Preliminary Project Schedule with the services and activities of the County, 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 and its representatives, of their required participation in any meeting or inspection giving 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, 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 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 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 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 its 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 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 and make recommendations to the County 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 - 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.

2.2.2 Subcontractor Interfacing - The Contractor shall be the single point of interface with all Subcontractors, the County, and all of its agents and representatives. 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 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. The Contractor 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 advise the Project Director when timely a response is not occurring on any of the above.

2.3 Solicitation of Bids

- A.** 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.
- B.** As part of such preparation, the Contractor shall review the specifications and drawings. 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 in written form.
- C.** 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, 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 prepare an addendum to the bidding

document, and issue same to all of the prospective bidders.

- D. In accordance with Subsection 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 "E"**) for applicable subcontract trades.

2.4 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 "F" and "G"**), 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.

2.5 Quality Control - The Contractor shall develop and maintain a program, acceptable to the County, 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. The County shall be the final judge of performance and acceptability.

2.6 Guaranteed Maximum Price and Contract Time

2.6.1 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 **Three Hundred Thirty-Six Thousand Three Hundred Three Dollars**. The final approved Guaranteed Maximum Price spread sheet is hereby attached as **Attachment "H"** to and shall become a part of this Contract between the County and Contractor.

2.6.2 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 **Twenty-Five Thousand Four Hundred Twenty Dollars** within the Guaranteed Maximum Price.

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

- A. 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.
- B. 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.
- C. The Preliminary Construction Schedule (**Attachment "D"**). As reflected in said Schedule, Contractor is to achieve Substantial Completion of the Work within **One Hundred Twenty-One Days** from issuance of Notice to Proceed. Final Completion shall be achieved within an additional **Fifteen Days**.

2.6.4 Included within the Guaranteed Maximum Price is the Contractor's fee. The Contractor's Fee is hereby established as **Fifty-Three Thousand Three Hundred Fifty-Nine Dollars** 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.**

2.6.5 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.

2.6.6 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.

2.6.7 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.

2.7 Construction Phase

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

2.7.2 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.

2.7.2.1 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.

2.7.2.2 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 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.

2.7.3 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, and the County's representatives, to provide general direction of the work and progress of the various phases and subcontractors. The County 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.

2.8 Administration

2.8.1 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 for review and comment. Based upon that review and comment, Contractor shall then determine, subject to the reasonable objection of the 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.

2.8.2 Subcontracts and contracts 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.

2.8.3 Contractor shall schedule and conduct weekly meetings, at a minimum, at which the County, 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.

2.8.4 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 "D", including the County's occupancy requirements. Contractor will submit monthly updates to the Schedule until the Project is completed.

2.8.5 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.

2.9 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.

2.10 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 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.

2.11 Weather Protection - The Contractor shall 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.

2.12 Job Site Requirements

A. The Contractor shall provide for each of the following activities as a part of the Contractor's Construction Phase services:

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

2.13 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:

A. Job Meetings - Hold weekly progress and coordination meetings to provide for an easy flowing Project. Implement procedures and assure timely submittals, expedite processing approvals and return of shop drawings, samples, etc. Coordinate and expedite critical ordering 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.

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

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

Subcontractors.

- D. Payments to Subcontractor** - Develop and implement a procedure for review, processing, and payment of applications by Subcontractors for progress and final payments.
- E. Reports and Project Site Documents** - Record the progress of the Project. Submit written progress reports to the including information on the Subcontractor's work, and the percentage of completion. Keep a daily log available to the County, and the Permitting Authority inspectors.
- F. Substantial Completion** - The Contractor shall secure the Certificate of Occupancy and notify the County, 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 days in advance of said date. Inspection and testing shall take place at time(s) mutually agreeable to the Contractor, and County. The inspection will be conducted jointly between the County and Contractor's representative. The inspection shall determine if substantial completion has been accomplished and the County 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.

- G. Final Completion** - The Contractor shall notify the 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 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 "J"**) will be issued by the County and the Project shall be submitted to the County for final acceptance.

The County 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 County 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.

- H. 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.

I. Record Drawings - The Contractor shall monitor the progress of Work on marked-up field prints which, at Substantial Completion, shall prepare the final record drawings.

