

II. C. 4. Cont.
2 of 4

**AGREEMENT
BETWEEN OWNER AND CONSTRUCTION MANAGER**

THIS AGREEMENT made the 31st day of October in the year Two Thousand Eighteen between the **BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS**, a political subdivision of the State of Florida whose address is 2725 Judge Fran Jamieson Way, Viera, Florida 32940 (hereinafter referred to as "Owner"), and **IVEY'S CONSTRUCTION** (hereinafter referred to as "Construction Manager"), a company licensed to do business in the State of Florida.

ARTICLE 1

THE CONSTRUCTION TEAM AND EXTENT OF AGREEMENT

The Construction Manager accepts the relationship of trust and confidence established between him and the Owner by this Agreement. The Construction Manager covenants with the Owner to furnish the best skill and judgment and to cooperate with the Architect/Engineer in furthering the interests of the Owner. The Construction Manager agrees to furnish efficient business administration and superintendence and use its best efforts to complete the Project in the best and soundest way, and in the most expeditious and economical manner consistent with the interest of the Owner.

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

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

1.2 Scope of Work - A general description of the Work/Project to be built/constructed/installed under this Agreement (**Attachment "B"**) and may include projects that may be funded or submitted for reimbursement through the Federal Emergency Management Agency (\$1-\$2,000,000).

1.3 Definitions:

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

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

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

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

Construction Manager – Ivey's Construction, 4060 N. Courtenay Parkway, Merritt Island, FL 32953

Architect/Engineer – Morgan & Associates Consulting Engineers, Inc.

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

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

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

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

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

- 1.4 Extent of Agreement - This Agreement for Construction Management Services – to provide labor, materials, and equipment for an observation deck replacement, between the Owner and the Construction Manager supersedes any prior negotiations, representations or agreements. The drawings, specifications and other descriptive

documents defining the work to be included under this construction contract are identified in **Attachment "D"**. The Construction Manager shall obtain from the Owner three (3) sets of signed, sealed and dated drawings, specifications and other documents upon which the GMP is based; shall acknowledge on the face of each document of each set that it is the set upon which he based his GMP; and shall send one (1) set of the documents to the Project Director along with his GMP proposal, while keeping one (1) set for himself and returning one (1) set to the Architect/Engineer.

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

ARTICLE 2

CONSTRUCTION MANAGER'S RESPONSIBILITIES

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

2.1 PRE-CONSTRUCTION PHASE

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

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

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

- 2.1.3 Preliminary Project Schedule - Construction Manager has prepared a Preliminary Project Schedule, a copy of which is attached as **Attachment "E"**. Construction Manager shall coordinate and integrate the Preliminary Project Schedule with the services and activities of Owner, Architect and Construction Manager. The Construction Manager shall provide current scheduling information and provide direction and coordination regarding milestones, beginning and finishing dates, responsibilities for performance and the relationships of the Construction Manager's work to the work of his subcontractors and suppliers to enable them to perform their respective tasks so that the development of construction progresses in a smooth and efficient manner in conformance with the overall Total Project Schedule. The schedule shall include all phases of construction work, material supplies, long lead procurement, approval of shop drawings, change orders in progress, schedules for change orders, and performance of testing requirements. The Construction Manager shall advise the Owner, its representatives and the Architect/Engineer of their required participation in any meeting or inspection giving each at least one (1) week notice unless such notice is made impossible by conditions beyond the Construction Manager's control. The Construction Manager shall hold jobsite meetings at least once each week with the Construction Team and at least once each week with the subcontractors and the Architect/Engineer field representatives, and Owner or more frequently as required by work progress, to review progress, discuss problems and their solutions and coordinate future work with all subcontractors.
- 2.1.4 Subcontractors and Suppliers - Construction Manager shall continue to develop subcontractor interest in the Project and shall furnish to Owner and Architect for their information a list of possible subcontractors, including suppliers who are to furnish materials or equipment fabricated to a special design, from whom proposals will be requested for each principal portion of the Project. Owner will promptly reply in writing to Construction Manager if Owner has an objection to any such subcontractor or supplier. The receipt of such list shall not require Owner to investigate the qualifications of proposed subcontractors or suppliers, nor shall it waive the rights of Owner to later object to or reject any proposed subcontractor or supplier.
- 2.1.5 Long Lead and Owner Direct Procurement - The Construction Manager shall review the design for the purpose of identifying long lead and Owner direct procurement items (machinery, equipment, materials and supplies). When each item is identified the Construction Manager shall notify the subcontractors, the Project Director, and the Owner of the required procurement and schedule. Such information shall be included in the bid documents and made a part of all affected subcontracts. As soon as the Architect/Engineer has completed drawings and technical specifications and the Construction Manager has obtained permitting approval, the Construction Manager shall prepare Invitation for Bids. The Construction Manager shall keep informed of the progress of the respective subcontractors and/or suppliers, manufacturing or fabricating such items and notify the Project Director, Owner and Architect/Engineer of any problems or prospective delay in delivery.
- 2.1.6 Extent of Responsibility - The recommendations and advice of Construction Manager concerning design alternatives shall be subject to the review and approval of Owner and Owner's professional consultants. It is not Construction Manager's responsibility to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations. However, if Construction Manager recognizes that portions of the Drawings and Specifications are at variance

therewith, Construction Manager shall promptly notify Owner and Architect in writing.

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

2.1.8 Separate Contracts Planning - The Construction Manager shall review the design with the Architect/Engineer and make recommendations to the Owner and to the Architect/Engineer with respect to dividing the work in such manner as will permit the Construction Manager to take bids and award separate construction subcontracts on the current schedule while the design is being completed. The Construction Manager shall take into consideration such factors as natural and practical lines of severability, sequencing, effectiveness, access and availability constraints, total time for completion, construction market conditions, availability of labor and materials, community relations and any other factors pertinent to saving time and cost by overlapping design and construction that are authorized by the Owner.

2.2 CONSTRUCTION PHASE

2.2.1 Interfacing -

- (1) The Construction Manager shall take such measures as are appropriate to provide that all construction requirements will be covered in the separate subcontracts for procurement of long lead items, the separate construction subcontracts and the general conditions items performed without duplication or overlap, sequenced to maintain completion of all work on schedule. Particular attention shall be given to provide that each bid package clearly identifies the work included in that particular separate subcontract, its schedule for start and completion and its relationship to other separate subcontractors.
- (b) Subcontractor Interfacing - The Construction Manager shall be the single point of interface with all Subcontractors for the Owner, and all of its agents and representatives, including the Architect/Engineer. The Construction Manager shall negotiate all change orders, field orders and request for proposals, with all affected Subcontractors and shall review the costs of those proposals and advise the Owner and Architect/Engineer of their validity and reasonableness, acting in the Owner's best interest prior to requesting approval of each change order from the Owner. Before any work is begun on any change order, an executed Authorization to Initiate Work form from the Owner must be issued. However, when health and safety are threatened, the Construction Manager shall act immediately to remove the threat to health and safety. The Construction Manager shall also carefully review all shop drawings and then forward the same to the Architect/Engineer for review and actions. The Architect/Engineer will transmit them back to the Construction Manager who will then issue the shop drawings to the affected Subcontractor for fabrication or revision. The Construction Manager shall maintain a suspense control system to promote expeditious handling. The Construction Manager shall request the Architect/Engineer to make interpretations of the drawings or specifications requested of the Construction Manager by the Subcontractors and shall maintain a suspense control system to promote timely response. The Construction Manager shall advise the Project

Director and Architect/Engineer when timely response is not occurring on any of the above.

2.2.2 Solicitation of Bids

- (1) Without assuming responsibilities of the Architect/Engineer, the Construction Manager shall prepare Invitations for Bids (or Request For Proposals, when applicable) for all procurements of long lead times, materials and services for Subcontractor contracts and for site utilities.
- (2) As part of such preparation, the Construction Manager shall review the specifications and drawings prepared by the Architect/Engineer. Ambiguities, conflicts or lack of clarity of language, use of illegally restrictive requirements, and any other defects in the specifications or in the drawings noted by the Construction Manager shall be brought to the attention of the Project Director and Architect/Engineer in written form.
- (3) For each separate subcontractor or construction trade contract used in this project, the Construction Manager shall, unless waived by the Owner, conduct a pre-bid conference with prospective bidders, the Architect/Engineer and Project Director. In the event questions are raised which require an interpretation of the bidding documents or otherwise indicate a need for clarification or correction of the invitation, the Construction Manager shall transmit these to the Architect/Engineer and upon receiving clarification or correction in writing shall prepare an addendum to the bidding document, and issue same to all of the prospective bidders.
- (4) In accordance with Article 2.4.2 the Construction Manager shall open and review all bids and enter into contract(s) with those low bidders determined to be most qualified by the Construction Manager. The Construction Manager shall make every effort to follow the County's Pre-Qualification Ordinance 98-37 (**Attachment "F"**) for applicable subcontract trades.

2.2.3 Bonds - For those projects where the cost will exceed \$100,000.00, in accordance with the provisions of Section 255.05, Florida Statutes, the Construction Manager shall provide to the Owner, on forms furnished by the Owner (**Attachment "G" and "H"**), certified copies of the recorded 100% Public Construction Performance Bond and 100% Public Construction Payment Bond each in an amount not less than the total construction cost (GMP) as defined in Article 9 and inclusive of the construction fee. *Payment and Performance Bonds shall be recorded (by the Construction Manager) in the official record of the County in which the project is located.* The Contractor must provide a copy of the bond(s) to all subcontractors and notify them of deadlines to make claims under the bonds.

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

and control over each Subcontractor to ensure that corrections are made in a timely manner so as to not affect the efficient progress of the work. Should disagreement occur between the Construction Manager and Architect/Engineer over acceptability of work and conformance with the requirements of the specifications and plans, the Owner shall be the final judge of performance and acceptability.

2.3 Guaranteed Maximum Price (GMP) and Contract Time

2.3.1 Construction Manager acknowledges and agrees the Drawings and Specifications are sufficiently complete for Construction Manager to propose a Guaranteed Maximum Price (GMP), which is the total not to exceed sum of the Construction Manager's Fee and the Cost of the Project. Accordingly, the Guaranteed Maximum Price (GMP) is hereby established at **\$697,373.00**. *The final approved GMP spread sheet is hereby attached as **Attachment "I"** to and shall become a part of this Agreement between Owner and Construction Manager.*

2.3.2 The Cost of the Work shall include Construction Manager's contingency, a sum agreed to by all parties for the Manager's use to cover costs arising from unforeseen conditions in the project. Construction Manager's contingency is hereby established as a separate line item of **\$50,000.00** within the Guaranteed Maximum Price.

2.3.3 Basis of Guaranteed Maximum Price (GMP)

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

- .1 The list of the Drawings and Specifications, including all addenda thereto, and the Conditions of the Contract, which are identified in the Attachments to this Agreement.
- .2 The list of clarifications and assumptions made by Construction Manager in the preparation of its Guaranteed Maximum Price proposal to supplement the information contained in the Drawings and Specifications.
- .3 The Preliminary Construction Schedule (**Attachment "E"**). As reflected in said Schedule, Construction Manager is to achieve Substantial Completion of the Work within **one hundred eighty (180) calendar days** from issuance of Notice to Proceed. Final Completion shall be achieved within an additional **thirty (30) calendar days**.

2.3.4 Included within the Guaranteed Maximum Price is the Construction Manager's fee. The Construction Manager's Fee is hereby established as **\$94,914.00** for services provided in this Agreement. The sum of the Cost of the Project and the Construction Manager's Fee shall not exceed the Guaranteed Maximum Price. The Construction Manager's Fee shall constitute Construction Manager's total compensation for profit. All costs in excess of the final approved GMP (as reduced by Owner direct purchases, if any, in accordance with **Attachment "C"**) are the responsibility of the Construction Manager. Any savings between the GMP (as reduced by Owner direct purchases) and the sum of the actual cost of the Project plus the Construction Manager's fee will be returned to the Owner.

2.3.5 Prior to issuance of the Construction Phase Notice to Proceed, Construction Manager shall not incur any costs to be reimbursed as part of the Cost of the Project, except as

Owner may specifically authorize in writing.

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

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

2.4 Construction Phase

2.4.1 General

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

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

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

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

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

2.4.1.4 Lines of Authority - The Construction Manager shall establish and maintain lines of authority for its personnel, and shall provide this description/definition to the Owner and all other affected parties such as the code inspectors of the permitting authorities, the subcontractors, the Architect/Engineer and the Owner's

representatives, to provide general direction of the work and progress of the various phases and subcontractors. The Owner and the Architect/Engineer may attend meetings between the Construction Manager and subcontractors, however, such attendance shall not diminish either the authority or responsibility of the Construction Manager to administer the subcontractor.

2.4.2 Administration

- 2.4.2.1 Those portions of the Project that Construction Manager does not customarily perform with Construction Manager's own personnel shall be performed under subcontracts or by other appropriate written agreements with Construction Manager. Construction Manager shall obtain bids from subcontractors and from suppliers of materials or equipment fabricated to a special design for the Project from the list previously reviewed and, after analyzing such bids, shall deliver such bids to the Owner and Architect for review and comment. Based upon that review and comment, Construction Manager shall then determine, subject to the reasonable objection of Architect or Owner, which bids will be accepted. Construction Manager shall not be required to contract with anyone to whom Construction Manager has reasonable objection. Notwithstanding anything herein to the contrary, Construction Manager covenants and agrees that it shall competitively bid all subcontracts. Further, with respect to all such subcontracts, Construction Manager covenants and agrees that it shall select and contract with the lowest, responsive and qualified bidder, unless otherwise consented to in writing by Owner.
- 2.4.2.2 Subcontracts and agreements with suppliers furnishing materials or equipment fabricated to a special design shall conform with payment provisions and shall not be awarded on the basis of cost plus a fee without prior written consent of Owner.
- 2.4.2.3 Construction Manager shall schedule and conduct weekly meetings at which Owner, Architect, Construction Manager and appropriate Subcontractors can discuss the status of the Project. Construction Manager shall prepare and promptly distribute meeting minutes within two (2) business days after any such meeting is held.
- 2.4.2.4 Promptly after Owner's issuance of the Notice to Proceed, Construction Manager shall prepare a more detailed Project Schedule, based upon the preliminary Project Construction Schedule attached as **Attachment "E"**, including Owner's occupancy requirements. Construction Manager will submit monthly updates to the Schedule until the project is completed.
- 2.4.2.5 Construction Manager shall provide Monthly Written Reports to Owner on the progress of the entire Work. Construction Manager shall maintain a daily log containing a record of weather, subcontractors working on the site, number of workers, Work accomplished, problems encountered and other similar relevant data as Owner may require. The log shall be available to Owner at all times.
- 2.5 Professional Services - Construction Manager shall not be required to provide professional services which constitute the practice of architecture or engineering, unless

such services are specifically required by the Contract Documents for a portion of the Project, or unless Construction Manager has specifically agreed in writing to provide such services. In such event, Construction Manager shall cause such services to be performed by appropriately licensed professionals.

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

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

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

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

2.8 Job Site Requirements

- (1) The Construction Manager shall provide for each of the following activities as a part of the Construction Manager's Construction Phase services:
- a. Maintain a log of daily activities, including manpower records, weather, delays, major decisions, etc. and require the same of subcontractors
 - b. Maintain a directory of companies on the Project with names, addresses, telephone numbers, emergency telephone numbers and fax numbers of key personnel.
 - c. Establish and enforce job rules governing parking, clean-up, use of facilities and worker discipline.
 - d. Provide labor relations management for a harmonious, productive Project.
 - e. Provide a safety program for the Project to meet OSHA requirements. Monitor for Subcontractor compliance without relieving them of responsibilities to perform work in accordance with the best acceptable practice.
 - f. Provide a quality control program.

- g. Miscellaneous office supplies that support the construction efforts which are consumed by his own forces.

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

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

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

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

- (2) Shop Drawing Submittals/Approvals - Check Shop Drawings and implement procedures for submittal and transmittal to the Architect/Engineer of such drawings for action, and closely monitor their submittal and approval process. Provide copy of all correspondence to Owner. Construction Manager will provide one (1) approved Submittal or Shop Drawing to Owner.
- (3) Material and Equipment Expediting - Closely monitor material and equipment deliveries; implement inspection and follow-up procedures on commitments of all Suppliers and Subcontractors.
- (4) Payments to Subcontractor - Develop and implement a procedure for review, processing, and payment of applications by Subcontractors for progress and final payments.
- (5) Document Interpretation - Refer all questions for interpretation of the documents prepared by the Architect/Engineer to the Architect/Engineer.
- (6) Reports and Project Site Documents - Record the progress of the Project. Submit written progress reports to the Owner and the Architect/Engineer including information on the Subcontractor's work, and the percentage of completion. Keep a daily log available to the Owner, the Architect/Engineer and the Permitting Authority inspectors.
- (7) Substantial Completion - The Construction Manager shall secure the Certificate of Occupancy and notify the Owner and Architect/Engineer, in writing, that the

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

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

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

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

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

- (9) Start-Up - With the Owner's personnel, direct the checkout of utilities, operations, systems and equipment for readiness and assist in their initial start-up and testing by the subcontractors.
- (10) Record Drawings - The Construction Manager shall monitor the progress of Work on marked-up field prints which, at Substantial Completion, shall be submitted to the Architect/Engineer who will prepare the final record drawings.
- (11) Administrative Records - The Construction Manager will maintain at the job site on a current basis, files and records such as, but not limited to the following:

Contracts and Purchase Orders

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

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

(12) Owner Occupancy:

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

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

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

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

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

- (13) Warranty - Where any work is performed by the Construction Manager's own forces or by Subcontractors under contract with the Construction Manager, the Construction Manager shall warrant that all materials and equipment included in such Work will be new except where indicated otherwise in Contract Documents, and that such Work will be of good quality, free from improper workmanship and defective materials and in conformance with the Drawings and Specifications.

With respect to the same Work, the Construction Manager further agrees to correct all work found by the Owner to be defective in material and workmanship or not in conformance with the Drawings and Specifications for a period of one (1) year from the Date of Final Completion or as may be set forth with respect to specific warranties contained in the trade sections of the Specifications. The Construction Manager shall collect and deliver to the Owner any specific written warranties given by others as required by the Contract Documents. **Also, the Construction Manager shall conduct, jointly with the Owner and the Architect/Engineer, a warranty inspection nine (9) months after the date of Owner Occupancy. This warranty inspection will be scheduled by a representative of the Owner.**

ARTICLE 3

OWNER'S RESPONSIBILITIES

- 3.1 Owner's Information - The Owner shall provide full information regarding Owner's requirements for the Project.
- 3.2 Owner's Representative/Project Director - The Owner shall designate a representative who shall be fully acquainted with the Project and shall define the lines of Owner authority to approve Project Construction Budgets, and changes in Project. The Owner's representative shall render decisions promptly and furnish information expeditiously.
- 3.3 Architect and Engineer's Agreement - The Owner shall retain an Architect/Engineer for design and to prepare construction documents for the Project. The Architect/Engineer's services, duties and responsibilities are described in the Agreement between the Owner and the Architect/Engineer, a copy of which will be furnished to the Construction Manager upon request.
- 3.4 Approvals and Easements - The Owner shall pay for necessary approvals, easements, assessments and charges required for the construction, use or occupancy of permanent structures or for permanent changes in existing facilities.
- 3.5 Legal Services - The Owner shall furnish such legal services as may be necessary for providing the items set forth in Article 3 and such auditing services as the Owner may require.
- 3.6 Drawings and Specifications - The Owner will provide to the Construction Manager a reproducible set of all drawings and specifications reasonably necessary and ready for printing.
- 3.7 Cost of Surveys & Reports - The services, information, surveys and reports required by the above paragraphs shall be furnished with reasonable promptness in accordance with the approved schedule at the Owner's expense, and the Construction Manager shall be entitled to rely upon the accuracy and completeness thereof.
- 3.8 Project Fault or Defects - If the Owner becomes aware of any fault or defect in the Project or non-conformance with the drawings and specifications, the Owner shall give prompt written notice thereof to the Construction Manager and Architect/Engineer.

- 3.9 Funding - The Owner shall furnish, in accordance with the established schedule, reasonable evidence satisfactory to the Construction Manager that sufficient funds will be available and committed for the cost of each part of the Project.
- 3.10 Lines of Communication - The Owner and Architect/Engineer shall communicate with the Subcontractors or Suppliers only through the Construction Manager while such method of communication is effective in maintaining Project schedules and quality.
- 3.11 Lines of Authority - The Owner shall establish and maintain lines of authority for Owner's personnel and shall provide this definition to the Construction Manager and all other affected parties.
- 3.12 Permitting & Code Inspections - The Owner recognizes and coordinates with the Permitting Authority and expects the Construction Manager to do the same.

ARTICLE 4

PERMITTING AND INSPECTION

- 4.1 Permits, Fees and Notices - Unless otherwise provided in the Contract Documents, the Construction Manager shall secure and the Owner shall pay for any Brevard County building permit or other County permits and governmental fees and licenses necessary for proper execution of the Contract and which are legally required. ~~Any other entity/jurisdiction permits (i.e.: City of Titusville, City of Melbourne, etc.) shall be included in the Guaranteed Maximum Price and secured and paid for by the Construction Manager.~~ County Impact and Solid Waste fees will also be paid by the Owner. Copies of all permits shall be submitted to the Owner. PAID BY OWNER
- 4.2 The Construction Manager shall comply with and give notices required by laws, ordinances, rules and regulations and lawful orders of public authorities bearing on performance of the work required for the Project.
- 4.3 It is not the Construction Manager's responsibility to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations. However, if the Construction Manager observes that portions of the Contract Documents are at variance therewith, and such variance was not discoverable during the Construction Manager's review of these documents for the purpose of determining the GMP, the Construction Manager shall promptly notify the Architect and Owner, in writing, and necessary changes shall be accomplished by appropriate modification.
- 4.4 If the Construction Manager performs Work knowing it to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without such notice to the Architect and Owner, the Construction Manager shall assume full responsibility for such Work and shall bear the attributable costs.

ARTICLE 5

SUBCONTRACTS

- 5.1 Definition - A Subcontractor is a person or organization who has a direct contract with the Construction Manager to perform any of the work. Nothing contained in the Contract Document shall create any contractual relation between the Owner or Architect/Engineer and any Subcontractor.
- 5.2 Bids/Proposals - The Construction Manager shall request and make every attempt to receive, at a minimum, three (3) bids/proposals from Subcontractors and Suppliers and will award those contracts to the most qualified and responsive low bidder after the Construction Manager and Owner have reviewed each bid/proposal and agree that the Subcontractor is qualified to perform the work.
- 5.3 Required Subcontractor and Subcontract Conditions.
- 5.3.1 Subcontractual Relations - By an appropriate written agreement, the Construction Manager shall require each Subcontractor to the extent of the work to be performed by the Subcontractor, to be bound to the Construction Manager by the terms of the Contract Documents, and to assume toward the Construction Manager all the obligations and responsibilities which the Construction Manager by this Agreement, assumes toward the Owner and the Architect/Engineer. Said agreements shall preserve and protect the rights of the Owner and Architect/Engineer under the Contract Documents with respect to the work to be performed by the Subcontractor so that the subcontracting thereof will not prejudice such rights. Where appropriate, the Construction Manager shall require each Subcontractor to enter into similar agreements with his Subcontractor's Subcontractor.

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

- (1) Subcontractors must submit a complete pre-qualification form demonstrating their work experience, financial condition, and adherence to schedule. The Subcontractors financial condition must demonstrate that adequate fixed and liquid assets and equipment are available to properly perform the subcontract.
- (2) Workforce - The Subcontractor must agree to perform no less than fifty (50%) percent of the Project construction work utilizing its own forces.
- (3) All subcontracts shall provide:
 - a. **LIMITATION OF REMEDY - NO DAMAGES FOR DELAY**
That the Subcontractor's exclusive remedy for delays in the performance of the contract caused by events beyond its control, including delays claimed to be caused by the Owner or Architect/Engineer or attributable to the Owner or Architect/Engineer and including claims based on breach of contract or negligence, shall be an extension of its contract time.

In the event of a change in the work the Subcontractor's claim for adjustments in the contract sum are limited exclusively to its actual cost for such change, plus, no more than five percent (5%) for profit, and five percent (5%) for overhead.

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

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

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

ARTICLE 6

SCHEDULE, TIME OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

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

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

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

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

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

ARTICLE 7

GUARANTEED MAXIMUM PRICE FOR CONSTRUCTION

- 7.1 The Construction Manager will establish and submit in writing a Guaranteed Maximum Price to the Owner for its approval, guaranteeing the maximum price to the Owner, for the construction cost of the Project or designated part thereof, based on a review of the contract drawings and specifications. Such Guaranteed Maximum Price will be subject to increase or deduction for changes in the Project as provided in Article 10 and for Owner direct purchases, if any, in accordance with **Attachment "C"**. All costs in excess of the final approved GMP, as adjusted up or down in accordance with the terms of this agreement, are the responsibility of the Construction Manager. Any savings between the GMP, as adjusted, and the sum of the actual cost of the Project plus the Construction Manager's fees, will be returned to the Owner. The GMP includes all taxes in the Cost of the Project which were legally enacted and in effect at the time the GMP was established.
- 7.2 Owner-Direct Purchases - In the event the Owner opts to make Owner Direct Purchases, as outlined in **Attachment "C"**, the Guaranteed Maximum Price shall be reduced by the cost of the materials plus applicable sales tax so that all sales tax savings accrue to the benefit of the project contingency. The Construction Manager shall diligently process all Owner Direct Purchase invoices for the project in order for the Owner to benefit from applicable vendor discounts. The Construction Manager will be required to submit all invoices to Owner in sufficient amount of time in order for the project to benefit from the vendor discount. All costs associated with missed discounts by the Construction Manager will be deducted from the Construction Manager's contract via deductive change order at project completion. Owner reserves the right to waive the Construction Manager's responsibility for missing discounts.
- 7.3 At the time of execution of the contract, the Construction Manager will verify the time schedule for activities and work which is adopted by the Construction Team and used to determine the Construction Manager's cost of work. Surplus funds from bids received below the applicable line items, including line items within the General Conditions, in the GMP will be set aside for contingency. Construction contingency funds will be used for the purpose of defraying the expenses due to unforeseen circumstances relating to construction. The Construction Manager will be required to furnish documentation evidencing expenditures charged to this contingency prior to the release of funds by the Owner. Documentation for use of the Contingency shall be determined by the Construction Team. The Architect/Owner shall verify and approve the actual costs.

If bids are received above the applicable line item in the GMP the deficiency will be taken from the contingency via an approved Authorization to Initiate Work/GMP Realignment form; however, such events shall not be cause to increase the GMP. If bids are not received for a portion of the work at or below the applicable line item amount in

the GMP, the Construction Manager reserves the right to perform that portion of the work or negotiate for its performance for the specified line item lump sum amount or less.

ARTICLE 8

CONSTRUCTION MANAGER'S FEE

- 8.1 In consideration of the performance of the contract, the Owner agrees to pay the Construction Manager as compensation for his services fees as set forth in Subparagraphs 8.1.2 and 8.1.3. subject to the retainage specified in 8.1.1 below.
- 8.1.1 Construction Phase Fee - Prior to commencement of the Construction Phase, the Owner will direct the Construction Manager in writing to proceed into the Construction Phase. The Owner retains the right to review the need and effectiveness of any employee or employees assigned by the Construction Manager, should the Project Director question the need for the employee or employees. A percentage of the agreed upon Construction Phase Fee shall be paid monthly based on percentage (%) of work completed, less retainage, in accordance with subsection 12.1 below. The Construction Manager's first monthly Certificate for Payment shall be submitted no earlier than thirty (30) days following the issuance of the Notice to Proceed, and the final monthly payment shall be paid only when construction of the Project is finally completed, all original, final release of liens are received, closeout documentation has been submitted and occupancy of the Project accepted by the Owner. If construction is authorized only for a part of the Project, the fee paid shall be proportionate to the amount of work authorized by the Owner.
- (1) Adjustments in Fee - For changes in the Project as provided in Article 10, the Construction Phase fee shall be adjusted as follows:
- (a) The Construction Manager shall be paid an additional fee subject to negotiation if the Construction Manager is placed in charge of reconstruction of an insured or uninsured loss excluding any condition that may have been caused from negligent acts by the Construction Manager, subcontractors or others for whose acts the Construction Manager is responsible.
- (2) Costs and Expenses Included in Construction Manager's Construction Phase Fee - The following are included in the Construction Manager's fee for services during the Construction Phase and are included in the GMP (See **Attachment "L"** for Allowable Costs, Overhead associated with the Construction Manager's Construction Phase Fee referenced in Article 8):
- (a) Corporate costs including expenses and overhead and profit related to this project by the Construction Manager's principal and branch offices.
 - (b) Costs of all data processing, accounting, purchasing and associated staff which is performed at the home office.
 - (c) General operating expenses incurred in the management and supervision of the project, except as expressly included in Article 9.
 - (d) Salaries or other compensation of the Construction Manager's employees at his principal and branch offices.

- (e) Those services set forth in Paragraph 2.1, 2.2, 2.3 and 2.4; except as expressly included in Article 9.
- (f) Relocation expenses for Construction Manager's personnel.
- (g) Costs of all project estimating, safety, scheduling and accounting staff.

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

ARTICLE 9

COST OF THE PROJECT

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

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

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

- (1) Labor wages paid for the on-site Project Superintendent directly responsible for the operation and supervision of the project, clerical and Quality Control personnel (as opposed to wages paid to management or supervisory personnel who are not part of the on-site project management) in the direct employ of the Construction Manager in the performance of the Construction Manager's work under this Agreement, acceptable salary or wage schedules and such fringe benefits, if any, as may be payable with respect thereto (labor burden not to exceed 40% for payroll and 15% for per diem).
- (2) Payments due to Subcontractors from the Construction Manager or made by the Construction Manager to Subcontractors for their work performed pursuant to contract under this Agreement.
- (3) Cost of the premiums for insurance above and beyond the minimum required by Brevard County (\$1 million) and cost of premiums for bonds which the Construction Manager is required to procure by this Agreement specifically for

the construction of this project.

- (4) Sales, use, gross receipts or similar taxes related to allowable direct costs of the Project imposed by a governmental authority, and for which the Construction Manager is liable. No costs shall be paid by the Owner to the Construction Manager for any expenses made necessary to correct defective workmanship or to correct any work not in conformance with the Plans and Specifications or to correct any deficiency or damage caused by negligent acts by the Construction Manager.
- (5) If approved by the Owner, the Construction Manager, when qualified, may self-perform all or a portion of the work for any item listed on the estimate or GMP breakdown where it is deemed advantageous due to schedule or economic benefit for the direct cost of the work.
- (6) Legal costs reasonably and properly resulting from prosecution of the Project for the Owner, including handling claims for changes by subcontractors and vendors, subject to the following limitations:
 - (a) The Owner approved incurring such costs in advance, which approval shall not be unreasonably denied; and
 - (b) The legal costs were not incurred as result of the Construction Manager's own negligence or default.
- (7) Costs for such temporary facilities during construction, as approved by the Owner, including temporary water, heat, power, sanitary facilities, telephones, radios and computers with software.

9.3 Allowances

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

9.4 Public Records Law and Audit Requirements

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

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

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

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

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

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

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

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

ARTICLE 10

CHANGES IN THE PROJECT

- 10.1 Change Orders - The Owner, without invalidating this Agreement, may order Changes in the Project within the general scope of this Agreement consisting of additions, deletions or other revisions which may cause an increase or decrease

in the GMP, and/or the Construction Completion Date. All changes in the Project GMP or Construction Completion Date not covered by an authorized contingency, as described in Article 7.3 must be authorized by a written Change Order or Construction Change Directive, and signed by the Owner, Architect and Construction Manager before the change is implemented. It shall be the Owner's discretion as to whether each change order requires the A/E signature. **Maximum allowable mark-up on any change order is 5% Profit, 5% Overhead, and a 2% Bond.**

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

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

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

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

10.1.4 If none of the methods set forth in Clause 10.1.3 is agreed upon, the Construction Manager, provided he receives a written order signed by the Owner, shall promptly proceed with the work required by the Construction Change Directive involved. The cost of such work shall then be determined on the basis of the reasonable expenditures and savings of those performing the work attributed to the change. However, in the event a Change Order is issued

under these conditions, the Architect/Engineer will establish an estimated cost of the work and the Construction Manager shall not perform any work whose cost exceeds that estimate without prior written approval by the Owner. In such case, and also under Article 10.1.3 above, the Construction Manager shall keep and present, in such forms as the Owner may prescribe, an itemized accounting together with appropriate supporting data of the increase in the Cost of the Project as outlined in Article 9. The amount of decrease in the Guaranteed Maximum Price to be allowed by the Construction Manager to the Owner for any deletion or change which results in a net decrease in cost will be the amount of the actual net decrease in the Cost of the Project and the Construction Manager's fee subject to the limits set forth in Article 7.

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

10.1.6 Should the Construction Manager or his contracted subcontractors encounter:

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

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

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

unit prices, etc.

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

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

10.2 **Claims for Additional Cost or Time**

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

- 10.2.1 If the Construction Manager is delayed at any time in the progress of the work by any act or neglect of the Owner or the Architect or of any employee of either or by any separate Construction Manager employed by the Owner or by any changes ordered in the work by labor disputes, fire, or unusual delay in transportation, unavoidable casualties or any causes beyond the Construction Manager's control or by delay authorized by the Owner pending resolution or disputes, and such delay extends the completion date, the Substantial Completion shall be extended by Change Order for such reasonable time as the Construction Team may determine.

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

during the course of the project. Failure to include a change to time and Contract price in a change order shall waive any change to the time and Contract price unless the parties mutually agree in writing to postpone a determination of the change to time and price resulting from the change order. Such a determination may be postponed not more than forty five (45) days to give the Construction Manager an opportunity to demonstrate a change in the time and price needed to complete the Work.

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

10.3 Minor Changes in the Project (Realignment of Work)

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

10.4 In any emergency affecting the safety of persons or property, the Construction Manager shall act at his discretion, to prevent threatened damage, injury or loss. Any increase in the Guaranteed Maximum Price or extension of time claimed by the Construction Manager on account of emergency work shall be determined as provided in Article 10.

ARTICLE 11

DISCOUNTS

11.1 All discounts for prompt payment shall accrue to the Owner to the extent the Cost of the Project is paid directly by the Owner or from a fund made available by the Owner to the Construction Manager for such payments.

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

ARTICLE 12

PAYMENTS TO THE CONSTRUCTION MANAGER

12.1 Monthly Statements - The Construction Manager shall submit to the Owner a sworn statement along with the Certificate for Payment, showing in detail all monies paid out, cost accumulated or costs incurred on account of the Cost of the Project during the previous period and the amount of the Construction Manager's fees due as provided in

Article 8. This data shall be attached to the Certificate for Payment Form shown in Attachment "N", and shall include, but not be limited, to the following:

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

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

Ten percent of each payment shall be held by the OWNER as retainage until 50-percent completion of such Project, which shall be deemed to have occurred when 50% of the GMP, as increased or decreased from time to time, has been expended. At that time, the retainage shall be reduced to 5% and the Construction Manager shall be entitled to request payment or release of up to 50% of the previously withheld retainage amounts, provided the retainage is not the subject of a good faith dispute, the subject of a claim brought pursuant to s. 255.05, Florida Statutes or otherwise the subject of a claim or demand by the OWNER.

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

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

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

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

- 12.2 Final Payment - Final payment constituting the unpaid balance of the Cost of the Project and the Construction Manager's fee, shall be due and payable in accordance with Florida Statutes after an *acceptable* Certificate of Final Completion has been issued **and all contractual closeout obligations have been met by the Construction Manager**. Before issuance of final payment, the Construction Manager, subcontractors and agents shall submit original, sworn, notarized statements that all payrolls, material bills, and other debts connected with the Project have been paid or otherwise satisfied, warranty information is complete, Final As-Builts in AutoCad format acceptable to the Owner, have been submitted and instruction and documentation for the Owner's operating and maintenance personnel is complete.
- 12.3 Payments for Materials and Equipment - Payments will be made for material and equipment not incorporated in the work but insured, itemized, delivered and suitably stored at the site or another location subject to prior approval and acceptance by the Owner on each occasion.
- 12.4 Withholding Payments to Subcontractors - The Construction Manager shall not withhold payments to Subcontractors if such payments have been made to the Construction Manager. Should this occur for any reason, the Construction Manager shall immediately return such monies to the Owner, adjusting pay requests and project bookkeeping, as required.

ARTICLE 13

INSURANCE, INDEMNITY WAIVER OF SUBROGATION

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

- been received for this hold harmless/indemnification provision.
- (2) The Owner shall cause any other Construction Manager who may have a contract with the Owner to perform construction or installation work in the area where work will be performed under this Agreement, to agree to indemnify the Owner and the Construction Manager and hold them harmless from all claims for bodily injury and property damage (other than property insured under Paragraph 13.2(3)) that may arise from the Construction Manager's operations.

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

13.2 Insurance

- (1) The Construction Manager shall not commence any construction work in connection with this Agreement until the Construction Manager has obtained all of the following types of insurance and such insurance certificate(s) have been submitted to the Owner and have been approved by the Owner, nor shall the Construction Manager allow any Subcontractor to commence work on his subcontract until all insurance required of the Subcontractor has been so obtained and approved. All insurance policies shall be with insurers qualified and doing business in the State of Florida.
- a. Worker's Compensation - Provide Worker's Compensation Insurance on behalf of all employees who are to provide a service for this project, as required under Florida Laws.
- b. Commercial General Liability - Including but not limited to bodily injury, property damage and personal injury with limits of not less than \$2,000,000.00 combined single limit per occurrence, including products and completed operations, to include:
1. "XCU" (Explosion, Collapse, Underground Damage) - The Construction Manager's Liability Policy shall provide "XCU" coverage.
 2. Broad Form Property Damage Coverage, Products and Completed Operations Coverage - The Construction Manager's Liability Policy shall include Broad Form Property Damage Coverage, Products and Completed Operations Coverages.
 3. Contractual Liability Work Contracts - The Construction Manager's Liability Policy shall include Contractual Liability Coverage designed to protect the Construction Manager for contractual liabilities assumed by the Construction Manager in the performance of this Agreement.
- c. Automobile Liability - Including bodily injury, property damage liability for all vehicles owned, hired, leased and non-owned with limits of not less

than \$2,000,000.00 combined single limit, per accident.

- d. Performance and Payment Bonds - With limits of not less than 100% of the total construction cost of this project. Payment and Performance Bond shall be recorded in the official record of the County in which the project is located. These bonds shall remain in effect at least until one (1) year after the date when the final payment is approved. Any bonding company submitting a Bid Bond, Performance Bond or Payment Bond to Brevard County must be licensed to transact a fidelity and surety business in the State of Florida, and hold a Certificate of Authority from the Secretary of the Treasury under Act of Congress, approved by July 30, 1947 (U.S.C. 613), and approved by Brevard County. Acceptable surety companies shall be licensed to do business in Florida and shall have an A.M. Best Rating of "A-" and financial size V or higher.
- e. Builder's Risk Coverage - The Construction Manager shall take out and maintain during the life of this Agreement a "Builder's Risk Policy" completed value form as a cost of the Project, issued to provide coverages on an "all risk" basis including theft. This coverage shall not be lapsed or canceled because of partial occupancy by the Owner prior to final acceptance of the Project.

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

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

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

- (1) The name of the insured Construction Manager, the specific job by name and job number, the name of the insurer, the number of the policy, its effective date, and its termination date.
- (2) The General Liability and Auto Liability certificates of insurance shall indicate that the policies have been endorsed to cover the County as an additional insured to the extent of liability assumed by the Construction Manager under this Agreement, and that these policies may not be canceled or modified without thirty (30) days prior written notice to the County.
- (3) The insurance coverages enumerated above constitute the minimum requirements and shall in no way lessen or limit the liability of the Construction Manager under the terms of the Contract.