J. 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:

1. Contracts and Purchase Orders
2. Shop Drawing Submittal/Approval
3. Logs Equipment
4. Purchase/Delivery Logs
5. Contract Drawings and Specifications with Addenda
6. Cost Proposal Requests
7. Meeting Minutes
8. Lab Test Reports
9. Contract Changes
10. Material Purchase Delivery Logs
11. "As-Built" Marked Prints
12. Monthly Progress Reports
13. Correspondence
14. Files Transmittal Records
15. Inspection Reports
16. Punch Lists

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

K. 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.

- L. 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 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 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.

3.4 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.

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

3.5 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.

3.6 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.

3.7 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.

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

3.9 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.

3.10 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 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 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 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 Sub-contractual Relations - By an appropriate written contract, 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. Said contracts shall preserve and protect the rights of the County 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 Subsection 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.

- A.** Subcontractors shall 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.
- B.** Workforce - The subcontractor must agree to perform no less than fifty percent of the Project construction work utilizing its own forces.
- C.** All subcontracts shall provide:

- 1. 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 attributable to the County, 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.

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.

2. 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	Five Hundred Dollars per day
Project Final Completion	Two Hundred Fifty Dollars 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 Subsections 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 shall 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 shall 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 shall 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 shall 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 shall 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 Subsections 8.2 and 8.3 subject to the retainage provisions specified in the Contract.

8.2 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 Subsection 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.

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

1. 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.

B. 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 "K" for Allowable Costs, Overhead associated with the Contractor's Construction Phase Fee referenced in Article 8):

1. Corporate costs including expenses and overhead and profit-related to this Project by the Contractor's principal and branch offices.
2. Costs of all data processing, accounting, purchasing and associated staff which is performed at the home office.
3. General operating expenses incurred in the management and supervision of the project, except as expressly included in Article 9.
4. Salaries or other compensation of the Contractor's employees at Contractor's principal and branch offices.
5. Those services set forth in Subsections 2.1, 2.2, 2.3 and 2.4; except as expressly included in Article 9.
6. Relocation expenses for Contractor's personnel.
7. Costs of all project estimating, safety, scheduling and accounting staff.

8.3 The Contractor shall 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:

- A.** the Cost of the Project as defined in Article 9, plus the Contractor's fees, or
- B.** 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 "L"** - "Allowable General Conditions".

The County agrees to pay the Contractor for the Cost of the Project subject to the limits set forth in Subsections 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")

- A. 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).
- B. Payments due to subcontractors from the Contractor or made by the Contractor to subcontractors for their work performed pursuant to contract under this Contract.
- C. 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.
- D. 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.
- E. 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.
- F. 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:
 - 1. The County approved incurring such costs in advance, which approval shall not be unreasonably denied; and

2. The legal costs were not incurred as result of the Contractor's own negligence or default.
- G. 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 Subsection 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, Building B, Suite 203, Viera, Florida 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 Subsection 7.3, must be authorized by a written Change Order or Construction Change Directive, and signed by the County and Contractor before the change is implemented. **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:

- A.** when an unsafe, hazardous or other similar condition exists
- B.** when failure to achieve prompt resolution of the change will result in a demobilization of the Contractor, its subcontractors and/or agents
- C.** 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, 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:

- A.** by mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation by the County;
- B.** by unit prices stated in the Contract or subsequently agreed upon;
- C.** by cost as defined in Article 9 plus a mutually acceptable fixed or percentage fee; or
- D.** by the method provided in Subsection 10.1.4.

10.1.4 If none of the methods set forth in Subsection 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 County 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 Subsection 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 In the event the Contractor or its contracted subcontractors encounter the following:

- A.** concealed conditions in the performance of the Work below the surface of the ground; or
- B.** concealed or unknown conditions in an existing structure be at variance with the conditions indicated by the Drawings, Specifications, or County furnished information; or
- C.** unknown physical conditions below the surface of the ground; or
- D.** concealed or unknown conditions in an existing structure of an unusual nature;
- E.** 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 Subsection 10.2. and Article 11.

Upon discovery of the above 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 County will evaluate the alleged unknown or concealed condition and, if warranted, agree 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 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 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 shall review the Contractor's proposal and respond to the Contractor within seven 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

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 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 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 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 Manager. 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 "M"**, 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 in order to correspond to 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 contracts.