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

13.3 Waiver of Subrogation

- 13.3.1 The Owner and the Construction Manager waive all rights against each other, for damages caused by perils covered by insurance provided under Article 13.2 to the extent covered by such insurance except such rights as they may have to the proceeds of such insurance held by the Owner and Construction Manager as trustees. The Construction Manager shall require similar waivers from all Subcontractors and their Sub-subcontractors.
- 13.3.2 The Owner and Construction Manager waive all rights against each other for loss or damage to any equipment used in connection with the Project and covered by any property insurance. The Construction Manager shall require similar waivers from all subcontractors and their sub-subcontractors.
- 13.3.3 The Owner waives subrogation against the Construction Manager on all property and consequential loss policies carried by the Owner on adjacent properties and under property and consequential loss policies purchased for the Project after its completion.
- 13.3.4 If the policies of insurance referred to in this Article require an endorsement to provide for continued coverage where there is a waiver of subrogation, the Owner of such policies will cause them to be so endorsed. Failure to obtain proper endorsement nullifies the waiver of subrogation.

ARTICLE 14

TERMINATION OF THE AGREEMENT AND OWNER'S
RIGHT TO PERFORM CONSTRUCTION MANAGER'S OBLIGATION

- 14.1 Termination by the Construction Manager - If the Project is stopped for a period of thirty (30) days under an order of any court or other public authority having jurisdiction or as a result of an act of government, such as a declaration of a national emergency making materials unavailable, through no act or fault of the Construction Manager, or if the Project should be stopped for a period of thirty (30) days by the Owner, then the Construction Manager may, upon seven (7) days written notice to the Owner, request undisputed payment for all work executed, the Construction Manager's fee earned to date, and for any proven loss sustained upon any materials, equipment, tools, construction equipment, and machinery, including reasonable profit, damages and terminal expenses incurred by the Construction Manager.
- 14.2 Owner's Right to Perform Construction Manager's Obligations and Termination by Owner for Cause -
- (1) If the Construction Manager fails to perform any of its obligations under this Agreement, the Owner may, after seven (7) days written notice during which period the Construction Manager fails to perform such obligations, make good such deficiencies. The GMP, or the actual cost of the Project, whichever is less, shall be reduced by the cost to the Owner to making good such deficiencies and the Construction Manager's Construction Phase Fee shall be reduced by an amount required to manage the making good of such deficiencies.

- (2) If the Construction Manager is adjudged a bankrupt, or if he makes a general assignment for the benefit of his creditors, or if a receiver is appointed on account of his insolvency, or if he persistently or repeatedly refuses or fails, except in case for which extension of time is provided, to supply enough properly skilled workmen or proper materials and fails to maintain an established schedule (failure to maintain schedule shall be defined as any activity on the critical path that falls forty-five (45) days or more behind schedule) which has been adopted by the Construction Team, or if he fails to make prompt payment to subcontractors for materials or labor, or persistently disregards laws, rules, ordinances, regulations, or orders of any public authority having jurisdiction, or otherwise is guilty of a substantial violation of a provision of the Agreement, then the Owner may, without prejudice to any right or remedy and after giving the Construction Manager and his surety, if any, seven (7) days written notice, during which period Construction Manager fails to cure the violation, terminate the employment of the Construction Manager and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Construction Manager, and may finish the Project by whatever method he may deem expedient. In such case, the Construction Manager shall not be entitled to receive any further payment until the Project is finished nor shall he be relieved from his obligations assumed under Article 7. Reasonable termination expenses incurred by the Owner may be deducted from any payments left owing the Construction Manager (excluding monies owed the Construction Manager for subcontract work).

14.3 Termination by Owner for Convenience

- (1) If the Owner terminates this Agreement other than pursuant to Article 14.2(2) or Article 14.3(2), he shall reimburse the Construction Manager for any unpaid cost of the Project due him under Article 9, plus that part of the unpaid balance of the Construction Phase Fee in an amount as will increase the payment on account of his fee to a sum which bears the same ratio to the Construction Phase Fee as the Cost of the Project at the time of termination bears to the Guaranteed Maximum Price, if established, otherwise to the Owner's Construction Budget. The Owner shall also pay to the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment retained. In case of such termination of Agreement the Owner shall reimburse the Construction Manager for obligations and commitments made before notice of termination was received by the Construction Manager.
- (2) After the establishment of the Guaranteed Maximum Price or at the completion of the Construction Phase, if the final cost estimates or lack of legislative funding make the Project no longer feasible from the standpoint of the Owner, the Owner may terminate this Agreement and pay the Construction Manager his proportionate fee due in accordance with Article 8.1, plus any costs incurred pursuant to Articles 9 and 10.
- (3) Any termination by Owner for cause which is later determined to be invalid shall be considered a termination by Owner for convenience.

14.4 Termination for Prohibition Against Contracting With Scrutinized Companies

The Construction Manager certifies that it and its subcontractors are not on the Scrutinized Companies that Boycott Israel List. Pursuant to Section 287.135, F.S., the Owner may immediately terminate this Agreement at its sole option if the Construction Manager or its subcontractors are found to have submitted a false certification; or if the Construction Manager, 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 Agreement.

If this Agreement is for more than one million dollars, the Construction Manager 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, F.S. Pursuant to Section 287.135, F.S., the Owner may immediately terminate this Agreement at its sole option if the Construction Manager, its affiliates, or its subcontractors are found to have submitted a false certification; or if the Construction Manager, 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 Agreement.

The Construction Manager agrees to observe the above requirements for applicable subcontracts entered into for the performance of work under this Agreement.

- (2) As required by § 287.135(5), Florida Statutes, prior to entering into a agreement/contract (formal contract or purchase order in excess of \$1 million dollars to provide goods or services to Owner/Brevard County, individual with authority to execute this Agreement for the Construction Manager shall file a sworn statement with the contracting officer or Purchasing Director, as applicable verifying that none of the three conditions above exist. If the Construction Manager is found to have falsified the affidavit attached as Attachment "O", the County/Owner may terminate the contract.
- (3) If subsequent to the submittal of the attached affidavit, the Construction Manager - (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/Owner may terminate the agreement/contract.

ARTICLE 15

ASSIGNMENT AND GOVERNING LAW

- 15.1 Neither the Owner nor the Construction Manager shall assign his interest in this Agreement without the written consent of the other except as to the assignment of proceeds.
- 15.2 This Agreement shall be governed by the Laws of the State of Florida.

- 15.3 **Venue and Attorney's Fees:** Venue for any legal action brought by any party to this Agreement to interpret, construe or enforce this Agreement shall be in a court of competent jurisdiction in and for Brevard County, Florida. In the event of any legal action to enforce the terms of this Agreement, each party shall bear its own attorney's fees and costs and any trial shall be non-jury.
- 15.4 **Severability:** If any provision of this Agreement is held by a Court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired.

ARTICLE 16

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

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

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

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

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

The Construction Manager agrees that the Owner shall not be liable for any claim that the Construction Manager fails to submit as a Request for Change Order as provided in this section.

- 16.2 After receipt of a Request for Change Order, the Owner, in consultation with the Architect/Engineer, shall deliver to the Construction Manager its written determination of the claim. As to disputed matters subject to the determination by final Owner action (not actions for breach of contract or tort) the Owner's written decision following compliance with the dispute resolution procedure set forth in sections 16.4 through 16.6 below shall be final Owner action.
- 16.3 For work the Construction Manager performs with its own forces, and in addition to the adjustments provided for in Article 8, the Construction Manager's exclusive remedy for delays in performance of the construction caused by events beyond its control, including delays claimed to be caused by or attributable to the Owner or the Architect/Engineer, including claims based on breach of contract or negligence, shall be a claim submitted in compliance with Article 16.1 above, for an extension of the scheduled construction time. In the event of a change in such work that will modify the GMP, the Construction Manager's claim for adjustment in contract sum are limited exclusively to its actual costs for such changes, including costs involved in claim preparation, plus five percent (5%) overhead, five percent (5%) profit and a two percent (2%) bond in the General Conditions. The Construction Manager expressly agrees that the foregoing constitute its sole and exclusive remedies for delays and changes in such work, and eliminate any other remedies for claim for increase in the contract price, delays, changes in the work, damages, losses or additional compensation.
- 16.4 In the event of any dispute over a proposed change order or any other matter arising out of the implementation or interpretation of this contract the following dispute resolution process shall apply.
- (a) Within three (3) days after denial of a contractor's change order or contract modification request in an amount, individually or in total, less than the authorized purchasing level approved for the County Manager by the County Commission (currently at \$100,000) the contractor may submit to the County Manager or a designee with experience in the oversight of construction projects for a department or business other than the department responsible for monitoring the disputed request, documentation of the contractor's position in the dispute or disagreement. The County Manager or designee, within five (5) days after the receipt of the contractor's documentation, shall review the request and make a final determination as to whether denial was arbitrary or capricious based upon the sufficiency of the work under the terms of the contract, applicable regulations and relevant construction standards. Based upon the sufficiency and degree of completion, as well as any defects in the work and the amount reasonably required, if any, to correct or repair defective work, the reviewer shall make the final determination as to whether a written change order or contract modification should be approved by the County Manager.
 - (b) If the denied request or disputed amount exceeds the County Manager's purchasing authority, the County Manager shall present a report, recommendation and the contractor's claim and documentation, to the County Commission for a final determination within thirty (30) days after receiving the contractor's documentation for the claim. The Commission shall make its decision using the standards specified in subparagraph (a) above.

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

ARTICLE 17

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

- 17.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Construction Manager claims that a delay or additional cost is involved because of such action by the Owner, the Construction Manager shall make such claim as provided in this Agreement.
- 17.2 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Construction Manager, who shall cooperate with them. The Construction Manager shall participate with other separate contractors and the Owner in reviewing their construction schedules when directed to do so. The Construction Manager shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Construction Manager,

separate contractors and the Owner until subsequently revised.

- 17.3 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights which apply to the Construction Manager under the Conditions of the Contract.
- 17.4 The Construction Manager shall afford the Owner, and separate contractors, reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities and shall connect and coordinate the Contractor's construction and operations with the Construction Manager, as required.
- 17.5 If part of the Construction Manager's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Construction Manager shall, prior to proceeding with that portion of the Work, promptly report to the Architect/Engineer or Owner apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Construction Manager to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Construction Manager's Work, except as to defects not then reasonably discoverable.
- 17.6 Costs caused by delays or by improperly timed activities or defective construction shall be borne by the party responsible thereof.
- 17.7 The Construction Manager shall promptly remedy damage wrongfully caused by the Construction Manager to completed or partially completed construction or to property of the Owner or separate contractors.

ARTICLE 18

FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) REQUIREMENTS

During the performance of this Agreement, the CONSTRUCTION MANAGER agrees as follows:

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

qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

- 18.3. The CONSTRUCTION MANAGER will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or worker's representatives of the CONSTRUCTION MANAGER's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- 18.4. The CONSTRUCTION MANAGER will comply with all provisions of Executive Order 11246 of September 24, 1965, and the rules, regulations and relevant orders of the Secretary of Labor.
- 18.5. The CONSTRUCTION MANAGER will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
- 18.6. In the event of the CONSTRUCTION MANAGER's non-compliance with the non-discrimination clauses of this Agreement or with any of the said rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and the CONSTRUCTION MANAGER may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- 18.7. The CONSTRUCTION MANAGER will include the portion of the sentence immediately preceding paragraph (18.1) and the provisions of paragraphs (18.1) through (18.7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The CONSTRUCTION MANAGER will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance, provided, however, that in the event the CONSTRUCTION MANAGER becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the CONSTRUCTION MANAGER may request the United States to enter into such litigation to protect the interests of the United States.
- 18.8. **Clean Air Act and the Federal Water Pollution Control Act:** (For all contracts in excess of \$150,000)
 - A. **Clean Air Act** –
 - i. The CONSTRUCTION MANAGER agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

- ii. The CONSTRUCTION MANAGER agrees to report each violation to the County through its Facilities Department and understands that the Brevard County Facilities Department will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- iii. The CONSTRUCTION MANAGER agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

B. Federal Water Pollution Control Act -

- i. The CONSTRUCTION MANAGER agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- ii. The CONSTRUCTION MANAGER agrees to report each violation to the County through its Facilities Department and understands and agrees that the Brevard County Facilities Department will, in turn, report each violation to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- iii. The CONSTRUCTION MANAGER agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

18.9. Suspension and Debarment:

- A. This Agreement is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the CONSTRUCTION MANAGER is required to verify that neither the CONSTRUCTION MANAGER, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- B. The CONSTRUCTION MANAGER must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- C. This certification is a material representation of fact relied upon by the County. If it is later determined that the CONSTRUCTION MANAGER did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the State of Florida (Division of Emergency Management) and the County, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- D. The CONSTRUCTION MANAGER agrees to comply with the requirements of 2 C.F.R. pt.180, subpart C and 2 C.F.R. pt. 3000, subpart C while this Agreement is valid. The Contractor agrees to include a provision requiring such compliance in its lower tier covered transactions.

18.10. **Byrd Anti-Lobbying Amendment, 31 U.S.C. . § 1352 (as amended):**

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee or a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier-to-tier up to the recipient.

18.11. **Procurement of Recovered Materials:**

In the performance of this Agreement, the CONSTRUCTION MANAGER shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired:

- A. Competitively within a timeframe providing for compliance with the Agreement performance schedule;
- B. Meeting Agreement performance requirements; or
- C. At a reasonable price.

Information about this requirement, along with the list of EPA-designate items, is available at EPA's Comprehensive Procurement Guidelines website at <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

18.12. **Additional FEMA Requirements:**

A. **Access to Records:**

- i. The CONSTRUCTION MANAGER agrees to provide the County, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers and records of the CONSTRUCTION MANAGER which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts and transcriptions.
- ii. The CONSTRUCTION MANAGER agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- iii. The CONSTRUCTION MANAGER agrees to provide the FEMA Administrator or his authorized representative access to construction or other work sites pertaining to the work being completed under the Agreement.

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

The CONSTRUCTION MANAGER shall not use DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

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

The CONSTRUCTION MANAGER acknowledges that FEMA financial assistance will be used to fund this Agreement and resulting Agreements only. The CONSTRUCTION MANAGER will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures and directives.

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

The Federal Government is not a party to this Agreement and is not subject to any obligations or liabilities to the non-Federal entity, CONSTRUCTION MANAGER, or any other party pertaining to any matter resulting from the Agreement.

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

The CONSTRUCTION MANAGER acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the CONSTRUCTION MANAGER 's actions pertaining to this Agreement.

ARTICLE 19

MISCELLANEOUS

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

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

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

19.3 **Apprentices** - If the Construction Manager employs apprentices on the project, the behavior of the Construction Manager and the Owner shall be governed by the provision of Chapter 446, Florida Statutes, and by applicable standards and policies governing apprentice programs and agreements established by the Division of Labor of the State of Florida Department of Labor and Employment Security. The Construction Manager will

include a provision similar to the foregoing sentence in each subcontract.

- 19.4 Minority Participation - The Construction Manager shall *diligently attempt* to award his material contracts, subcontracts and sub-subcontracts to firms having a letter of certification as a minority business from the "Office of Minority Business Assistance, Department of General Services, or any other Federal, Florida County or City certification.
- 19.5 Minority Employment Information - The Board of County Commissioners requires construction contracts, who would otherwise be required to file and EEO Form 1 Report under Federal Law (currently Federal law requires filing for employers with more than 15 employees), to submit an EEO Form 1 Report with the submission of their GMP. This requirement extends to any subcontractors who are required to submit the EEO Form 1 Report (over 15 employees) under Federal law. Failure to submit an EEO Form 1 Report with your GMP will be reason to declare your proposal "non-responsive" to the proposal requirements. However, the information will be used for statistical purposes only and will not be used in any way as a basis to award a contract. See **Attachment "P"**.
- 19.6 Public Entity Crime Affidavit attached as **Attachment "Q"**.
- 19.7 Non-Collusion Affidavit of Prime Bidder attached as **Attachment "Q"**.
- 19.8 Copyright Clause No reports, data, programs or other materials produced, in whole or in part for the benefit and use of the Owner, under this agreement shall be subject to copyright by Contractor in the United States or any other Country.
- 19.9 E-Verify The Construction Manager:
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 Construction Manager during the term of the agreement; and
B. shall expressly require any contractor and subcontractors performing work or providing services pursuant to this agreement 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."

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

ATTEST:



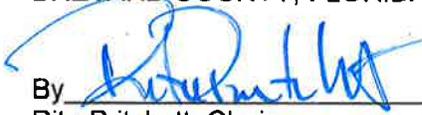
Scott Ellis, Clerk

Reviewed for legal form and content:



Matthew Soss, Assistant County Attorney

BOARD OF COUNTY COMMISSIONERS OF
BREVARD COUNTY, FLORIDA

By 
Rita Pritchett, Chair Date
Brevard County Commission

As Approved By the Brevard County
Commission on: 10/10/2017

Date _____

IVEY'S CONSTRUCTION

[Signature] 10/31/18
BY: Construction Manager Date

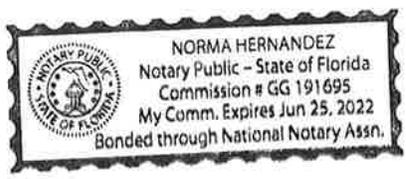
STATE OF FLORIDA
COUNTY OF BREVARD

Kevin W. Ivey President

The foregoing instrument was acknowledged before me this 31st day of 2018 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.

Norma Hernandez
NOTARY PUBLIC

Norma Hernandez
Typed/Printed Name



ATTACHMENT "A"

CONSTRUCTION TEAM ASSIGNED REPRESENTATIVES

Owner

Brevard County Parks and Recreation Department

Mary Ellen Donner

Project Director/Construction Coordinator/Department Director

Terry Lane

Parks Operations Manager

Melissa Renninger

Contract Administrator

Larry Wojciechowski

Parks Support Services Manager

Architect-Engineer

Morgan and Associates Consulting Engineers, Inc.

Construction Manager

Ivey's Consttuction, Inc.

Kevin W. Ivey

President

Steven Sergis

Vice President/Principal-In-Charge

Steven Sergis

Project Manager

Taylor Davis

Project Administrator

Skylar Sheffield

Project Superintendent

Mike Koons

Estimator/Cost Control

Ryan Ivey

Schedules

ATTACHMENT "B"

PROJECT SCOPE OF WORK

Provide all labor, materials, and equipment for
Demolition and disposal of existing dock/walkway. Installation of new dock and walkway, installation of new
revetment. Site Restoration and sodding. Removal, temporary relocation, and reinstall of obstructions.
(sheds, trees, Tiki deck), etc. New lighting.

ATTACHMENT "C"

DIRECT PURCHASING PROCEDURE CONSTRUCTION MANAGEMENT AGREEMENT

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

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

- a) **Contract:** Construction Management Agreement by and between Construction Manager and Brevard County Board of County Commissioners, Viera, Florida to provide labor, materials, and equipment for
Veterans Memorial Park observation deck replacement
- b) **County Purchased Materials:** Materials purchased directly by the Owner through execution and delivery of a Purchase Order.
- c) **GMP** - Guaranteed Maximum Price established under the Contract.
- d) **Materials:** Tangible Personal Property necessary for completion of the Project.
- e) **Materials Deduction Summary:** Written document signed by Owner's representative and Construction Manager setting forth the amounts of County Purchased Materials, plus applicable taxes were the purchase not exempt from such taxes, as reflected in the parties' previously executed deductive change order(s) to the Contract showing deduction of such Materials from the GMP.
- f) **Owner:** See Definition in Article I, section 1.3.
- g) **Owner's Representative:** See Definition in Article I, section 1.3.
- h) **Project:** See Definition in Article I, section 1.3.
- i) **Purchase Order:** The Owner's request for Materials from a particular vendor or supplier when fully executed and delivered to the Construction Manager, and the Owner's promise to pay for the Material specified upon delivery and acceptance at the Project Site, and presentation of an invoice by the Construction Manager to the Owner certifying payment of same.
- j) **Material Requisition:** A request by the Construction Manager to the Owner that

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ATTACHMENT "D"

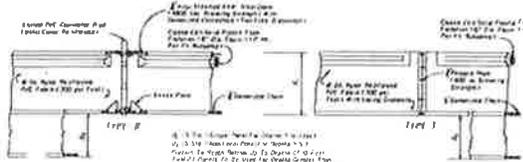
DRAWINGS AND SPECIFICATIONS

To be attached

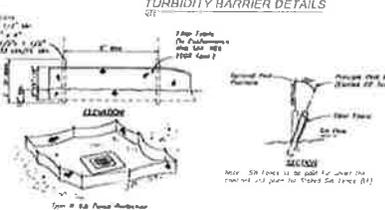
Veterans Memorial Park
Observation Deck Replacement
400 S. Sykes Creek Parkway
Merritt Island, FL 32952

List of Documents

Design Plans		Date
Sheet		
1.	C-1 Cover Sheet – Location Map	9/13/18
2.	C-2 Existing Site Conditions and Erosion Plan	9/13/18
3.	C-3 Site Plan	9/13/18
4.	S-1 Structural Notes and Plans	9/4/18
5.	S-2 Enlarged Structural Plans	9/4/18
6.	S-3 Enlarged Structural Plans	9/4/18
7.	S-4 Enlarged Structural Plans	9/4/18

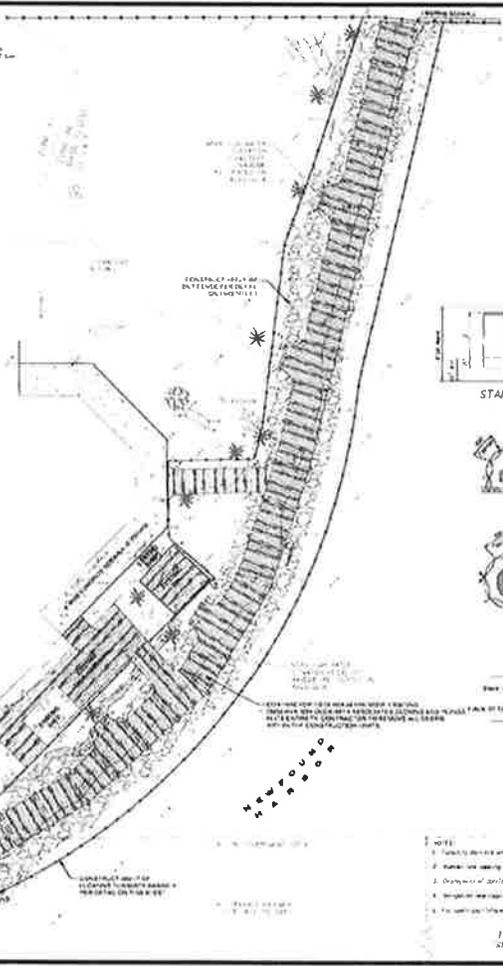


WARNING
 THE USE OF THIS TYPE OF TURBIDITY BARRIER IS LIMITED TO THE PROTECTION OF THE CHANNEL FROM EXCESSIVE SEDIMENTATION AND NOT TO BE USED AS A PERMANENT EROSION CONTROL MEASURE. THE USER SHALL BE RESPONSIBLE FOR THE DESIGN AND CONSTRUCTION OF THE BARRIER AND FOR THE PROTECTION OF THE CHANNEL FROM EXCESSIVE SEDIMENTATION AND NOT TO BE USED AS A PERMANENT EROSION CONTROL MEASURE.



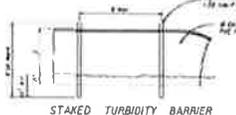
TYPE III SILT FENCE DETAIL
 SEE SHEET 1001-1002-1003

EXISTING BUILDING

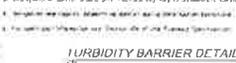
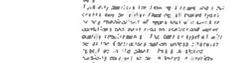


GRAPHICAL SCALE
 SCALE 1" = 10'
 NAD 83 DATUM

LEGEND
 - Turbidity Barrier
 - Staked Turbidity Barrier
 - Survey
 - Point of Interest for Construction



STAKED TURBIDITY BARRIER



TURBIDITY BARRIER DETAILS
 SEE SHEET 1001-1002-1003

VETERAN'S MEMORIAL PARK
 MILBURN ISLAND, HI
 EXISTING CONDITIONS
 & PROPOSED PLAN

MORGAN & Associates
 Consulting Engineers, Inc.
 1111 Kalia Road, Suite 200, Honolulu, HI 96813
 Phone: (808) 941-1111
 Fax: (808) 941-1112
 Email: info@morganandassociates.com

DATE: 08/11/2011
 DRAWN: J. L. LEE
 CHECKED: J. L. LEE
 SCALE: 1" = 10'
 SHEET: 1001-1002-1003
 OF: 1001-1002-1003

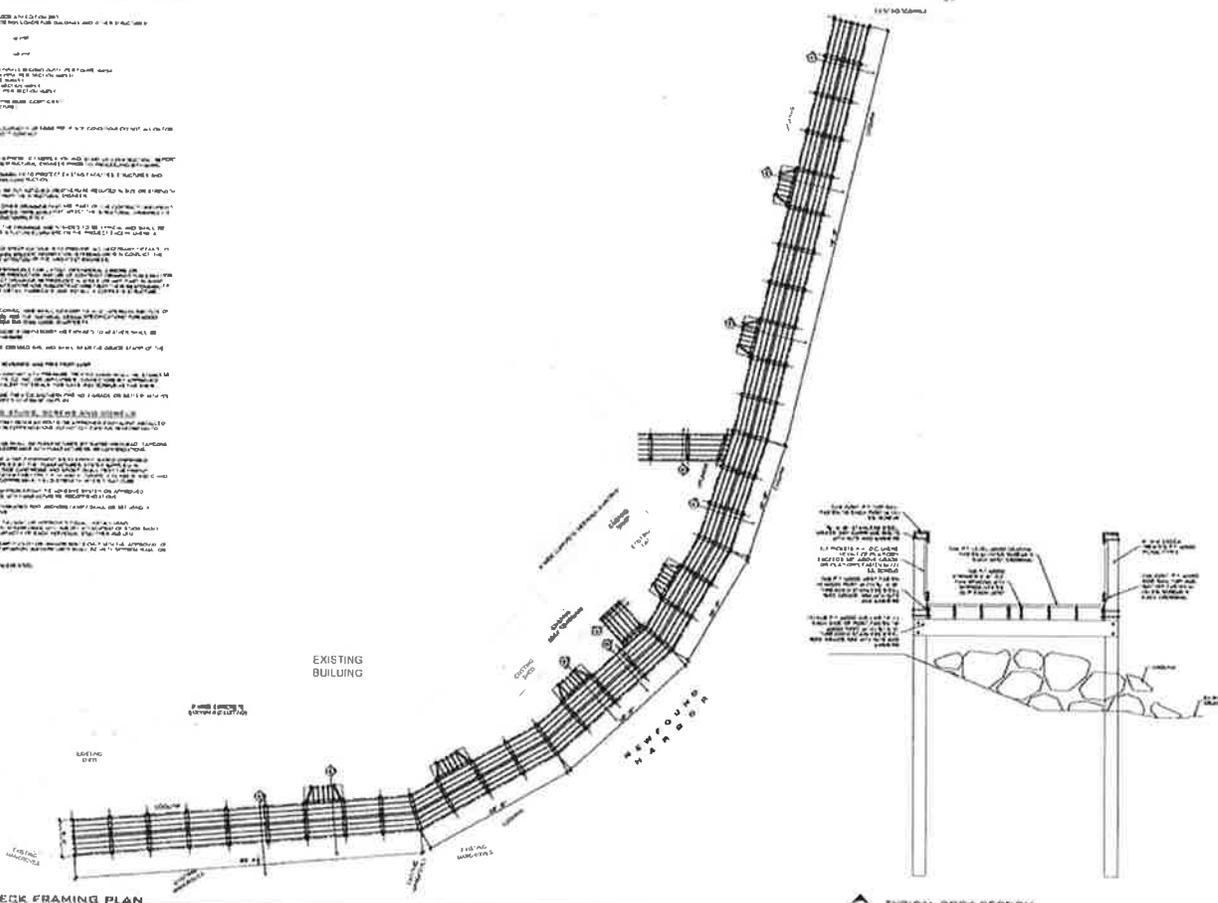
STRUCTURAL NOTES

01. DESIGN: CONSULT THE ARCHITECT FOR ALL INFORMATION.
 02. DESIGN: CONSULT THE ARCHITECT FOR ALL INFORMATION.
 03. DESIGN: CONSULT THE ARCHITECT FOR ALL INFORMATION.
 04. DESIGN: CONSULT THE ARCHITECT FOR ALL INFORMATION.
 05. DESIGN: CONSULT THE ARCHITECT FOR ALL INFORMATION.

06. DESIGN: CONSULT THE ARCHITECT FOR ALL INFORMATION.
 07. DESIGN: CONSULT THE ARCHITECT FOR ALL INFORMATION.
 08. DESIGN: CONSULT THE ARCHITECT FOR ALL INFORMATION.
 09. DESIGN: CONSULT THE ARCHITECT FOR ALL INFORMATION.
 10. DESIGN: CONSULT THE ARCHITECT FOR ALL INFORMATION.

11. DESIGN: CONSULT THE ARCHITECT FOR ALL INFORMATION.
 12. DESIGN: CONSULT THE ARCHITECT FOR ALL INFORMATION.
 13. DESIGN: CONSULT THE ARCHITECT FOR ALL INFORMATION.
 14. DESIGN: CONSULT THE ARCHITECT FOR ALL INFORMATION.
 15. DESIGN: CONSULT THE ARCHITECT FOR ALL INFORMATION.

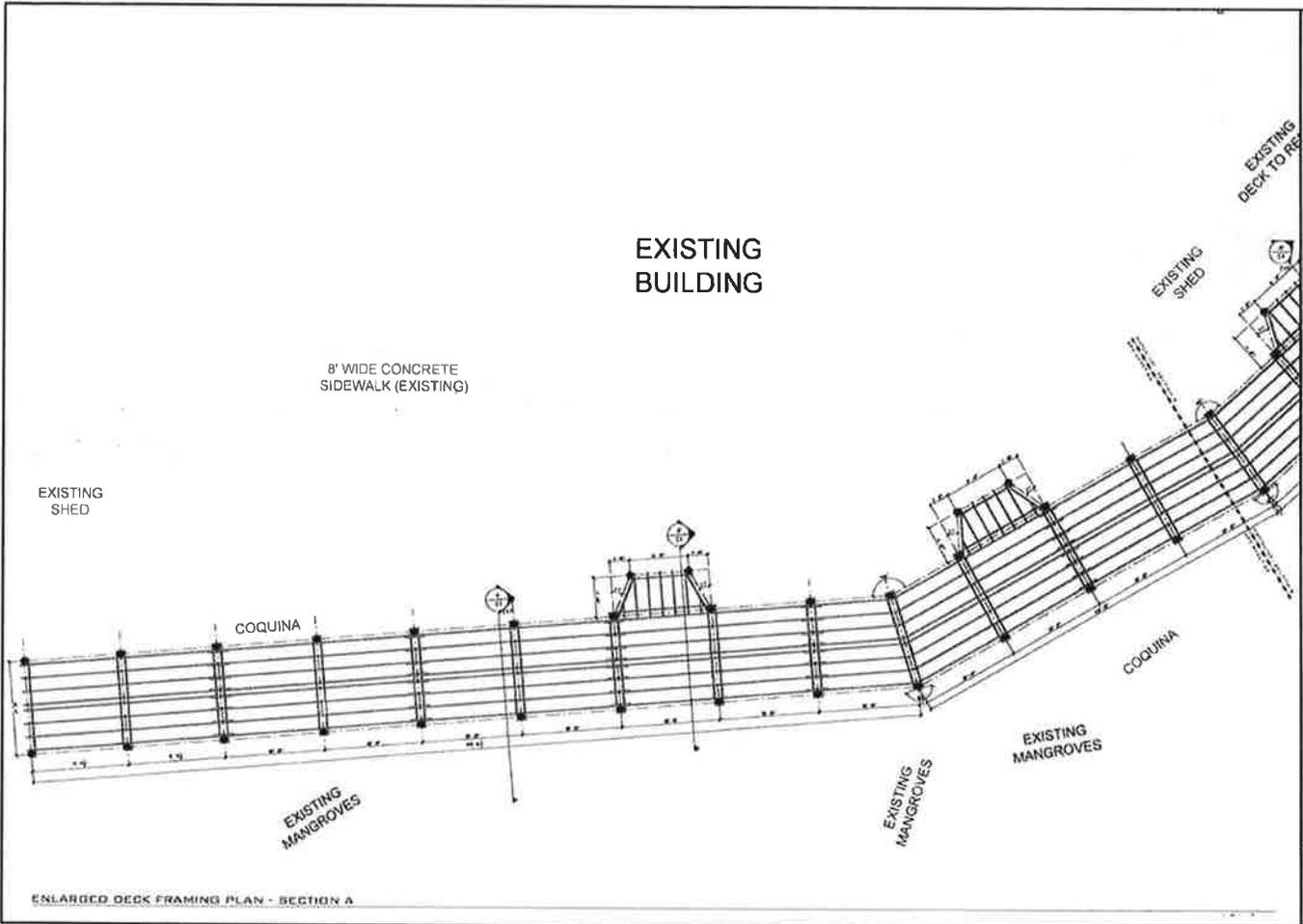
16. DESIGN: CONSULT THE ARCHITECT FOR ALL INFORMATION.
 17. DESIGN: CONSULT THE ARCHITECT FOR ALL INFORMATION.
 18. DESIGN: CONSULT THE ARCHITECT FOR ALL INFORMATION.
 19. DESIGN: CONSULT THE ARCHITECT FOR ALL INFORMATION.
 20. DESIGN: CONSULT THE ARCHITECT FOR ALL INFORMATION.



NO.	REVISION	DATE
1	ISSUED FOR PERMIT	11/15/2018
2	ISSUED FOR PERMIT	11/15/2018
3	ISSUED FOR PERMIT	11/15/2018
4	ISSUED FOR PERMIT	11/15/2018
5	ISSUED FOR PERMIT	11/15/2018
6	ISSUED FOR PERMIT	11/15/2018
7	ISSUED FOR PERMIT	11/15/2018
8	ISSUED FOR PERMIT	11/15/2018
9	ISSUED FOR PERMIT	11/15/2018
10	ISSUED FOR PERMIT	11/15/2018

STRUCTURAL NOTES & PLAN
 VETERANS MEMORIAL PARK
 11/15/2018





EXISTING SHED

8" WIDE CONCRETE SIDEWALK (EXISTING)

EXISTING BUILDING

EXISTING SHED

EXISTING DECK TO RE

COQUINA

COQUINA

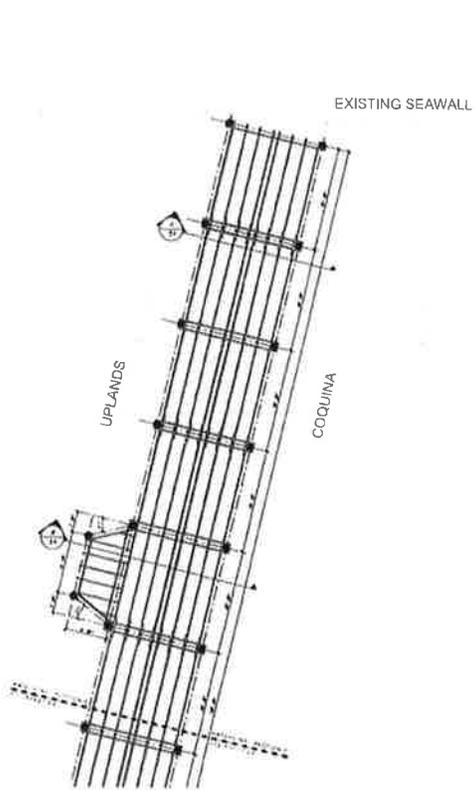
EXISTING MANGROVES

EXISTING MANGROVES

EXISTING MANGROVES

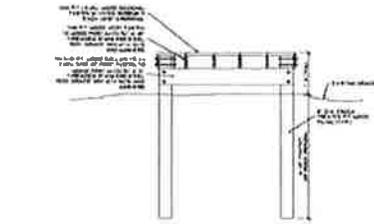
ENLARGED DECK FRAMING PLAN - SECTION A

<p>ENLARGED STRUCTURAL PLANS ENLARGED DECK FRAMING PLAN FOR VETERAN'S MEMORIAL PARK 1000 S. STATE ST. #100 TAMPA, FL 33606</p>
<p>MKS STRUCTURAL ENGINEERING 1000 S. STATE ST. #100 TAMPA, FL 33606 (813) 288-1111</p>
<p>52</p>

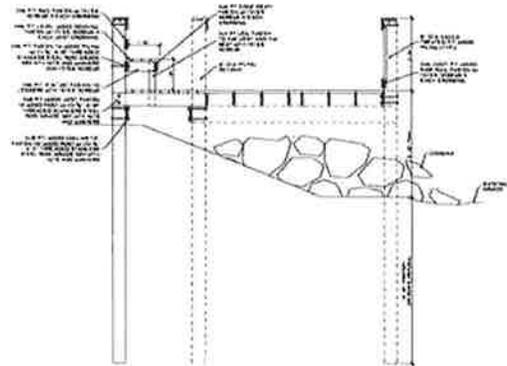


ENLARGED DECK FRAMING PLAN - SECTION D

EXISTING SEAWALL



TYPICAL CONNECTOR DECK SECTION



TYPICAL DECK SECTION AT BENCH

NO.	DATE	BY	CHKD.	APP.
1	11/11/11	J. J. J.	J. J. J.	J. J. J.
2	11/11/11	J. J. J.	J. J. J.	J. J. J.
3	11/11/11	J. J. J.	J. J. J.	J. J. J.
4	11/11/11	J. J. J.	J. J. J.	J. J. J.
5	11/11/11	J. J. J.	J. J. J.	J. J. J.
6	11/11/11	J. J. J.	J. J. J.	J. J. J.
7	11/11/11	J. J. J.	J. J. J.	J. J. J.
8	11/11/11	J. J. J.	J. J. J.	J. J. J.
9	11/11/11	J. J. J.	J. J. J.	J. J. J.
10	11/11/11	J. J. J.	J. J. J.	J. J. J.

ENLARGED STRUCTURAL PLANS
 VETERAN'S MEMORIAL PARK
 11/11/11



ATTACHMENT "E"

**CONSTRUCTION MANAGER'S
PRELIMINARY CONSTRUCTION SCHEDULE**

To be attached

Veteran's Memorial Observation Deck Replacement GMP Contract Schedule				28-Oct-18 08:44																													
Activity ID	Activity Name	Activity % Complete	Original Duration	Early Start	Early Finish	Gantt Chart Timeline (Oct 2018 - Aug 2019)																											
Vel Mem Deck: Veteran's Memorial Observation Deck Replacement GMP Contract						Gantt Chart Timeline (Oct 2018 - Aug 2019)																											
A1000	Contract Award / NTP	0%	1	05-Feb-18	05-Nov-18	Contract Award / NTP																											
A1010	Submittals	0%	37	09-Nov-18	31-Dec-18	Submittals																											
A1020	Mobilization / Temp. Fence	0%	10	03-Dec-18	14-Dec-18	Mobilization / Temp. Fence																											
A1030	Relocate Sheds / Trees / Install SR Fence	0%	15	03-Dec-18	21-Dec-18	Relocate Sheds / Trees / Install SR Fence																											
A1040	Demo Existing Deck	0%	34	14-Dec-18	01-Feb-19	Demo Existing Deck																											
A1050	Install Revealment / Pilings	0%	35	04-Feb-19	22-Mar-19	Install Revealment / Pilings																											
A1060	Construct Observation Deck	0%	45	25-Feb-19	26-Apr-19	Construct Observation Deck																											
A1070	Grading and Soil	0%	20	01-Apr-19	26-Apr-19	Grading and Soil																											
A1080	Reinstall Sheds / Trees / Remove SR Fence	0%	10	22-Apr-19	03-May-19	Reinstall Sheds / Trees / Remove SR Fence																											
A1090	Substantial Completion	0%	0	0	03-May-19	Substantial Completion																											
A1100	Punchlist / Close-Out Documentation	0%	21	09-May-19	03-Jun-19	Punchlist / Close-Out Documentation																											
A1110	Final Completion	0%	0	0	03-Jun-19	Final Completion																											

ATTACHMENT "F"

ORDINANCE 98-37

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3. Potential bidders, the apparent lowest bidder, or the person providing services under any other contract delivery method, and applicable subcontractors identified in the bid or request for qualification package for any County construction project which is to be competitively awarded shall be evaluated to determine whether the bidder and its subcontractors are qualified. In evaluating qualifications, the County shall consider the following information:
 - A Contractor's Pre-Qualification Statement for the prime contractor and subcontractors performing parts of work identified in the bidding documents as critical to the project's success. The Pre-Qualification Statement shall be provided on a form to be established by the County Manager;
 - Most current financial statement, but not more than one (1) year old, indication of bondability, or, if project is under \$100,000, other evidence of financial capability as identified in the bid documents;
 - Resumes of Contractor and Subcontractor's key personnel, including project manager and superintendent levels, showing job history, education related to work to be performed and any license, training, and experience related to the work which that individual will perform;
 - List of subcontractors and suppliers, and items of work to be performed by the Contractor's own work force;
 - County evaluations of the performance on County projects;
 - References obtained from individuals or businesses with whom the contractor or subcontractor has performed work or conducted business;
 - Any other relevant qualifications, data or information identified in the bidding documents to be critical to the success of the project.
4. The County Manager will establish committees which may debar a contractor, contractor's key personnel, contractor's surety, subcontractor and subcontractor's key personnel, or any entity which key personnel are later employed or retained by in a supervisory position, from bidding on any County project under the circumstances enumerated below. The decision to disbar is

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

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

- Conviction or a judgment obtained in a court of competent jurisdiction for:
- Commission of a fraud or a criminal offense as an incident to obtaining, attempting to obtain, or in the performance of a 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 contract provision, as set forth below, when the violation is of a character so as to justify debarment action such as:

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

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

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

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

the other provisions shall remain in full force and effect.