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:

- A. defective work not remedied;
- B. third party claims filed or reasonable evidence indicating the probable filing of such claims;
- C. failure of Contractor to make payments properly to subcontractors, consultants, or for labor, materials or equipment;
- D. evidence that the Project cannot be completed for the unpaid balance of the Guaranteed Maximum Price, as adjusted;
- E. 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;
- F. 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 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. In the event that the Contractor withholds payments to subcontractors 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 Indemnification

- A. 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.

- B. 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 Subsection 13.2(3) that may arise from the Contractor's operations.
- C. 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.

The foregoing indemnification shall not constitute a waiver of sovereign immunity beyond the limits set forth in Florida Statutes, Section 768.28.

13.2 Insurance

- A. 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.
 - 1. **Commercial General Liability** - Including but not limited to bodily injury, property damage and personal injury with limits of not less than Two Million Dollars per occurrence, including products and completed operations, to include:
 - a) **"XCU" (Explosion, Collapse, Underground Damage)** - The Contractor's Liability Policy shall provide "XCU" coverage.
 - b) **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.
 - c) **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.
 - 2. **Automobile Liability** - Including bodily injury, property damage liability for all vehicles

owned, hired, leased and non-owned with limits of not less than Two Million Dollars per occurrence.

3. **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.
4. **Professional Liability Insurance** - 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 One Million Dollars per occurrence.
5. **Builders Risk Insurance** - 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 and issued to provide coverages on an "all risk" basis including theft.

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 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. **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.

The Contractor shall require each of its subcontractors to procure and maintain insurance

during the life of the respective subcontracts.

C. 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 the issuance of the Notice to Proceed. All Certificate(s) of Insurance 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 Brevard County Board of County Commissioners 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

13.1.1 The County and the Contractor waive all rights against each other, for damages caused by perils covered by insurance provided under Subsection 13.2 to the extent covered by such insurance except such rights as either party 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.

13.1.2 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.

13.1.3 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.

13.1.4 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

- A. 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.
- B. 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

- A. If the County terminates this Contract other than pursuant to Subsection 14.2 or Subsection 14.3, 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.
- B. 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 Subsection 8.1, plus any costs incurred pursuant to Articles 9 and 10.
- C. 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

- A. 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.

- B. 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 "N", the County may terminate the contract.
- C. 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.
- D. 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 Subsection shall become inoperative and unenforceable.

Article 15

Assignment; Governing Law; Venue; Severability

15.1 Neither the County nor the Contractor shall assign their respective 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 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 days after the receipt of such instructions.
- C.** The Contractor must submit a Notice of Claim to the County 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, 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 Subsections 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, including claims based on breach of contract or negligence, shall be a claim submitted in compliance with Subsection 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 Subsection 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 Subsection 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 Subsection 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 Subsection 16.4 above, the County Commission shall decide whether to grant or deny, in whole or in part, the amounts recommended by the mediator. The County 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 Subsections 16.4 and 16.5 may be extended by mutual written agreement of the Contractor and the County.

Article 17

County's Right to Perform Construction 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 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

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 - 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 the language of this Subsection will be included in all subcontracts of the subcontractors as well as the Contractor's own contract; provided, however, that the language of this subsection 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 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 shall include a provision similar to the foregoing sentence in each subcontract.

18.4 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.

18.5 Minority Employment Information - The County requires construction contractors, who would otherwise be required to file an 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 "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 County, under this Contract shall be subject to copyright by Contractor in the United States or any other Country.

18.9 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 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; and
- C. Agrees to maintain records of its participation and compliance with the provisions of the E-Verify program, including participations by its subcontractors as provided above, and to make such records available to the County consistent with the terms of the Contractor's enrollment in the program. This includes maintaining a copy of proof of the Contractor's and subcontractors' enrollment in the E-Verify Program.
- D. Compliance with the terms of this section is made an express condition of this Contract and the County may treat a failure to comply as a material breach of this Contract.
- E. A contractor who registers with and participates in the E-Verify program may not be barred or penalized under this section if, as a result of receiving inaccurate verification information from the E-Verify program, the contractor hires or employs a person who is not eligible for employment.
- F. Nothing in this section may be construed to allow intentional discrimination of any class protected by law.

In Witness Whereof, the parties hereto have executed this Contract the day and year written below.

Attest:



Scott Ellis, Clerk of Court

Board of County Commissioners of
Brevard County, Florida



By: Kristine Isnardi, Chair

Reviewed for Legal Form and Content



Abigail Forrester Jorandby
Assistant County Attorney


As approved by the Board on April 9, 2019

Ivey's Construction, Inc.

By:  3/26/19
Kevin Ivey, President Director Date

State of Florida
County of Brevard

The foregoing instrument was acknowledged before me this 26th day of 2019 by whose position is President with the firm of Ivey's Construction, Inc. a Florida Corporation, on behalf of the corporation. He/She is personally known to me or has produced _____ as identification.



Notary Public

Norma Hernandez
Typed/Printed Name



Attachment "A"

Construction Team Assigned Representatives

County:

Brevard County Parks and Recreation Department

Project Director: Mike Butcher

Contract Administrator: Melissa Renninger

Construction Manager:

Ivey's Construction, Inc., 4060 N. Courtenay Parkway, Merritt Island, Florida 32953-8111

President - Kevin W. Ivey

Vice President/Principal-In-Charge – Steven Sergis

Project Manager – Steven Sergis

Project Administrator – Taylor Davis

Project Superintendent – Skylar Sheffield

Estimator/Cost Control – Mike Koons

Schedules – Ryan Ivey

Attachment "B"

Project Scope of Work

Provide all labor, materials, and equipment for: renovations to the gymnasium at the Gibson Complex.

The Guaranteed Maximum Price includes the following scope of work:

1. Furnish and install plywood over open wall areas of PEMB framing.
2. Clean and apply two coats drywall paint to ceiling framing and insulation.
3. Apply one coat primer (new plywood) and two coats semi-gloss paint to wood and block walls.
4. Apply two coats semi-gloss paint to main double doors and frame.
5. Removal and disposal of existing wood gymnasium flooring and sub framing.
6. Installation of new Mondo Advance 8mm flooring, with game lines.
7. Installation of ADA ramps at main door and two emergency exit doors.
8. Floor Prep allowance for slab that is more than 1/8 inch in 10 feet out of level.
9. Moisture testing, prior to new floor installation.
10. Builders risk insurance.
11. Performance and payment bond.
12. Contractor contingency of 10%.
13. Temporary sanitary facilities.
14. Full time supervision.

Exclusions:

1. Any engineering or design.
2. Permitting or permit fees.
3. Any treatment/mods to compensate for perimeter concrete curb above gymnasium floor.

Attachment "C"

Direct Purchasing Procedure

Intent: The County 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 County direct purchase under these procedures, will inure solely to the benefit of the County. The County's direct purchase of materials will not minimize or conflict with the Contractor'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:

Contract: Construction Manager Contract by and between the Contractor and the County to provide labor, materials, and equipment for: dock and walkway repair at Intracoastal Waterway Park.

County: See Definition in Article I, Section 1.3.

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

County's Representative: See Definition in Article I. Section 1.3.

Guaranteed Maximum Price (GMP): Guaranteed Maximum Price established under the Contract.

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

Materials Deduction Summary: Written document signed by the County's representative and Contractor 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.

Project: See Definition in Article I., Section 1.3.

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

Material Requisition: A request by the Contractor to the County that the County 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 County requires the Contractor to notify the County's representative of Materials needed for the Project exceeding Five Thousand Dollars in value, through a Material Requisition form. For the purpose of these Procedures, the Contractor shall assign to the County any rights the Contractor 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 the County pursuant to these Procedures shall be referred to as "County Purchased Materials", and the responsibilities of the County and Contractor 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 County'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.

County Direct Purchasing Requirements and Procedures: When a Materials purchase for the Project is estimated to be \$5,000 or greater and time allows for an Owner Direct Purchase, Contractor shall prepare a Material Requisition form, (to be provided by the County), acceptable to County, and which specifically identifies Materials which County 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 Contractor shall 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 Contractor;
- 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 acknowledgement of these Procedures for County Director Purchase of Materials.

After receipt of the Material Requisition, the County's Representative will determine whether the County will directly purchase the Materials described in the Material Requisition, and communicate consent or decline to purchase the materials to the Contractor within twenty four (24) hours. Brevard County's Purchasing Department shall be the County's approving authority on Purchase Orders of County Purchased Materials. If the County consents to purchase the Materials, the County shall issue a Purchase Order for same. The County shall issue the original Purchase Order, and the Contractor 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 Contractor in the Material Requisition.