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

ATTACHMENT "G"

PUBLIC CONSTRUCTION PAYMENT BOND

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

THE CONDITIONS OF THIS BOND are that if Principal:

1. Promptly makes payments to all claimants, as defined in Section 255.05(1), Florida Statutes, supplying Principal with labor, materials, or supplies, used directly or indirectly by Principal in the prosecution of the work provided for in the contract dated _____, 20____, between Principal and Owner for construction of _____, the contract being attached hereto and made a part of this bond by reference, in such time and without delay, and in the manner prescribed in the contract; and
2. Pays Owner all losses, damages, expenses, costs, and attorney's fees, including appellate proceedings, that Owner sustains because of a default by Principal under the contract, then this bond is void; otherwise it remains in full force. Any changes in or under the contract documents and compliance or noncompliance with any formalities connected with the contract does not affect Surety's obligation under this bond.

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

Witness:

Principal Seal

Its: _____
Title

Witness:

Surety Seal

Its: _____
Title

ATTACHMENT "H"

PUBLIC CONSTRUCTION PERFORMANCE BOND

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

THE CONDITIONS OF THIS BOND are that if Principal:

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

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

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

Witness:

Principal

Seal

Its: _____

Title

Witness:

Surety

Seal

Its: _____

Title

ATTACHMENT "I"

**CONSTRUCTION MANAGER'S
GUARANTEED MAXIMUM PRICE**

ATTACH HERE

Ivey's Construction, Inc.

4060 N. Courtenay Pkwy • Merritt Island, FL 32953 • CGC 038685 • (321) 453-3812 • FAX: 459-0398

October 18, 2018

Greg Minor, CPRP
Assistant Department Director
Brevard County Parks & Recreation
2725 Judge Fran Jamieson Way, Building B
Viera, FL 32940

Reference: Veteran's Memorial Park Observation Deck Replacement

Subject: GMP Proposal

Greg:

Ivey's Construction, Inc. is pleased to provide the following Guaranteed Maximum Price Proposal for work associated with the Veteran's Memorial Park Observation Deck Replacement Project. Ivey's GMP is based on drawings titled "Veteran's Memorial Park Observation Deck Replacement", dated September 13, 2018, by Morgan & Associates, sheets C-1 through C-3 and S-1 through S-4.

GMP **\$697,373.00**

Our proposal includes the following scope of work:

- Demolition and disposal of existing dock.
- Installation of new revetment.
- Installation of new dock.
- Removal, temporary relocation, and reinstallation of obstructions (sheds, tiki deck, trees, etc.).
- Site restoration and sodding.
- Allowance of \$25,000 for new lighting.
- Builders Risk Insurance.
- Contractor Contingency.
- Full time supervision.

The anticipated schedule is to start January 2019, and complete by May 2019.

Feel free to contact me if you have any questions regarding this proposal.

Thank you,
IVEY'S CONSTRUCTION, INC.



Michael Koons
Estimator



Veteran's Memorial Park Observation Deck Replacement

Date: October 16, 2018

Line	Division	Activity/Scope	Breakdown	Division Totals
1	01	General Requirements		\$96,470
2		Supervision	\$45,360	
3		Project Engineer	\$6,380	
4		Construction Trailer	\$4,500	
5		Storage Box (Shed Items)	\$1,800	
6		Power for Trailer (Hook-up & Monthly Fee)	\$2,350	
7		Field Office Supplies and Equipment	\$750	
8		Cell Phone and Internet	\$650	
9		Dumpster and Fees	\$1,400	
10		Concrete Washout	\$600	
11		Temporary Toilet and Hand Wash	\$1,920	
12		Progress Cleaning / Street Sweeping	\$4,560	
13		Rental Equipment	\$1,000	
14		Temporary Protection	\$1,500	
15		Temporary Site Fencing	\$2,050	
16		Material Testing	\$1,800	
17		Fuel for Vehicle	\$1,650	
18		Survey and Layout	\$15,750	
19		Drawing Reproductions	\$200	
20		Permit	By Owner	
21		Builders Risk Insurance	\$2,000	
22		Misc. GC (small tools, cleaning equip.)	\$250	
23	03	Concrete		\$6,484
24		Removal & Replacement of Sidewalks, 432 SF w/thick. Edge	\$6,084	
25		Replacement A/C Pad	\$400	
26	13	Special Construction		\$11,500
27		Removal, Relocation and Reinstallation of Sheds	\$6,000	
28		Removal, Relocation and Reinstallation of Tiki Deck	\$2,500	
29		Removal, Relocation and Reinstallation of Bench, Signage, etc.	\$3,000	
30	32	Exterior Improvements		\$13,700
31		Tree Trimming for Dock Access	\$2,500	
32		Remove and Replace Cabbage Palm Trees Adjacent to Dock	\$2,400	
33		Condensing Unit Privacy Fence Removal and Reinstallatlon	\$800	
34		Site Restoration & Sod	\$8,000	
35	23	Mechanical		\$8,400
36		Condensing Units Relocation, Temp Set-up and Reinstallation	\$8,400	
37	26	Electrical		\$25,000
38		Lighting Replacement Allowance	\$25,000	
39	35	Marine Construction		\$384,000
40		Dock Replacement & Revetment	\$354,500	
41		Import Coquina Allowance (\$1,500 per 13 CY load x 4 loads)	\$6,000	
42		Hard Substrate Rock Punching / Drilling Allowance	\$23,500	
43		Column Subtotals	\$545,554	\$545,554
44		Contingency		\$50,000.00
45		Subtotal		\$595,554
46		CM Fee 15.94%		\$94,914
47		Subtotal		\$690,468
48		Bond 1%		\$6,905
49		Total GMP		\$697,373

EXHIBIT L
OVERHEAD AND PROFIT

Veteran's Memorial Dock Replacment

	Unit	Unit Price	Est Qty	Total
Office Phone	MO	\$40	5	\$200
Office Supplies	MO	\$50	5	\$250
Postage	MO	\$10	5	\$50
Gas/Oil	MO	\$320	5	\$1,600
Autos/Trucks & Insurance	MO	\$850	5	\$4,250
Project Manager	HR	\$95	132	\$12,540
Estimating Costs	HR	\$65	32	\$2,080
Executive Labor	HR	\$105	4	\$420
Asst. Project Manager	HR	\$55	132	\$7,260
Safety Director	HR	\$50	44	\$2,200
In-house Secretary	HR	\$35	44	\$1,540
Travel Expenditures	LS	\$0	0	\$0
Warranty Expense	LS	\$0	0	\$0
CM Fee	%	10%	\$545,554	\$54,555
			Total Fee	\$86,945
			Fee %	15.94%

ATTACHMENT "J"

CERTIFICATE OF SUBSTANTIAL COMPLETION

(Insert Form Here)

ATTACHMENT "K"

CERTIFICATE OF FINAL COMPLETION

PROJECT NO. & TITLE:
ARCHITECT:
CONTRACT DATE:

CONTRACTOR:
DATE OF FINAL COMPLETION:

CERTIFICATE OF ARCHITECT/ENGINEER

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

A/E Firm Name: _____ By: _____

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

THROUGH THE SUBSTANTIAL COMPLETION PHASE

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

THROUGH THE FINAL COMPLETION PHASE

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

Architect: _____ Date: _____

Project Manager: _____ Date: _____

Facilities Construction Manager: _____ Date: _____

ATTACHMENT "L"

ALLOWABLE COSTS, OVERHEAD

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

EXHIBIT L
OVERHEAD AND PROFIT

Veteran's Memorial Dock Replacment

	Unit	Unit Price	Est Qty	Total
Office Phone	MO	\$40	5	\$200
Office Supplies	MO	\$50	5	\$250
Postage	MO	\$10	5	\$50
Gas/Oil	MO	\$320	5	\$1,600
Autos/Trucks & Insurance	MO	\$850	5	\$4,250
Project Manager	HR	\$95	132	\$12,540
Estimating Costs	HR	\$65	32	\$2,080
Executive Labor	HR	\$105	4	\$420
Asst. Project Manager	HR	\$55	132	\$7,260
Safety Director	HR	\$50	44	\$2,200
In-house Secretary	HR	\$35	44	\$1,540
Travel Expenditures	LS	\$0	0	\$0
Warranty Expense	LS	\$0	0	\$0
CM Fee	%	10%	\$545,554	\$54,555
			Total Fee	\$86,945
			Fee %	15.94%

ATTACHMENT "M"
(Direct Cost Items)
GENERAL CONDITIONS

SUPERINTENDENT

JOB SITE SECRETARY/CLERK

QUALITY CONTROL

See Attached

SURVEY

PERMITS

IMPACT/CONNECTION FEES

CONSTRUCTION DRAWINGS/SPECS

PROGRESS PHOTOGRAPHS *(IF REQUESTED BY THE OWNER)*

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

SPECIAL SECURITY *(IF REQUESTED BY THE OWNER)*

PAYMENT & PERFORMANCE BONDS

BUILDERS RISK INSURANCE

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

TEMPORARY UTILITIES *(AS APPROVED BY THE OWNER)*

TEMPORARY JOBSITE FENCING *(INITIAL INSTALLATION ONLY)*

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

Ivey's Construction, Inc.

4060 N. Courtenay Pkwy • Merritt Island, FL 32953 • CGC 038685 • (321) 453-3812 • FAX: 459-0398

October 18, 2018

Greg Minor, CPRP
Assistant Department Director
Brevard County Parks & Recreation
2725 Judge Fran Jamieson Way, Building B
Viera, FL 32940

Reference: Veteran's Memorial Park Observation Deck Replacement

Subject: GMP Proposal

Greg:

Ivey's Construction, Inc. is pleased to provide the following Guaranteed Maximum Price Proposal for work associated with the Veteran's Memorial Park Observation Deck Replacement Project. Ivey's GMP is based on drawings titled "Veteran's Memorial Park Observation Deck Replacement", dated September 13, 2018, by Morgan & Associates, sheets C-1 through C-3 and S-1 through S-4.

GMP.....\$697,373.00

Our proposal includes the following scope of work:

- Demolition and disposal of existing dock.
- Installation of new revetment.
- Installation of new dock.
- Removal, temporary relocation, and reinstallation of obstructions (sheds, tiki deck, trees, etc.).
- Site restoration and sodding.
- Allowance of \$25,000 for new lighting.
- Builders Risk Insurance.
- Contractor Contingency.
- Full time supervision.

The anticipated schedule is to start January 2019, and complete by May 2019.

Feel free to contact me if you have any questions regarding this proposal.

Thank you,
IVEY'S CONSTRUCTION, INC.



Michael Koons
Estimator

Line	Division	Activity/Scope	Breakdown	Division Totals
1	01	General Requirements		\$96,470
2		Supervision	\$45,360	
3		Project Engineer	\$6,380	
4		Construction Trailer	\$4,500	
5		Storage Box (Shed Items)	\$1,800	
6		Power for Trailer (Hook-up & Monthly Fee)	\$2,350	
7		Field Office Supplies and Equipment	\$750	
8		Cell Phone and Internet	\$650	
9		Dumpster and Fees	\$1,400	
10		Concrete Washout	\$600	
11		Temporary Toilet and Hand Wash	\$1,920	
12		Progress Cleaning / Street Sweeping	\$4,560	
13		Rental Equipment	\$1,000	
14		Temporary Protection	\$1,500	
15		Temporary Site Fencing	\$2,050	
16		Material Testing	\$1,800	
17		Fuel for Vehicle	\$1,650	
18		Survey and Layout	\$15,750	
19		Drawing Reproductions	\$200	
20		Permit	By Owner	
21		Builders Risk Insurance	\$2,000	
22		Misc. GC (small tools, cleaning equip.)	\$250	
23	03	Concrete		\$6,484
24		Removal & Replacement of Sidewalks, 432 SF w/thick. Edge	\$6,084	
25		Replacement A/C Pad	\$400	
26	13	Special Construction		\$11,500
27		Removal, Relocation and Reinstallation of Sheds	\$6,000	
28		Removal, Relocation and Reinstallation of Tiki Deck	\$2,500	
29		Removal, Relocation and Reinstallation of Bench, Signage, etc.	\$3,000	
30	32	Exterior Improvements		\$13,700
31		Tree Trimming for Dock Access	\$2,500	
32		Remove and Replace Cabbage Palm Trees Adjacent to Dock	\$2,400	
33		Condensing Unit Privacy Fence Removal and Reinstallation	\$800	
34		Site Restoration & Sod	\$8,000	
35	23	Mechanical		\$8,400
36		Condensing Units Relocation, Temp Set-up and Reinstallation	\$8,400	
37	26	Electrical		\$25,000
38		Lighting Replacement Allowance	\$25,000	
39	35	Marine Construction		\$384,000
40		Dock Replacement & Revetment	\$354,500	
41		Import Coquina Allowance (\$1,500 per 13 CY load x 4 loads)	\$6,000	
42		Hard Substrate Rock Punching / Drilling Allowance	\$23,500	
43		Column Subtotals	\$545,554	\$545,554
44		Contingency		\$50,000.00
45		Subtotal		\$595,554
46		CM Fee 15.94%		\$94,914
47		Subtotal		\$690,468
48		Bond 1%		\$6,905
49		Total GMP		\$697,373

**EXHIBIT L
OVERHEAD AND PROFIT**

Veteran's Memorial Dock Replacment

	<u>Unit</u>	<u>Unit Price</u>	<u>Est Qty</u>	<u>Total</u>
Office Phone	MO	\$40	5	\$200
Office Supplies	MO	\$50	5	\$250
Postage	MO	\$10	5	\$50
Gas/Oil	MO	\$320	5	\$1,600
Autos/Trucks & Insurance	MO	\$850	5	\$4,250
Project Manager	HR	\$95	132	\$12,540
Estimating Costs	HR	\$65	32	\$2,080
Executive Labor	HR	\$105	4	\$420
Asst. Project Manager	HR	\$55	132	\$7,260
Safety Director	HR	\$50	44	\$2,200
In-house Secretary	HR	\$35	44	\$1,540
Travel Expenditures	LS	\$0	0	\$0
Warranty Expense	LS	\$0	0	\$0
 CM Fee	 %	 10%	 \$545,554	 \$54,555
			Total Fee	\$86,945
			Fee %	15.94%

ATTACHMENT "N"
CERTIFICATE FOR PAYMENT

(INSERT FORM HERE)

Not Applicable

ATTACHMENT "O"

VENDOR AFFIDAVIT REGARDING SCRUTINIZED COMPANY LIST

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

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

STATE OF FLORIDA
COUNTY OF _____

BEFORE ME, the undersigned authority, personally appeared _____, who, being by me first duly sworn, made the following statement:

1. The Business address of _____ (name of bidder or contractor) is _____.
2. My relationship to _____ (name of bidder or contractor) is _____ (relationship such as sole proprietor, partner, president, vice president).
3. I understand that "Boycott of Israel" has the same meaning as defined in §215.4725, Florida Statutes, and means refusing to deal, terminating business activities, or taking other actions to limit commercial relations with Israel, or persons or entities doing business in Israel or in Israeli-controlled territories, in a discriminatory manner. A statement by a company that it is participating in a boycott of Israel, or that it has initiated a boycott in response to a request for a boycott of Israel or in compliance with, or in furtherance of, calls for a boycott of Israel, may be considered by the State Board of Administration to be evidence that a company is participating in a boycott of Israel. The term does not include restrictive trade practices or boycotts fostered or imposed by foreign countries against Israel.
4. I understand that "business operations" means, for purposes specifically related to Cuba or Syria, engaging in commerce in any form in Cuba or Syria, including, but not limited to, acquiring, developing, maintaining, owning, selling, possessing,

leasing, or operating equipment, facilities, personnel, products, services, personal property, real property, military equipment, or any other apparatus of business or commerce.

5. _____ (name of the bidder or contractor) is not on the Scrutinized Companies that Boycott Israel List, created pursuant to s. 215.4725, Florida Statutes, or is engaged in a boycott of Israel.
6. _____ (name of the bidder or contractor) is not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to s. 215.473, Florida Statutes.
7. _____ (name of the bidder or contractor) is not engaged in business operations in Cuba or Syria.

Signature

Sworn to and subscribed before me in the state and county first mentioned above on the _____ day of _____, 20__.

Notary Public

(affix seal)

My commission expires:

ATTACHMENT "P"

MINORITY EMPLOYMENT INFORMATION

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

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

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

Company Name:

Signature: _____ Date: _____

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

Company Name:

Signature: _____ Date: _____

Company Name: _____

Company Address: _____

Company Telephone: _____

Signature: _____ Printed Signature: _____

ATTACHMENT "Q"

PUBLIC ENTITY CRIME ACKNOWLEDGMENT

A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid/quote/proposal on a contract to provide goods or services to a public entity, may not submit a bid/quote/proposal on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids/quotes/proposals on leases of rental property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for Category Two (\$15,000) for a period of thirty six (36) months from the date of being placed on the convicted vendor list.

NON-COLLUSION AFFIDAVIT OF PRIME BIDDER

State of Florida

County of Brevard

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

- (1) Affiant is President of Avey'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 in any way colluded, conspired, connived or agreed, directly or indirectly with any other Bidder, firm or person to submit a collusive or sham bid/quote/proposal in connection with the Contract for which the bid/quote/proposal has been submitted or to refrain from bidding in connection with such Contract, or has in any manner, directly or indirectly, sought by Contract, or has in any manner, directly or indirectly, sought by the agreement or collusion or communication or conference with any other bidder, firm or person to fix the price or prices in the bid/quote/proposal or of any other Bidder, or to fix any overhead, profit or cost element of the bid/quote/proposal price or the bid/quote/proposal price of any other bidder, or to secure through any collusion, conspiracy, connivance or unlawful agreement any advantage against the Board of County Commissioners of Brevard County, Florida, or any person interested in the Contract; and
- (5) The price or prices negotiated for the bid/quote/proposal are fair and proper and are not tainted by any collusion, conspiracy, connivance, or unlawful agreement

on the part of the Bidder or any of its agents, representatives, owners, employees, or parties of interest, including affiant.

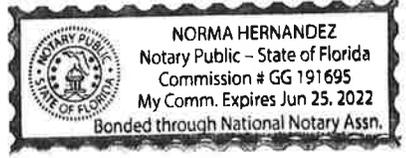
[Handwritten Signature]
Signature

Kenn W. Wey
Title President

Subscribed and sworn to before me this 3rd day of October, 2018.

[Handwritten Signature]
Notary Public

My Commission expires: 6/25/2022



CONTINUING ROOF CONSULTANT SERVICES AGREEMENT

This is an Agreement entered into this 12th day of July 2018, by and between **BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS**, a political subdivision of the State of Florida, hereinafter referred to as COUNTY and **Terracon Consultants, Inc.**, a corporation under the laws of the State of Florida, hereinafter referred to as CONSULTANT, whose address is 1675 Lee Road, Winter Park, Florida 32789.

WHEREAS, the County has a need for the services of a consultant to provide design for roof consulting services, moisture intrusion and building envelope systems under a continuing contract per Florida Statute 287.055;

WHEREAS, the County issued a Request for Qualifications #RFQ-4-18-08 for such services and has selected the CONSULTANT to provide said services;

WHEREAS, this is an Agreement for professional services for projects in which the construction costs do not exceed \$2 million, for study activity when the fee for services for each study does not exceed \$200,000, or for work of a specified nature projects, that may be funded or submitted for reimbursement by/through the Federal Emergency Management Agency, as outlined herein.

For and in consideration of the mutual agreement hereinafter contained, the COUNTY hereby retains the CONSULTANT and the CONSULTANT hereby covenants to provide continuing architectural/engineering services as prescribed herein.

SECTION 1 - GENERAL IDENTIFICATION OF SERVICES

All continuing services provided by the CONSULTANT for the COUNTY shall be identified in Work Orders. Work Orders shall entail a description of services to be performed, a statement of fees, proposed schedule for compensation, a projected schedule for completion of the work, project team members assigned to supervise/perform services provided under the Work Order, and any other terms or conditions specific to the Work Order to be performed by the CONSULTANT, including terms that may be specific to projects that may be funded or submitted for reimbursement by/through the Federal Emergency Management Agency. A Work Order shall not give rise to any contractual rights until approved by the COUNTY in the form of a written Notice to Proceed signed by an authorized representative of the COUNTY. The written Notice to Proceed and specific Work Order, as approved by the COUNTY, shall together constitute an addendum to this Agreement.

The Federal Emergency Management Agency (FEMA) Clauses and Certifications included herein, or attached hereto, control over any conflicting clauses contained within the separate Agreements, covering the work for each Project, between the COUNTY and the CONSULTANT, when the Work involved will be submitted by/through FEMA for reimbursement to the COUNTY.

The FEMA Clauses and Certifications are attached hereto, and incorporated by this reference, as Attachment "A."

Services to be provided by the CONSULTANT under this Agreement, depending on the project, may include:

- A. Peer review of design documents and recommendations to improve roof design(s) and building envelope systems by preventing leaks and minimizing warranty issues;
- B. Full design services for roof, moisture intrusion and building envelope system repairs and/or replacements on County facilities;
- C. Consult and inspect existing roofs, and identify any issues/problems related to moisture intrusion, mold, and the building envelope system and provide recommendations to correct deficiencies, as well as cost estimates and schedules when required;
- D. Consult on building envelope systems issues and provide recommendations to correct deficiencies, as well as cost estimates and schedules when required;
- E. Consult on building envelope systems during construction to ensure compliance with manufacturer's criteria and specifications, as well as with Consultant plans and specifications;
- F. Pre-qualify roof contractors to meet manufacturer's warranty installation requirements, and other County qualification requirements;
- G. Provide reports on all above as required;
- H. Any other consultant services needed of roof consultant related to moisture intrusion, mold, or building envelope system that may be requested by Brevard County;
- I. Building envelope systems are defined as slab on grade/below grade construction, structural and non-structural exterior walls, and penetrations/wall opening/flashing components;
- J. Peer review of building envelope systems may include topics such as structural/wind resistance, water penetration, air infiltration, condensation resistance, differential movement, energy conservation, sound attenuation, fire resistance, security performance, durability, economy and maintainability, as well as sustainability.

SECTION II - COUNTY OBLIGATIONS

The COUNTY shall furnish to the CONSULTANT, upon request, any data available in the COUNTY'S files pertaining to the work to be performed under this Agreement.

SECTION III - CONTINUING ROOF CONSULTANT SERVICES

Upon receipt of Notice to Proceed, CONSULTANT agrees to perform continuing roof consultant services associated with the requested work in accordance with the negotiated terms of the applicable Proposal, and in accordance with accepted professional standards and practices. The CONSULTANT agrees to correct any errors and omissions and prepare any revisions which may be required because plans and/or specifications were found defective, without any increase in price. This remedy shall be cumulative to all other remedies available

under law.

In connection with continuing roof consultant services to be rendered pursuant to this Agreement, the CONSULTANT further agrees to:

- A. Maintain an adequate staff of qualified personnel.
- B. Comply with federal, state and local laws applicable to the work.
- C. Cooperate fully with the COUNTY in the scheduling and coordination of all phases of the work.
- D. Cooperate and coordinate with other COUNTY consultants, as directed by the COUNTY.
- E. Report the status of the work to the COUNTY upon request and hold pertinent data, calculations, field notes, records, sketches and other projects open to the inspection of the COUNTY or its authorized agent at any time.
- F. Submit for COUNTY review design computations, sketches and other data representative of the work's progress at the percentage stages of completion which may be stipulated in the applicable Work Order. **This shall include a Division 16 Estimate of Probable Construction Cost at each design submittal.** Submit for COUNTY approval the final work product upon incorporation of any modifications requested by the COUNTY during any previous review. Any COUNTY approval of the CONSULTANT'S plans, design or specifications shall not be deemed to diminish the CONSULTANT'S responsibility;
- G. Confer with the COUNTY during the further development and implementation of improvements for which the CONSULTANT has provided design or other services.
- H. Interpret plans and other documents, correct error and omissions and prepare any necessary plan revisions not involving change in the scope of work required, at no additional cost.
- I. Prior to final approval of the work by the COUNTY, conduct and complete a preliminary check of any construction documents through any review committee, third party consultant or any county, city, state or federal agency from which a permit or other approval is required.
- J. Regarding any resulting construction, the CONSULTANT will review all pre-qualification documents, bids and make recommendations regarding award to the lowest responsible bidder. The CONSULTANT shall review and approve the contractor's Schedule of Values.
- K. Prior to commencement of construction, the CONSULTANT shall attend a pre-construction conference. Representatives from the Owner, Contractor and CONSULTANT shall attend to discuss policies and procedures to be followed during the construction period, and answer questions regarding design intent, clarification or interpretation of the construction documents.
- L. The CONSULTANT will review and approve or reject, as appropriate, all Contractor Applications for Payment submitted during the construction of work.
- M. The CONSULTANT will review and approve or reject, as appropriate, all contractor submitted as-built drawings, warranties and operation and maintenance manuals for completeness and conformance with the contract requirements and submit to the Owner indicating their approval.

- N. The CONSULTANT will prepare record drawings and specifications showing significant changes in the work made during construction based on marked-up prints, drawings and other data furnished by the contractor to the CONSULTANT, utilizing AutoCad Release 12 or newer software or compatible approved by the Owner. **One (1) set of reproducible record drawings, in electronic format, is to be submitted to the Owner with Certificate of Final Completion.**
- O. The CONSULTANT will prepare and distribute meeting minutes at all design phase meetings and progress meetings, in a format approved by the Owner. In addition to the regular scheduled construction site visits and progress meetings, this Agreement shall include, at no additional cost to the Owner, the Substantial & Final Completion Inspection(s) and the warranty inspection with the appropriate written reports and certifications.
- P. The CONSULTANT shall respond promptly and completely to all Requests For Information or clarifications regarding the drawings and specifications so as not to cause a delay in the construction schedule.

SECTION IV - TIME OF COMPLETION

The services to be rendered by the CONSULTANT for each section of the work shall commence upon receipt of a written Notice to Proceed from the COUNTY subsequent to the execution of the Agreement, and shall be completed within the time stated in the Proposal.

SECTION V - COMPENSATION

The COUNTY agrees to pay and the CONSULTANT agrees to accept, for services rendered pursuant to this Agreement, fees and other compensation computed in accordance with one or a combination of the methods outlined below, and as specified in an approved Proposal:

- A. Hourly Rate - the CONSULTANT shall be compensated at the attached Hourly Rate Schedule (Attachment "A") for each hour of time engaged directly in the work. The CONSULTANT will provide a detailed breakdown for hours spent for the peer review process and hours spent for construction monitoring.
- B. Reimbursable Expenses - The CONSULTANT shall be compensated for certain work-related expenditures not covered by fees for consulting services, provided such expenditures are previously authorized by the COUNTY in an approved Work Order. Upon receipt of satisfactory back up materials, the CONSULTANT will be compensated for such reimbursable expenses at a rate of 1 times actual expenses. Such expenses may include:
 - 1. Expenses for document reproduction or other incidental expenses. These expenses shall be reimbursed on a direct cost basis to cover labor and expenses.
 - 2. Other miscellaneous reimbursable expenses previously authorized by the COUNTY (ie: permits).
- C. At least thirty (30) days prior to each anniversary date of this Agreement either party may request an adjustment to the rates provided for herein to apply in the

forthcoming year. Failure of the parties to agree on a new rate shall constitute a basis for issuing a Notice of Termination by the COUNTY. Any proposed change in rates by the CONSULTANT shall be subject to the prior approval of the COUNTY.

- D. In the event CONSULTANT experiences any delay resulting from circumstances beyond its control, or a change in the scope of work which will result in an increase or decrease in a Proposal's price or time, CONSULTANT shall provide immediate notice to the COUNTY for consideration of additional compensation or time. Additional compensation shall be limited to direct costs resulting from the delay or change in work as provided in Section V of this Agreement.

SECTION VI - PAYMENT AND PARTIAL PAYMENTS

Subject to the COUNTY'S right to withhold any amounts reasonably necessary to complete or correct defective or substandard work, the COUNTY shall make monthly payments or partial payments to the CONSULTANT for all authorized work performed during the previous calendar month in accordance with the "Florida Prompt Payment Act."

- A. The CONSULTANT shall submit signed invoices to the COUNTY.
- B. The amount of each invoice submitted shall be the amount due for all services performed to date in connection with authorized work, as certified by the CONSULTANT. Each invoice shall include any prior authorized reimbursable expenses and must reference the particular Purchase Order which authorized the services performed. The invoice shall be accompanied by copies of invoices for reimbursable expenses.
- C. Invoices for work other than lump sum shall include a breakdown for each part of the work billed for each item and personnel as identified in Attachment "A". Copies of all invoices paid by the CONSULTANT for expenses shall be included with the CONSULTANT's invoice.

SECTION VII - SCHEDULE OF WORK

The COUNTY shall have the sole right to determine on which units or sections of the work the CONSULTANT shall proceed with and in what order. Should a Proposal revision affect a change in scope, cost, or schedule, the CONSULTANT shall submit such revisions for review and, if warranted, approval by the COUNTY in writing.

SECTION VIII - RIGHT OF DECISIONS

All services shall be performed by the CONSULTANT to reasonable professional standards and practices and to the reasonable requirements of the COUNTY. COUNTY staff shall decide and dispose of all claims, questions and disputes arising under this Agreement. Such determination shall be final, conclusive and binding upon the parties hereto unless such determination is clearly arbitrary or unreasonable. In the event the CONSULTANT does not concur with the decisions of the COUNTY, within ten (10) calendar days after determination by COUNTY staff, the CONSULTANT shall present any such objections in writing to COUNTY staff and, upon request, any adverse determination shall be referred to an appeal board comprised of a representative of the County Attorney's Office, County Manager and the Facilities Department Director for review and disposition at a hearing to be held within ten (10) calendar days after

receipt of the appeal. This paragraph does not constitute a waiver of either party's right to proceed in a court of competent jurisdiction, provided that prior to filing any suit the CONSULTANT goes through the appeal process established in this Agreement and provided further that the CONSULTANT strictly abides by the ten day time deadline set forth in this paragraph.

SECTION IX - OWNERSHIP OF DOCUMENTS

All reports, tracings, plans, specifications, maps, contract documents and/or other work products developed by the CONSULTANT pursuant to this Agreement shall remain the property of the CONSULTANT. The COUNTY retains the right of use of these documents at their own risk. When each individual section of work requested pursuant to this Agreement is complete, all of the above work products shall be delivered to the COUNTY for its use.

SECTION X - REUSE OF DOCUMENTS

The CONSULTANT may not reuse plans, specifications or reports specifically developed by the CONSULTANT for the COUNTY without express written permission from the COUNTY.

SECTION XI - NOTICES

Any legal notices from the CONSULTANT to the COUNTY shall be considered delivered when posted by certified mail or delivered in person to the COUNTY, Attention: Mary Bowers, Support Services Manager, Brevard County Facilities Department, 2725 Judge Fran Jamieson Way, Building "A", Viera, Florida 32940.

Any legal notices from the COUNTY to the CONSULTANT shall be considered delivered when posted by certified mail to the CONSULTANT at the last address left on file with the COUNTY or delivered in person to said CONSULTANT of the CONSULTANT'S authorized representative.

SECTION XII - AUDIT RIGHTS

The COUNTY or any of its duly authorized representatives reserves the right to audit the records of the CONSULTANT related to this Agreement at any time during the prosecution of the work included herein and for a period of three (3) years after final payment is made.

Both parties understand that Brevard County is subject to the Florida Public Records Law, Chapter 119, Florida Statutes. "Public Records" are defined "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency" Fla. Stat. 119.011(12).

Pursuant to Florida Statute Chapter 119, generally, and 119.0701 specifically, if records created by the COUNTY or the CONSULTANT related to the performance of the services under this Agreement do not fall under a specific exemption under Florida or federal law, the records - whether created or maintained by the CONSULTANT or the COUNTY- must be provided to anyone making a public records request. It will be the CONSULTANT'S duty to identify any

information in records created by the CONSULTANT which it deems is exempt under Florida or federal law and identify the statute number which requires the information be held exempt.

A request to inspect or copy public records relating to this Agreement must be made directly to the COUNTY. If the COUNTY does not possess the requested records, the COUNTY shall immediately notify the CONSULTANT of the request, and the CONSULTANT must provide the COUNTY with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided pursuant to Florida Statute Chapter 119 and Brevard County Board Policy.

Should any person or entity make a public records request of the COUNTY which requires or would require the COUNTY to allow inspection or provide copies of records which the CONSULTANT maintains are exempt under the Public Records Law or otherwise confidential, it shall be the CONSULTANT'S obligation to provide the County within a reasonable time of notification by the COUNTY to the CONSULTANT of the records request, of the specific exemption or confidentiality provision to allow the County to comply with the requirements of Florida Statute 119.07(1)(e) and (f). Should the County face any kind of legal action to require or enforce inspection or production of any records provided by the CONSULTANT to the County which the CONSULTANT maintains are exempt or confidential from such inspection/production as a public record, the CONSULTANT shall hire and compensate attorney(s) who shall represent the interests of the County as well as the CONSULTANT in defending such action. The CONSULTANT shall also pay any costs to defend such action and shall pay any costs and attorney's fees which may be awarded pursuant to Fla. Stat. 119.12.

Should the CONSULTANT fail to provide the public records to the COUNTY within a reasonable time, the CONSULTANT is subject to penalties under s. 119.10.

The CONSULTANT shall ensure that all public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the Agreement if the CONSULTANT does not transfer the records to the COUNTY.

Upon completion of the Agreement, the CONSULTANT shall transfer, at no cost, to the COUNTY all public records in possession of the CONSULTANT or keep and maintain public records required by the COUNTY to perform the service. If the CONSULTANT transfers all public records to the COUNTY upon completion of the Agreement, the CONSULTANT shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the CONSULTANT keeps and maintains public records upon completion of the Agreement, the CONSULTANT shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the COUNTY, upon request from the COUNTY's custodian of public records, in a format that is compatible with the information technology systems of the COUNTY.

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) 633-2050.

SECTION XIII - SUBCONTRACTING

The CONSULTANT shall not subcontract, assign, or transfer any work under this Agreement without the written approval of the COUNTY. When applicable, the CONSULTANT shall cause the names of any subcontracted firms responsible for major portions (or separate specialty) of the work to be inserted in the pertinent documents or data.

SECTION XIV - CONTINGENT FEES

The CONSULTANT represents that no person or company, excepting a bona fide employee, was employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, any fee commission, contribution, donation, gift or any other consideration, contingent upon, or resulting from award of this Agreement. For any breach or violation of this provision, the COUNTY shall have the right to terminate this Agreement, without liability, and, at its discretion, to deduct from the contract price or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration and any damages and shall be responsible for reporting the details of such breach or violation to the proper legal authorities where and when appropriate.

SECTION XV - TERMINATION/MODIFICATION OF AGREEMENT

- A. The CONSULTANT may terminate this Agreement for any reason upon thirty (30) days written notice, provided that any outstanding approved Work Order, upon which an Authorization to Proceed has been issued, is completed by the CONSULTANT.
- B. The County may terminate this Agreement for any reason, for its convenience, upon thirty (30) days written notice. In the event of termination by the COUNTY, the COUNTY's sole obligation to the CONSULTANT shall be payment for those portions of satisfactorily, completely performed work previously authorized by approved Proposal. Such payment shall be determined on the basis of hours of work performed by the CONSULTANT and agreed upon by the COUNTY up to the time of termination. In the event of such termination, the COUNTY may, without penalty or other obligation to the CONSULTANT, elect to employ other persons to perform the same or similar services.
- C. The terms of this Agreement may be modified upon the mutual agreement of the CONSULTANT and the COUNTY as confirmed in writing.
- D. In the event that the CONSULTANT changes his name, merges with another company, becomes a subsidiary or makes other substantial change in structure or in principals, the COUNTY reserves the right to terminate this Agreement subject to the terms prescribed above.

SECTION XVI - DURATION OF AGREEMENT

This Agreement shall remain in full force and effect for a period of one (1) year after its

date of execution, although actual completion of services hereunder may extend beyond such term, unless this Agreement is terminated by mutual consent of the parties as otherwise provided herein. The performance of specially and properly authorized projects may extend beyond the Agreement's one-year effective term and shall be compensated in accordance with Section IV hereof. In addition, subject to the COUNTY'S sole discretion, if no change in Attachment "A" is proposed, this Agreement may be extended in one (1) year increments for up to three (3) years beyond the initial one (1) year period of the Agreement only if no change in price is proposed by the CONSULTANT under Paragraph 5D above.

SECTION XVII - DEFAULT

In the event the CONSULTANT fails to comply with the provisions of this Agreement, the COUNTY may declare the CONSULTANT in default by written notification. In the event partial payment has been made for continuing roof consultant services not completed, the CONSULTANT shall return any sums due to the COUNTY as a result of CONSULTANT'S default within ten (10) days after notice and demand that said sums are due. The CONSULTANT shall not be compensated on a percentage of any deficient continuing roof consultant services which have been performed at the time the COUNTY declares a default. The COUNTY shall pay for that portion, if any, of the performed work which is used or useful by any other consultant retained by the COUNTY to finish the work to the extent that the COUNTY does not incur additional costs over those set forth in the CONSULTANT's canceled Purchase Order.

Any default by the COUNTY for causes which are later determined to be invalid shall be considered a termination by the COUNTY for convenience and compensated as provided in Section XV.

SECTION XVIII - INDEMNIFICATION AND INSURANCE

The CONSULTANT shall provide the following described insurance policies with insurers acceptable to the COUNTY. The CONSULTANT shall provide and maintain at all times during the terms of the Agreement, without cost or expense to the COUNTY, policies of insurance generally known as comprehensive general liability policies, and professional errors and omissions liability coverage. These policies of insurance shall cover the CONSULTANT for any and all claims, demands, and expenses whatsoever, including defense and causes for action for general damages, bodily injury and property damage arising out of or to the extent caused by negligent acts, errors or omissions of the CONSULTANT. Said policies shall provide limits in the amount not less than \$1,000,000.00 per occurrence to cover any and all claims arising in connection with any particular accident or occurrence. Said policies shall be endorsed to name the County, its officers and employees as additional insured and to provide the County with thirty (30) days advance written notice of its cancellation or of any changes.

The CONSULTANT shall provide and maintain Workers' Compensation insurance (for statutory limits) for all workers to provide services under the scope of this Agreement. The COUNTY shall be entitled to thirty (30) days written notice of any changes or cancellations of said policies. These insurance requirements shall not relieve or limit the liability of the CONSULTANT. The COUNTY does not in any way represent that these types or amounts of

insurance are sufficient or adequate to protect the CONSULTANT'S interests or liabilities, but are merely minimums.