The Contractor 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 Contractor. The Contractor shall coordinate delivery schedules, sequence of delivery, loading orientation, and other arrangements normally required by the Contractor for the Materials furnished. The contractor shall provide all services required for the unloading, handling and storage of materials through installation. The Contractor agrees to indemnify and hold the County harmless from any and all claims of whatever nature resulting from non-payment of goods to suppliers arising from the actions of the Contractor.

The Contractor shall insure that County Purchased Materials conform to the Specifications, and determine prior to incorporation in the Project, 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 Contractor shall inspect all shipments from the suppliers, and, if in conformance with the Purchase Order, approve the vendor's invoice for materials delivered. The Contractor 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 County may require. The Contractor shall then forward the documentation to the County.

If the Contractor discovers defective or non-conformities in County Purchased Material upon inspection, the Contractor shall not use such non-conforming defective Materials in the Project and instead shall promptly notify the County 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 Contractor for resolution with the appropriate supplier, vendor or subcontractor. If the Contractor fails to perform such inspection, the condition of which the Contractor either knew or should

have known by performance of an inspection, the Contractor shall be responsible for all damages to the County resulting from Contractor's incorporation of such Materials into the Project, including liquidated or delay damages.

On a bi-weekly basis, the Contractor 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 County's issuance of payment to the suppliers, based on the Contractor's records of materials delivered to the Project. In order to arrange for the prompt payment to the supplier, the Contractor shall provide to the County a list indicating the acceptance of the goods or materials within fifteen days of receipt of said invoice for goods or materials. The list shall reference the applicable purchase order and include a copy of the invoiced, delivery tickets written acceptance of the delivered items, and such other documentation in duplicate, the County 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, said discounts shall accrue to the benefit of the County, and the amount quoted by the vendor, plus applicable tax, shall be deducted from the GMP. The Contractor agrees to assist the County 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 County with an invoice for payment by County, the Contractor shall execute and deliver to the County at the end of each month along with the Contractor'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 the purchased materials not been County 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 County on the Materials Deduction Summary for County Purchased Materials.

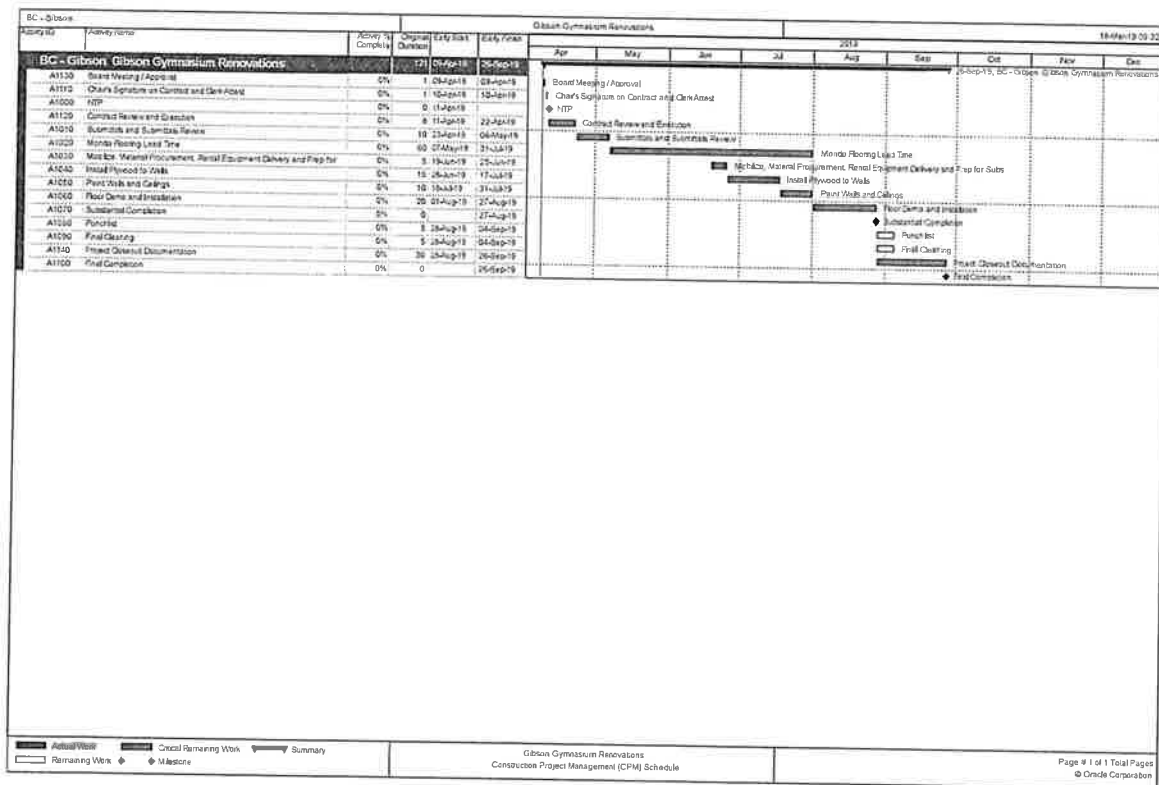
The Contractor shall maintain records of all County Purchased Materials incorporated in the Project. These records shall be available for inspection by the County upon request.