The CONSULTANT agrees to indemnify, defend and hold the COUNTY harmless against any and all claims, causes of action or liability for bodily injury, sickness, disease, death or personal injury or damage to property or loss of use resulting therefrom to the extent caused by negligent acts, errors or omissions of the CONSULTANT. The CONSULTANT agrees to indemnify and pay on behalf of the COUNTY the cost of the COUNTY'S legal defense of all claims described herein. Such payment on behalf of the COUNTY shall be in addition to any and all other legal remedies available to the COUNTY and shall not be considered to be the COUNTY's exclusive remedy. It is agreed by the parties hereto that specific consideration has been paid under this Agreement for this hold harmless provision.

SECTION XIX - QUALITY CONTROL

The CONSULTANT shall provide a high level of quality control and accuracy. The COUNTY may request additional data collection or re-analysis of data at no expense to the COUNTY. If the original data collected and/or the data analysis is found to be accurate and reasonable, the CONSULTANT shall be compensated for the additional work in accordance with Section IV of this Agreement.

The CONSULTANT acknowledges that the COUNTY will periodically evaluate the CONSULTANT's performance and that the evaluation will be used by the COUNTY in determining the CONSULTANT'S qualifications for future contracts with COUNTY.

SECTION XX – NON DISCRIMINATION

Non-discrimination: Respondent shall not discriminate as to race, sex, color, creed, handicap or national origin in the operations conducted under this engagement.

SECTION XXI - NON EXCLUSIVE AGREEMENT

The parties acknowledge that this Agreement is not an exclusive Agreement and the COUNTY may employ other engineers, professional or technical personnel to furnish services for the COUNTY, as the COUNTY, in its sole discretion, finds is in the public interest.

The COUNTY reserves the right to assign such work to the CONSULTANT as it may approve in the sole discretion of the COUNTY.

SECTION XXII - TRUTH IN NEGOTIATIONS

In accordance with the provisions of Chapter 287.055, Florida Statutes, the CONSULTANT agrees to execute a truth-in-negotiations certificate and agrees the original contract price and any additions may be adjusted to exclude any significant sums by which the contract price was increased due to inaccurate, incomplete or non-current wage rates and other factual unit costs.

SECTION XXIII - INTEREST OF MEMBERS OF DISTRICT AND OTHERS

No officers, members or employees of the COUNTY, and no members of its governing body, and no other public official of the governing body of the locality or localities in which services for the facilities are situated or carried out, who exercised any functions or

responsibilities in the review or approval of the undertaking or carrying out of this project, shall participate in any decision relating to this Agreement which affects their personal interest, or have any personal or pecuniary interest, direct or indirect, in this Agreement or the proceeds thereof.

SECTION XXIV - INTEREST OF CONSULTANT

The CONSULTANT covenants that it presently has no conflict of interest and shall not acquire any interest, direct or indirect, which shall conflict in any manner or degree with the performance of services required to be performed under this Agreement. The CONSULTANT further covenants that in the performance of this Agreement no person having any such interest shall be employed.

The Consultant shall perform the services under this Agreement as an independent Consultant and nothing contained herein shall be construed to be inconsistent with this relationship or status. Nothing in this Agreement shall be interpreted or construed to constitute the Consultant or any of its agents or employees to be the agent, employee or representative of the County.

SECTION XXV - ENTIRETY OF AGREEMENT

This writing, together with Proposals and signed Notices to Proceed that may follow, embody the entire Agreement and understanding between the parties hereto, and there are not other agreements and understandings, oral or written, with reference to the subject matter hereof that are not merged herein.

No alteration, change or modification of the terms of this Agreement shall be valid unless made in writing, signed by both parties hereto as an addendum to this Agreement, or as specifically prescribed in a Proposal.

SECTION XXVI – VENUE, ATTORNEYS FEES

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

This Agreement shall be governed, interpreted and construed according the ordinances and laws of Brevard County and the State of Florida. Any action brought to enforce the terms or litigate the terms of this Agreement shall be brought in Brevard County, Florida.

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

ATTEST:



Scott Ellis, Clerk

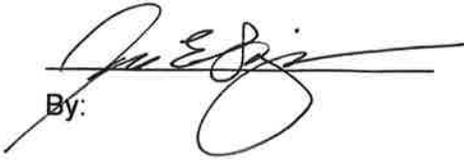
BREVARD COUNTY BOARD OF
COUNTY COMMISSIONERS:



Rita Pritchett, Chair

As Approved By the Board: _____

WITNESS:


By: _____

Terracon Consultants, Inc.


By: _____
BRIAN J. DUCHENE
OFFICE MANAGER / PRINCIPAL

ATTACHMENT "A"

FEMA CLAUSES AND CERTIFICATIONS

During the performance of this Agreement, the CONSULTANT agrees as follows:

1. The CONSULTANT will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The CONSULTANT will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CONSULTANT agrees to post in conspicuous places, available to all employees and applicants for employment, notices to be provided setting forth the provisions of this non-discrimination clause.
2. The CONSULTANT will, in all solicitations or advertisements for employees placed by or on behalf of the CONSULTANT, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.
3. The CONSULTANT will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or worker's representatives of the CONSULTANT's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The CONSULTANT will comply with all provisions of Executive Order 11246 of September 24, 1965, and the rules, regulations and relevant orders of the Secretary of Labor.
5. The CONSULTANT will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
6. In the event of the CONSULTANT's non-compliance with the non-discrimination clauses of this Agreement or with any of the said rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and the CONSULTANT may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
7. The CONSULTANT will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or

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

8. **Clean Air Act and the Federal Water Pollution Control Act:** (For all contracts in excess of \$150,000)

A. **Clean Air Act –**

- i. The CONSULTANT agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- ii. The CONSULTANT agrees to report each violation to the COUNTY through its Facilities Department and understands that the Brevard County Facilities Department will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- iii. The CONSULTANT agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

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

- i. The CONSULTANT agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- ii. The CONSULTANT agrees to report each violation to the COUNTY through its Facilities Department and understands and agrees that the Brevard County Facilities Department will, in turn, report each violation to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- iii. The CONSULTANT agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

9. **Suspension and Debarment:**

- A. This Agreement is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the CONSULTANT is required to verify that neither the CONSULTANT, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

- B. The CONSULTANT must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- C. This certification is a material representation of fact relied upon by the COUNTY. If it is later determined that the CONSULTANT did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the State of Florida (Division of Emergency Management) and the County, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- D. The CONSULTANT agrees to comply with the requirements of 2 C.F.R. pt.180, subpart C and 2 C.F.R. pt. 3000, subpart C while this Agreement is valid. The CONSULTANT agrees to include a provision requiring such compliance in its lower tier covered transactions.

10. **Byrd Anti-Lobbying Amendment, 31 U.S.C. . § 1352 (as amended):**

Contractors, including the CONSULTANT, who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee or a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier-to-tier up to the recipient.

11. **Procurement of Recovered Materials:**

In the performance of this Agreement, the CONSULTANT shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired:

- A. Competitively within a timeframe providing for compliance with the Agreement performance schedule;
- B. Meeting Agreement performance requirements; or
- C. At a reasonable price.

Information about this requirement, along with the list of EPA-designate items, is available at EPA's Comprehensive Procurement Guidelines website at <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

12. **Additional FEMA Requirements:**

A. **Access to Records:**

- i. The CONSULTANT agrees to provide the COUNTY, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers and records of the CONSULTANT which are directly pertinent to this

Agreement for the purposes of making audits, examinations, excerpts and transcriptions.

- ii. The CONSULTANT agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- iii. The CONSULTANT agrees to provide the FEMA Administrator or his authorized representative access to construction or other work sites pertaining to the work being completed under the Agreement.

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

The CONSULTANT shall not use DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

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

The CONSULTANT acknowledges that FEMA financial assistance will be used to fund this Agreement and resulting Agreements only. The CONSULTANT will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures and directives.

D. No Obligation by Federal Government:

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

E. Fraud and False or Fraudulent or Related Acts:

The CONSULTANT acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the CONSULTANT's actions pertaining to this Agreement.

ATTACHMENT "B"

CONTINUING ROOF CONSULTANT SERVICES AGREEMENT

RFQ-4-18-08

NEGOTIATED STANDARD HOURLY RATE SCHEDULE

POSITION	HOURLY RATE *
Principal	\$160.00
Project Architect/Manager	\$150.00
Outside Consultant	\$120.00
Quality Assurance/Construction Admin/Field	\$90.00
CAD Designer/Operator/Technician	\$70.00
Clerical/Admin/Word Processing	\$60.00

ATTACHMENT "C"

PUBLIC ENTITY CRIME AFFIDAVIT

A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid/quote/proposal on a contract to provide goods or services to a public entity, may not submit a bid/quote/proposal on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids/quotes/proposals on leases of rental property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

**CONTINUING
CONSTRUCTION MANAGER (AT RISK)
SERVICES AGREEMENT
(Federal Emergency Management Agency Projects)**

THIS AGREEMENT, entered into this 12th day of July, 2018 by and between **BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS**, a political subdivision of the State of Florida, hereinafter referred to as COUNTY, and **Heard Construction, Inc.** whose address is **95 East Hall Road, Merritt Island, Florida 32953**, a corporation under the laws of the State of Florida, hereinafter referred to as CONSTRUCTION MANAGER.

For and in consideration of the mutual agreement hereinafter contained, the COUNTY hereby retains the CONSTRUCTION MANAGER and the CONSTRUCTION MANAGER hereby covenants to provide Continuing Construction Manager (At Risk) Services for projects that may be funded or submitted for reimbursement through the Federal Emergency Management Agency (\$1 - \$2,000,000 each).

ARTICLE 1

- 1.1 The CONSTRUCTION MANAGER agrees to furnish its best skill and judgement and to cooperate with the Architect/Engineer, where applicable, in furthering the interest of the COUNTY. The CONSTRUCTION MANAGER agrees to furnish efficient business administration and supervision and to use its best efforts to complete the Project(s) in an expeditious and economical manner consistent with the interests of the COUNTY.
- 1.2 The Construction Team: The CONSTRUCTION MANAGER, the COUNTY and the Architect/Engineer (the "Construction Team") will work as a team through construction completion. The CONSTRUCTION MANAGER shall provide leadership to the Construction Team on all matters relating to construction. The Architect/Engineer will provide leadership to the Construction Team on all matters relating to design.

ARTICLE 2

- 2.1 The CONSTRUCTION MANAGER'S basic services under this Agreement include construction management services for various projects that may be funded or submitted for reimbursement through the Federal Emergency Management Agency (\$1-\$2,000,000). For each proposed Project, the COUNTY and the CONSTRUCTION MANAGER shall enter into a separate Agreement between COUNTY/Owner and Construction Manager (**Attachment "A"**). The Federal Emergency Management Agency clauses and certifications included herein, or attached hereto, control over any conflicting clauses contained within the separate Agreements, covering the work for each Project, between the COUNTY and the CONSTRUCTION MANAGER.
- 2.2 Selection for each proposed Project will be per Florida Statute 287.055, and Qualification Based Selection Criteria as follows:
 - A. Ability of firms professional personnel given the project's special characteristics;
 - B. Willingness to meet time and budget requirements;

- C. Physical location of firm;
 - D. Recent, current and projected workload of the firms available under the continuing contract;
 - E. Volume of work previously awarded to the firm by the County, provided distribution does not violate the principles of selection of the most qualified firm for the project;
 - F. Previous experience on County projects, including staff evaluations on file with Brevard County Facilities and Brevard County Purchasing Services.
- 2.3** The Contract Time for performance of each proposed Project shall be established in the "Agreement Between Owner and Construction Manager" for each proposed Project, including the Notice to Proceed.
- 2.4** This Agreement shall remain in effect for a period of one (1) year, and may be renewed for an additional three (3) one-year increments at the COUNTY'S option, based upon satisfactory performance of the CONSTRUCTION MANAGER.
- 2.5** Termination/Modification of Agreement
- A. Either party may terminate this Agreement for any reason upon thirty (30) days written notice, provided that, in the event CONSTRUCTION MANAGER so terminates, any outstanding approved Work Order upon which a Notice to Proceed has been issued is completed by the CONSTRUCTION MANAGER.
 - B. In the event of termination by the COUNTY, the COUNTY's sole obligation to the CONSTRUCTION MANAGER shall be payment for those portions of work satisfactorily completed which were previously authorized by approved Work Order. Such payment shall be determined on the basis of hours of work performed by the CONSTRUCTION MANAGER and agreed upon by the COUNTY up to the time of termination. In the event of such termination, the COUNTY may, without penalty or other obligation to the CONSTRUCTION MANAGER, elect to employ other persons to perform the same or similar services.
 - C. The terms of this Agreement may be modified upon the mutual agreement of the CONSTRUCTION MANAGER and the COUNTY as confirmed in writing.
 - D. In the event that the CONSTRUCTION MANAGER changes the firm's name, merges with another company, becomes a subsidiary, substitutes any project team members, or makes other substantial change in structure or in principals, the COUNTY reserves the right to terminate this Agreement subject to the terms prescribed above.
 - E. The CONSTRUCTION MANAGER shall not be allowed to substitute project team members named in its response, during the course of the Agreement, without prior written permission of the COUNTY.
- 2.6** The Guaranteed Maximum Price (GMP) for each proposed Project shall include the Cost of the Work required by the Contract Documents, and the CONSTRUCTION MANAGER'S fee. The GMP will be negotiated based on Contract Documents, Plans & Specifications for each proposed Project provided by the COUNTY.
- 2.7** Payment & Performance Bonds will be provided to the COUNTY by the CONSTRUCTION MANAGER for each proposed Project which exceeds \$100,000 in construction cost. Insurance must be provided to the COUNTY by the CONSTRUCTION MANAGER for each proposed Project.

ARTICLE 3

- 3.1 The COUNTY and CONSTRUCTION MANAGER respectively bind themselves, their partners, successors, assigns and legal representatives to this Agreement and to the partners, successors, assigns and legal representatives of other party with respect to all covenants of this Agreement. Neither the COUNTY nor the CONSTRUCTION MANAGER shall assign this Agreement without written consent of the other.
- 3.2 This Agreement shall be governed by the laws of the State of Florida.

ARTICLE 4

- 4.1 The CONSTRUCTION MANAGER shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement.
- 4.2 The CONSTRUCTION MANAGER is required to pay its subcontractors performing work related to this Agreement for satisfactory performance of that work no later than thirty (30) days after the CONSTRUCTION MANAGER'S receipt of payment for that work from COUNTY. In addition, the CONSTRUCTION MANAGER may not hold retainage from its subcontractors.

ARTICLE 5

FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) REQUIREMENTS

During the performance of this Agreement, the CONSTRUCTION MANAGER agrees as follows:

- 5.1. The CONSTRUCTION MANAGER will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The CONSTRUCTION MANAGER will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CONSTRUCTION MANAGER agrees to post in conspicuous places, available to all employees and applicants for employment, notices to be provided setting forth the provisions of this non-discrimination clause.
- 5.2. The CONSTRUCTION MANAGER will, in all solicitations or advertisements for employees placed by or on behalf of the CONSTRUCTION MANAGER, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.
- 5.3. The CONSTRUCTION MANAGER will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or worker's representatives of the CONSTRUCTION MANAGER'S commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

- 5.4. The CONSTRUCTION MANAGER will comply with all provisions of Executive Order 11246 of September 24, 1965, and the rules, regulations and relevant orders of the Secretary of Labor.
- 5.5. The CONSTRUCTION MANAGER will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
- 5.6. In the event of the CONSTRUCTION MANAGER's non-compliance with the non-discrimination clauses of this Agreement or with any of the said rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and the CONSTRUCTION MANAGER may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- 5.7. The CONSTRUCTION MANAGER will include the portion of the sentence immediately preceding paragraph (5.1) and the provisions of paragraphs (5.1) through (5.7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The CONSTRUCTION MANAGER will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance, provided, however, that in the event the CONSTRUCTION MANAGER becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the CONSTRUCTION MANAGER may request the United States to enter into such litigation to protect the interests of the United States.
- 5.8. **Clean Air Act and the Federal Water Pollution Control Act:** (For all contracts in excess of \$150,000)
- A. **Clean Air Act** –
- i. The CONSTRUCTION MANAGER agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- ii. The CONSTRUCTION MANAGER agrees to report each violation to the County through its Facilities Department and understands that the Brevard County Facilities Department will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- iii. The CONSTRUCTION MANAGER agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.
- B. **Federal Water Pollution Control Act** -

- i. The CONSTRUCTION MANAGER agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- ii. The CONSTRUCTION MANAGER agrees to report each violation to the County through its Facilities Department and understands and agrees that the Brevard County Facilities Department will, in turn, report each violation to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- iii. The CONSTRUCTION MANAGER agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

5.9. Suspension and Debarment:

- A. This Agreement is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the CONSTRUCTION MANAGER is required to verify that neither the CONSTRUCTION MANAGER, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- B. The CONSTRUCTION MANAGER must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- C. This certification is a material representation of fact relied upon by the County. If it is later determined that the CONSTRUCTION MANAGER did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the State of Florida (Division of Emergency Management) and the County, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- D. The CONSTRUCTION MANAGER agrees to comply with the requirements of 2 C.F.R. pt.180, subpart C and 2 C.F.R. pt. 3000, subpart C while this Agreement is valid. The Contractor agrees to include a provision requiring such compliance in its lower tier covered transactions.

5.10. Byrd Anti-Lobbying Amendment, 31 U.S.C. . § 1352 (as amended):

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee or a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier-to-tier up to the recipient.

5.11. Procurement of Recovered Materials:

In the performance of this Agreement, the CONSTRUCTION MANAGER shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired:

- A. Competitively within a timeframe providing for compliance with the Agreement performance schedule;
- B. Meeting Agreement performance requirements; or
- C. At a reasonable price.

Information about this requirement, along with the list of EPA-designate items, is available at EPA's Comprehensive Procurement Guidelines website at <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

5.12. Additional FEMA Requirements:

A. Access to Records:

- i. The CONSTRUCTION MANAGER agrees to provide the County, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers and records of the CONSTRUCTION MANAGER which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts and transcriptions.
- ii. The CONSTRUCTION MANAGER agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- iii. The CONSTRUCTION MANAGER agrees to provide the FEMA Administrator or his authorized representative access to construction or other work sites pertaining to the work being completed under the Agreement.

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

The CONSTRUCTION MANAGER shall not use DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

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

The CONSTRUCTION MANAGER acknowledges that FEMA financial assistance will be used to fund this Agreement and resulting Agreements only. The CONSTRUCTION MANAGER will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures and directives.

D. No Obligation by Federal Government:

The Federal Government is not a party to this Agreement and is not subject to any obligations or liabilities to the non-Federal entity, CONSTRUCTION MANAGER, or any other party pertaining to any matter resulting from the Agreement.

E. Fraud and False or Fraudulent or Related Acts:

The CONSTRUCTION MANAGER acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the CONSTRUCTION MANAGER's actions pertaining to this Agreement.

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

ATTEST:



Scott Ellis, Clerk

ATTEST:



BREVARD COUNTY

BOARD OF COUNTY COMMISSIONERS



By: Rita Pritchett, Chairman

OCT 10 2017

As approved by the Board on: _____



Heard Construction, Inc.

By: Andrew H. Day, President

Printed Name & Title

Attachment A

Agreement Between Owner

and

Construction Manager

AGREEMENT
BETWEEN OWNER AND CONSTRUCTION MANAGER

THIS AGREEMENT made the ____ day of _____ in the year Two Thousand Eighteen between the **BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS**, a political subdivision of the State of Florida whose address is 2725 Judge Fran Jamieson Way, Viera, Florida 32940 (hereinafter referred to as "Owner"), and _____ (hereinafter referred to as "Construction Manager"), a company licensed to do business in the State of Florida.

ARTICLE 1

THE CONSTRUCTION TEAM AND EXTENT OF AGREEMENT

The Construction Manager accepts the relationship of trust and confidence established between him and the Owner by this Agreement. The Construction Manager covenants with the Owner to furnish the best skill and judgment and to cooperate with the Architect/Engineer in furthering the interests of the Owner. The Construction Manager agrees to furnish efficient business administration and superintendence and use its best efforts to complete the Project in the best and soundest way, and in the most expeditious and economical manner consistent with the interest of the Owner.