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

The County 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 Contractor's discretion prior to County's payment for same.

The County 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"
Contractor's Preliminary Construction Schedule



Attachment "E"

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 and 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 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:

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 shall be competitively awarded to the lowest, qualified and responsive bidder in accordance with this article, unless the project (1) fits within exceptions set for 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, not 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 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 days to submit pre-qualification documents. This process will continue until the lowest qualified and responsive bidder is established. In the even that a subcontractor is found unqualified or non-responsive, the potential bidder or prime contractor will have five 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 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 year old, indication of bondability, or if project is under One Hundred Thousand Dollars, 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 public 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 contractor 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 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 re-lettered to accomplish such intentions.

Section 3: Severability: If any provision of this ordinance is held to be illegal or invalid, the other provision 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 days of enactment.

Attachment "F"

Public Construction 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 County, 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 defines in Section 255.05(1), Florida Statutes, supply Principal with labor, materials, or supplies, used directly or indirectly by Principal in the prosecution of the work provided for in the contract dated _____, between Principal and County for construction of _____, the contract being attached hereto and made part of this bond by reference, in such time and without delay, and in the manner prescribed in the contract; and
2. Pays County all losses, damages, expenses, costs and attorney's fees, including appellate proceedings, that County 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 _____, 2019.

Witness:

Principal

Seal

Its: _____

Title: _____

Witness:

Surety

Seal

Its: _____

Title: _____

Attachment "G"

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 County, 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 _____, between Principal and County for construction of _____, the contract being attached hereto and made 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 County all losses, damages, expenses costs and attorney's fees, including appellate proceedings, that County 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 _____, 2019.

Witness:

Principal

Seal

Its: _____

Title: _____

Witness:

Surety

Seal

Its: _____

Title: _____

Attachment "H"
Contractor's Guaranteed Maximum Price

IVEY'S
CONSTRUCTION, INC.

Gibson Gym Renovations

Date: February 8, 2019
REV1 - 3/20/19

Line	Division	Activity/Scope	Breakdown	Division Totals
1	01	General Requirements		
2		Supervision		\$33,805
3		Field Office Supplies & Drinking Water	\$22,680	
4		Cell Phone and Internet	\$400	
5		Dumpster and Fees	\$325	
6		Temporary Protection	\$2,100	
7		Temporary Toilet and Hand Wash	\$2,000	
8		Equipment Rentals (Electric Scissor Lift)	\$960	
9		Moisture Testing	\$1,440	
10		Fuel for Supervisor's Vehicle	\$1,200	
11		Permit Allowance	\$220	
12		Builders Risk Insurance	N/A	
13		General Liability Insurance	\$650	
14		Misc. GC's & Small Tools	\$1,080	
15			\$750	
15	02	Existing Conditions		
16		Removal of Metal Perimeter Transition Strip (concrete to wood)		\$1,600
17		Removal of Bleachers and other furnishings	\$1,600	
18	06	Wood Plastics & Composites	By others	
19		Wall Framing Material and Hardware for End Wall Infill		\$17,015
20		Carpenter Labor	\$4,575	
21	09	Finishes	\$12,440	
22		Prep and Painting of Ceilings and Interior Walls		\$201,775
23		Gym Flooring (Mondo)	\$28,750	
24		Floor Prep Allowance (within 1/8" in 50' radius)	\$151,857	
25			\$21,168	
26				
26		Column Subtotals	\$254,195	\$254,195
27		Contingency	10%	\$25,420
28				
28		Subtotal		\$279,615
29		CM Fee	19.08%	\$53,359
30				
30		Subtotal		\$332,973
31		Bond	1.0%	\$3,330
32				
32		Base GMP		\$336,303

Attachment "I"

Application and Certificate for Payment

Attachment "J"

Certificate of Final Completion

Project Number and Title: _____
Architect: _____ Contractor: _____
Contract Date: _____ Date of Final Completion: _____

Certificate of Architect/Engineer (A/E):

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: _____

(Below to be Completed by A/E):

Through the Substantial Completion Phase:

DATE: _____ DAYS: _____

1. Notice to Proceed (NTP):
2. Time Specified in Original Contract for Substantial Completion (SC):
3. Extension granted by Change Order:
(days between original contract SC and Final Contract SC)
4. Total Days Allowable to Substantial Completion:
(add lines 2 and 3)
5. Project Substantially Completed as Certified by A/E:
6. Substantial Completion Overrun:
(subtract line 4 from 5 and enter overrun)

Through the Final Completion Phase:

DATE: _____ DAYS: _____

1. Time Specified in Contract, between SC and Final Completion (FC):
2. Extensions granted by Change Orders:
(Days between SC and FC)
3. Total Days allowable between SC and FC:
(add lines 1 and 2)
4. Date Actually Completed and Total Days between
and Date Certified by A/E as actually being FC:
5. Final Completion Overrun (subtract line

Architect: _____ Date: _____

Project Manager: _____ Date: _____

Attachment "K"

Allowable Costs, Overhead

Description of estimated quantity, unites, unit cost, budget value, quantity to date, quantify to compensate for Office Phones, Office Supplies, Postage, Gas/Oil/Lubrication, Automobiles/Trucks, Project Manager, Estimating Costs, Executive Labor Costs, Assistant Project Manager, In house Secretary, Travel Expenditures, and Warranty Expenses.

OVERHEAD AND PROFIT

Gibson Gym Renovation

	Unit	Unit Price	Est Qty	Total
Office Phone	MO	\$40	3	\$120
Office Supplies	MO	\$50	3	\$150
Postage	MO	\$10	3	\$30
Gas/Oil	MO	\$385	3	\$1,155
Autos/Trucks & Insurance	MO	\$950	3	\$2,850
Project Manager	HR	\$105	72	\$7,560
Estimating Costs	HR	\$65	20	\$1,300
Executive Labor	HR	\$115	0	\$0
Asst. Project Manager	HR	\$55	72	\$3,960
Project Engineer	HR	\$55	16	\$880
Safety Director	HR	\$50	8	\$400
In-house Secretary	HR	\$35	40	\$1,400
Travel Expenditures	GAL	\$0.00	0	\$0
Warranty Expense	LS	\$0	0	\$0
CM Fee	%	12%	\$279,615	\$33,554
Total Fee				\$53,359
Fee %				19.08%

Attachment "L"

General Conditions

Direct Cost Items: Superintendent, Job Site Secretary/Clerk, Quality Control, Survey, Permits, Impact/Connection Fees, Construction Drawings and Specs, Progress Photographs (if requested by County), Job Site Sign (if requested by County), Special Security (if requested by County), Payment and Performance Bonds, Builders Risk Insurance, Jobsite Trailer and Support (if requested by County), Temporary Utilities (as approved by County), Temporary Jobsite Fencing (Initial Installation Only), and Trash removal/dump fees, and recycling (as approved by the County). General Conditions are listed on the Guaranteed Maximum Price provided by the Contractor as General Requirements for a total of Thirty-Three Thousand Eight Hundred Five Dollars.