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

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

- 1.2 Scope of Work - A general description of the Work/Project to be built/constructed/installed under this Agreement (**Attachment "B"**) and may include projects that may be funded or submitted for reimbursement through the Federal Emergency Management Agency (\$1-\$2,000,000).

- 1.3 Definitions:

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

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

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

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

Construction Manager -

Architect/Engineer -

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

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

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

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

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

1.4 Extent of Agreement - This Agreement for Construction Management services - to provide labor, materials, and equipment for

between the Owner and the Construction Manager supersedes any prior negotiations, representations or agreements. The drawings, specifications and other descriptive

documents defining the work to be included under this construction contract are identified in **Attachment "D"**. The Construction Manager shall obtain from the Owner three (3) sets of signed, sealed and dated drawings, specifications and other documents upon which the GMP is based; shall acknowledge on the face of each document of each set that it is the set upon which he based his GMP; and shall send one (1) set of the documents to the Project Director along with his GMP proposal, while keeping one (1) set for himself and returning one (1) set to the Architect/Engineer.

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

ARTICLE 2

CONSTRUCTION MANAGER'S RESPONSIBILITIES

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

2.1 PRE-CONSTRUCTION PHASE

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

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

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

- 2.1.3 Preliminary Project Schedule - Construction Manager has prepared a Preliminary Project Schedule, a copy of which is attached as **Attachment "E"**. Construction Manager shall coordinate and integrate the Preliminary Project Schedule with the services and activities of Owner, Architect and Construction Manager. The Construction Manager shall provide current scheduling information and provide direction and coordination regarding milestones, beginning and finishing dates, responsibilities for performance and the relationships of the Construction Manager's work to the work of his subcontractors and suppliers to enable them to perform their respective tasks so that the development of construction progresses in a smooth and efficient manner in conformance with the overall Total Project Schedule. The schedule shall include all phases of construction work, material supplies, long lead procurement, approval of shop drawings, change orders in progress, schedules for change orders, and performance of testing requirements. The Construction Manager shall advise the Owner, its representatives and the Architect/Engineer of their required participation in any meeting or inspection giving each at least one (1) week notice unless such notice is made impossible by conditions beyond the Construction Manager's control. The Construction Manager shall hold jobsite meetings at least once each week with the Construction Team and at least once each week with the subcontractors and the Architect/Engineer field representatives, and Owner or more frequently as required by work progress, to review progress, discuss problems and their solutions and coordinate future work with all subcontractors.
- 2.1.4 Subcontractors and Suppliers - Construction Manager shall continue to develop subcontractor interest in the Project and shall furnish to Owner and Architect for their information a list of possible subcontractors, including suppliers who are to furnish materials or equipment fabricated to a special design, from whom proposals will be requested for each principal portion of the Project. Owner will promptly reply in writing to Construction Manager if Owner has an objection to any such subcontractor or supplier. The receipt of such list shall not require Owner to investigate the qualifications of proposed subcontractors or suppliers, nor shall it waive the rights of Owner to later object to or reject any proposed subcontractor or supplier.
- 2.1.5 Long Lead and Owner Direct Procurement - The Construction Manager shall review the design for the purpose of identifying long lead and Owner direct procurement items (machinery, equipment, materials and supplies). When each item is identified the Construction Manager shall notify the subcontractors, the Project Director, and the Owner of the required procurement and schedule. Such information shall be included in the bid documents and made a part of all affected subcontracts. As soon as the Architect/Engineer has completed drawings and technical specifications and the Construction Manager has obtained permitting approval, the Construction Manager shall prepare Invitation for Bids. The Construction Manager shall keep informed of the progress of the respective subcontractors and/or suppliers, manufacturing or fabricating such items and notify the Project Director, Owner and Architect/Engineer of any problems or prospective delay in delivery.
- 2.1.6 Extent of Responsibility - The recommendations and advice of Construction Manager concerning design alternatives shall be subject to the review and approval of Owner and Owner's professional consultants. It is not Construction Manager's responsibility to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations. However, if Construction Manager recognizes that portions of the Drawings and Specifications are at variance

- therewith, Construction Manager shall promptly notify Owner and Architect in writing.
- 2.1.7 Equal Employment Opportunity and Affirmative Action - Construction Manager shall comply with applicable laws, regulations and special requirements of the Contract Documents regarding equal employment opportunity and affirmative action programs.
- 2.1.8 Separate Contracts Planning - The Construction Manager shall review the design with the Architect/Engineer and make recommendations to the Owner and to the Architect/Engineer with respect to dividing the work in such manner as will permit the Construction Manager to take bids and award separate construction subcontracts on the current schedule while the design is being completed. The Construction Manager shall take into consideration such factors as natural and practical lines of severability, sequencing, effectiveness, access and availability constraints, total time for completion, construction market conditions, availability of labor and materials, community relations and any other factors pertinent to saving time and cost by overlapping design and construction that are authorized by the Owner.

2.2 CONSTRUCTION PHASE

2.2.1 Interfacing -

- (1) The Construction Manager shall take such measures as are appropriate to provide that all construction requirements will be covered in the separate subcontracts for procurement of long lead items, the separate construction subcontracts and the general conditions items performed without duplication or overlap, sequenced to maintain completion of all work on schedule. Particular attention shall be given to provide that each bid package clearly identifies the work included in that particular separate subcontract, its schedule for start and completion and its relationship to other separate subcontractors.
- (b) Subcontractor Interfacing - The Construction Manager shall be the single point of interface with all Subcontractors for the Owner, and all of its agents and representatives, including the Architect/Engineer. The Construction Manager shall negotiate all change orders, field orders and request for proposals, with all affected Subcontractors and shall review the costs of those proposals and advise the Owner and Architect/Engineer of their validity and reasonableness, acting in the Owner's best interest prior to requesting approval of each change order from the Owner. Before any work is begun on any change order, an executed Authorization to Initiate Work form from the Owner must be issued. However, when health and safety are threatened, the Construction Manager shall act immediately to remove the threat to health and safety. The Construction Manager shall also carefully review all shop drawings and then forward the same to the Architect/Engineer for review and actions. The Architect/Engineer will transmit them back to the Construction Manager who will then issue the shop drawings to the affected Subcontractor for fabrication or revision. The Construction Manager shall maintain a suspense control system to promote expeditious handling. The Construction Manager shall request the Architect/Engineer to make interpretations of the drawings or specifications requested of the Construction Manager by the Subcontractors and shall maintain a suspense control system to promote timely response. The Construction Manager shall advise the Project Director and Architect/Engineer when timely response is not occurring on any of

the above.

2.2.2 Solicitation of Bids

- (1) Without assuming responsibilities of the Architect/Engineer, the Construction Manager shall prepare Invitations for Bids (or Request For Proposals, when applicable) for all procurements of long lead times, materials and services for Subcontractor contracts and for site utilities.
- (2) As part of such preparation, the Construction Manager shall review the specifications and drawings prepared by the Architect/Engineer. Ambiguities, conflicts or lack of clarity of language, use of illegally restrictive requirements, and any other defects in the specifications or in the drawings noted by the Construction Manager shall be brought to the attention of the Project Director and Architect/Engineer in written form.
- (3) For each separate subcontractor or construction trade contract used in this project, the Construction Manager shall, unless waived by the Owner, conduct a pre-bid conference with prospective bidders, the Architect/Engineer and Project Director. In the event questions are raised which require an interpretation of the bidding documents or otherwise indicate a need for clarification or correction of the invitation, the Construction Manager shall transmit these to the Architect/Engineer and upon receiving clarification or correction in writing shall prepare an addendum to the bidding document, and issue same to all of the prospective bidders.
- (4) In accordance with Article 2.4.2 the Construction Manager shall open and review all bids and enter into contract(s) with those low bidders determined to be most qualified by the Construction Manager. The Construction Manager shall make every effort to follow the County's Pre-Qualification Ordinance 98-37 (**Attachment "F"**) for applicable subcontract trades.

2.2.3 Bonds - For those projects where the cost will exceed \$100,000.00, in accordance with the provisions of Section 255.05, Florida Statutes, the Construction Manager shall provide to the Owner, on forms furnished by the Owner (**Attachment "G" and "H"**), certified copies of the recorded 100% Public Construction Performance Bond and 100% Public Construction Payment Bond each in an amount not less than the total construction cost (GMP) as defined in Article 9 and inclusive of the construction fee. *Payment and Performance Bonds shall be recorded (by the Construction Manager) in the official record of the County in which the project is located.* The Contractor must provide a copy of the bond(s) to all subcontractors and notify them of deadlines to make claims under the bonds.

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

between the Construction Manager and Architect/Engineer over acceptability of work and conformance with the requirements of the specifications and plans, the Owner shall be the final judge of performance and acceptability.

2.3 Guaranteed Maximum Price (GMP) and Contract Time

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

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

2.3.3 Basis of Guaranteed Maximum Price (GMP)

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

- .1 The list of the Drawings and Specifications, including all addenda thereto, and the Conditions of the Contract, which are identified in the Attachments to this Agreement.
- .2 The list of clarifications and assumptions made by Construction Manager in the preparation of its Guaranteed Maximum Price proposal to supplement the information contained in the Drawings and Specifications.
- .3 The Preliminary Construction Schedule (**Attachment "E"**). As reflected in said Schedule, Construction Manager is to achieve Substantial Completion of the Work within _____ calendar days from issuance of Notice to Proceed. Final Completion shall be achieved within an additional _____ calendar days.

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

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

- 2.3.6 The Guaranteed Maximum Price and date of Substantial Completion shall be subject to additions and deductions by a Change Order as provided in the Contract Documents.
- 2.3.7 The Guaranteed Maximum Price shall include in the Cost of the Project only those taxes which are enacted and in effect at the time the GMP was determined.

2.4 Construction Phase

2.4.1 General

- 2.4.1.1 The Construction Phase shall commence on the date identified in the Notice to Proceed to be issued by the Owner.
- 2.4.1.2 The Construction Manager shall cause all Work required by the Contract Documents to be properly completed in accordance with the terms of the Contract Documents and within the Contract Time.
- 2.4.1.3 Construction Manager's Staff - The Construction Manager shall maintain sufficient off-site support staff, and competent full time staff at the Project site authorized to act on behalf of the Construction Manager and to coordinate, inspect and provide general direction of the work and progress of the subcontractors, and the Construction Manager shall provide no less than those personnel during the respective phases of construction. The Construction Manager shall not change any of those designated persons unless mutually agreed to by the Owner and Construction Manager. In such case, the Owner shall have the right of approval of the qualifications of replacement personnel. Such approval will not be reasonably withheld.
- 2.4.1.3.1 The Construction Manager shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during the progress of the work. The superintendent shall represent the Construction Manager and all communications given to the superintendent shall be as binding as if given to the Construction Manager.
- 2.4.1.3.2 The superintendent shall be in attendance at the Project site not less than eight (8) hours per day, five (5) days per week, and any time work is being performed at the jobsite, unless the job is closed down due to a general strike or conditions beyond the control of the Construction Manager or until completion or termination of the Contract. It is understood that such superintendent shall be acceptable to the Owner and the Architect and shall be the one who will be continued in that capacity for the duration of the project, unless the Owner otherwise agrees. The superintendent shall not be employed on any other project for or by Construction Manager or any other entity during the course of the work.
- 2.4.1.4 Lines of Authority - The Construction Manager shall establish and maintain lines of authority for its personnel, and shall provide this description/definition to the Owner and all other affected parties such as the code inspectors of the permitting authorities, the subcontractors, the Architect/Engineer and the Owner's representatives, to provide general direction of the work and progress of the

various phases and subcontractors. The Owner and the Architect/Engineer may attend meetings between the Construction Manager and subcontractors, however, such attendance shall not diminish either the authority or responsibility of the Construction Manager to administer the subcontractor.

2.4.2 Administration

- 2.4.2.1 Those portions of the Project that Construction Manager does not customarily perform with Construction Manager's own personnel shall be performed under subcontracts or by other appropriate written agreements with Construction Manager. Construction Manager shall obtain bids from subcontractors and from suppliers of materials or equipment fabricated to a special design for the Project from the list previously reviewed and, after analyzing such bids, shall deliver such bids to the Owner and Architect for review and comment. Based upon that review and comment, Construction Manager shall then determine, subject to the reasonable objection of Architect or Owner, which bids will be accepted. Construction Manager shall not be required to contract with anyone to whom Construction Manager has reasonable objection. Notwithstanding anything herein to the contrary, Construction Manager covenants and agrees that it shall competitively bid all subcontracts. Further, with respect to all such subcontracts, Construction Manager covenants and agrees that it shall select and contract with the lowest, responsive and qualified bidder, unless otherwise consented to in writing by Owner.
- 2.4.2.2 Subcontracts and agreements with suppliers furnishing materials or equipment fabricated to a special design shall conform with payment provisions and shall not be awarded on the basis of cost plus a fee without prior written consent of Owner.
- 2.4.2.3 Construction Manager shall schedule and conduct weekly meetings at which Owner, Architect, Construction Manager and appropriate Subcontractors can discuss the status of the Project. Construction Manager shall prepare and promptly distribute meeting minutes within two (2) business days after any such meeting is held.
- 2.4.2.4 Promptly after Owner's issuance of the Notice to Proceed, Construction Manager shall prepare a more detailed Project Schedule, based upon the preliminary Project Construction Schedule attached as **Attachment "E"**, including Owner's occupancy requirements. Construction Manager will submit monthly updates to the Schedule until the project is completed.
- 2.4.2.5 Construction Manager shall provide Monthly Written Reports to Owner on the progress of the entire Work. Construction Manager shall maintain a daily log containing a record of weather, subcontractors working on the site, number of workers, Work accomplished, problems encountered and other similar relevant data as Owner may require. The log shall be available to Owner at all times.
- 2.5 Professional Services - Construction Manager shall not be required to provide professional services which constitute the practice of architecture or engineering, unless such services are specifically required by the Contract Documents for a portion of the Project, or unless Construction Manager has specifically agreed in writing to provide

such services. In such event, Construction Manager shall cause such services to be performed by appropriately licensed professionals.

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

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

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

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

2.8 Job Site Requirements

- (1) The Construction Manager shall provide for each of the following activities as a part of the Construction Manager's Construction Phase services:
 - a. Maintain a log of daily activities, including manpower records, weather, delays, major decisions, etc. and require the same of subcontractors
 - b. Maintain a directory of companies on the Project with names, addresses, telephone numbers, emergency telephone numbers and fax numbers of key personnel.
 - c. Establish and enforce job rules governing parking, clean-up, use of facilities and worker discipline.
 - d. Provide labor relations management for a harmonious, productive Project.
 - e. Provide a safety program for the Project to meet OSHA requirements. Monitor for Subcontractor compliance without relieving them of responsibilities to perform work in accordance with the best acceptable practice.
 - f. Provide a quality control program.
 - g. Miscellaneous office supplies that support the construction efforts which are consumed by his own forces.

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

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

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

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

- (2) Shop Drawing Submittals/Approvals - Check Shop Drawings and implement procedures for submittal and transmittal to the Architect/Engineer of such drawings for action, and closely monitor their submittal and approval process. Provide copy of all correspondence to Owner. Construction Manager will provide one (1) approved Submittal or Shop Drawing to Owner.
- (3) Material and Equipment Expediting - Closely monitor material and equipment deliveries; implement inspection and follow-up procedures on commitments of all Suppliers and Subcontractors.
- (4) Payments to Subcontractor - Develop and implement a procedure for review, processing, and payment of applications by Subcontractors for progress and final payments.
- (5) Document Interpretation - Refer all questions for interpretation of the documents prepared by the Architect/Engineer to the Architect/Engineer.
- (6) Reports and Project Site Documents - Record the progress of the Project. Submit written progress reports to the Owner and the Architect/Engineer including information on the Subcontractor's work, and the percentage of completion. Keep a daily log available to the Owner, the Architect/Engineer and the Permitting Authority inspectors.
- (7) Substantial Completion - The Construction Manager shall secure the Certificate of Occupancy and notify the Owner and Architect/Engineer, in writing, that the Project will be ready for inspection to determine if it is substantially complete and ready for inspection on or after a specific date, which date shall be stated in the

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

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

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

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

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

- (9) Start-Up - With the Owner's personnel, direct the checkout of utilities, operations, systems and equipment for readiness and assist in their initial start-up and testing by the subcontractors.
- (10) Record Drawings - The Construction Manager shall monitor the progress of Work on marked-up field prints which, at Substantial Completion, shall be submitted to the Architect/Engineer who will prepare the final record drawings.
- (11) Administrative Records - The Construction Manager will maintain at the job site on a current basis, files and records such as, but not limited to the following:

Contracts and Purchase Orders
Shop Drawing Submittal/Approval Logs
Equipment Purchase/Delivery Logs

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

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

(12) Owner Occupancy:

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

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

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

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

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

- (13) Warranty - Where any work is performed by the Construction Manager's own forces or by Subcontractors under contract with the Construction Manager, the Construction Manager shall warrant that all materials and equipment included in such Work will be new except where indicated otherwise in Contract Documents, and that such Work will be of good quality, free from improper workmanship and defective materials and in conformance with the Drawings and Specifications. With respect to the same Work, the Construction Manager further agrees to correct all work found by the Owner to be defective in material and workmanship

or not in conformance with the Drawings and Specifications for a period of one (1) year from the Date of Final Completion or as may be set forth with respect to specific warranties contained in the trade sections of the Specifications. The Construction Manager shall collect and deliver to the Owner any specific written warranties given by others as required by the Contract Documents. **Also, the Construction Manager shall conduct, jointly with the Owner and the Architect/Engineer, a warranty inspection nine (9) months after the date of Owner Occupancy. This warranty inspection will be scheduled by a representative of the Owner.**

ARTICLE 3

OWNER'S RESPONSIBILITIES

- 3.1 Owner's Information - The Owner shall provide full information regarding Owner's requirements for the Project.
- 3.2 Owner's Representative/Project Director - The Owner shall designate a representative who shall be fully acquainted with the Project and shall define the lines of Owner authority to approve Project Construction Budgets, and changes in Project. The Owner's representative shall render decisions promptly and furnish information expeditiously.
- 3.3 Architect and Engineer's Agreement - The Owner shall retain an Architect/Engineer for design and to prepare construction documents for the Project. The Architect/Engineer's services, duties and responsibilities are described in the Agreement between the Owner and the Architect/Engineer, a copy of which will be furnished to the Construction Manager upon request.
- 3.4 Approvals and Easements - The Owner shall pay for necessary approvals, easements, assessments and charges required for the construction, use or occupancy of permanent structures or for permanent changes in existing facilities.
- 3.5 Legal Services - The Owner shall furnish such legal services as may be necessary for providing the items set forth in Article 3 and such auditing services as the Owner may require.
- 3.6 Drawings and Specifications - The Owner will provide to the Construction Manager a reproducible set of all drawings and specifications reasonably necessary and ready for printing.
- 3.7 Cost of Surveys & Reports - The services, information, surveys and reports required by the above paragraphs shall be furnished with reasonable promptness in accordance with the approved schedule at the Owner's expense, and the Construction Manager shall be entitled to rely upon the accuracy and completeness thereof.
- 3.8 Project Fault or Defects - If the Owner becomes aware of any fault or defect in the Project or non-conformance with the drawings and specifications, the Owner shall give prompt written notice thereof to the Construction Manager and Architect/Engineer.
- 3.9 Funding - The Owner shall furnish, in accordance with the established schedule,

reasonable evidence satisfactory to the Construction Manager that sufficient funds will be available and committed for the cost of each part of the Project.

- 3.10 Lines of Communication - The Owner and Architect/Engineer shall communicate with the Subcontractors or Suppliers only through the Construction Manager while such method of communication is effective in maintaining Project schedules and quality.
- 3.11 Lines of Authority - The Owner shall establish and maintain lines of authority for Owner's personnel and shall provide this definition to the Construction Manager and all other affected parties.
- 3.12 Permitting & Code Inspections - The Owner recognizes and coordinates with the Permitting Authority and expects the Construction Manager to do the same.

ARTICLE 4

PERMITTING AND INSPECTION

- 4