IVEY'S CONSTRUCTION, INC.		Gibson Gym Renovations		Date: September 8, 2018
Line	Division	Activity/Scope	Breakdown	Division Totals
1	01	General Requirements		\$33,805
2		Supervision	\$22,680	
3		Field Office Supplies & Drinking Water	\$400	
4		Cell Phone and Internet	\$325	
5		Dumpster and Fees	\$2,100	
6		Temporary Protection	\$2,000	
7		Temporary Toilet and Hand Wash	\$960	
8		Equipment Rentals (Electric Scissor Lift)	\$1,440	
9		Moisture Testing	\$1,200	
10		Fuel for Supervisor's Vehicle	\$220	
11		Permit Allowance	N/A	
12		Builders Risk Insurance	\$650	
13		General Liability Insurance	\$1,080	
14		Misc. GC's & Small Tools	\$750	
15	02	Existing Conditions		\$1,600
16		Removal of Metal Perimeter Transition Strip (concrete to wood)	\$1,600	
17		Removal of Bleachers and other furnishings	By others	
18	06	Wood Plastics & Composites		\$17,015
19		Wall Framing Material and Hardware for End Wall Infill	\$4,575	
20		Carpenter Labor	\$12,440	
21	09	Finishes		\$201,775
22		Prep and Painting of Ceilings and Interior Walls	\$28,750	
23		Gym Flooring (Mondo)	\$151,857	
24		Floor Prep Allowance (within 1/8" in 50' radius)	\$21,168	
25				
26		Column Subtotals	\$254,195	\$254,195
27		Contingency	10%	\$25,420
28		Subtotal		\$279,615
29		CM Fee	19.08%	\$53,359
30		Subtotal		\$332,973
31		Bond	1.0%	\$1,330
32		Base GMP		\$336,303

Attachment “M”

Application and Certificate for Payment

Attachment "N"

Vendor Affidavit Regarding Scrutinized Company List

Pursuant to Section 2987.135(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. 215.475, 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 Kenn W. Grey, who, being by me first duly sworn, made the following statement:

1. The Business address of Grey's Construction, Inc. (name of contractor) is 4060 N. Courtenay Pkwy, Merritt Island, FL 32953.
2. My relationship to Grey's Construction, Inc. (name of 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 Section 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 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 contractor) is not on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, Florida Statutes, or is engaged in a boycott of Israel.
6. _____ (name of contractor) is not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy List, created pursuant to Section 215.473, Florida Statutes.
7. _____ (name of contractor) is not engaged in business operations in Cuba or Syria.

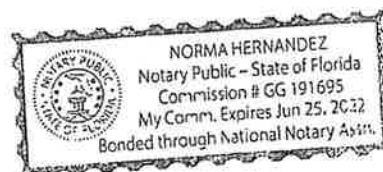
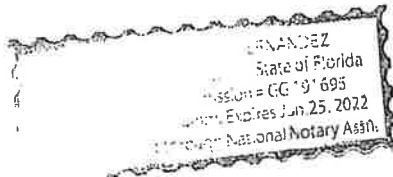

Signature

SWORN to and subscribed before me in the State and County first mentioned above on the 26th Day of March, 2019.


Notary Public

(affix seal)

My Commission Expires:



Attachment "O"

Minority Employment Information

The Board of County Commissioners requires construction contractors, who would otherwise be required to file an Equal Employment Opportunity (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 Guaranteed Maximum Price. 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 Acknowledgement and/or EEO Form 1 Report with your Guaranteed Maximum Price 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: Ivey's Construction, Inc.
Signature: [Signature]

Date: 3/26/19

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

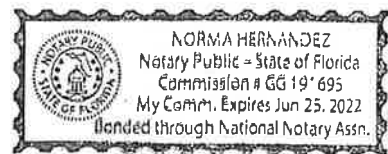
Company Name: _____
Signature: [Signature]

Date: _____

Company Name: Ivey's Construction, Inc.
Company Address: 4060 N. Courtenay Pkwy
Norfolk Island, FL 32953

Company Telephone: 321-453-3812

Signature: [Signature] Printed: Kevin W. Ivey, President



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 real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for Category Two (Fifteen Thousand Dollars) for a period of thirty six months from the date of being placed on the convicted vendor list.

Non Collusion Affidavit of Prime Bidder

State of Florida
County of Brevard

Kevin W. Wey, being duly sworn, deposes and says that:

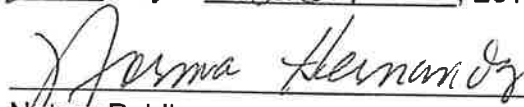
1. Affiant is President of Wey's Construction, Inc. the Bidder that has submitted a bid/quote/proposal;
2. Affiant is fully informed respecting the preparation and contents of the bid/quote/proposal and of all pertinent circumstances respecting such bid/quote/proposal;
3. Such bid/quote/proposal is genuine 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 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 of 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.



Kevin W. Guey, President
Signature and Title

SWORN to and subscribed before me in the State and County first mentioned above on the 26th Day of March, 2019.



Notary Public (affix seal)

My Commission Expires:

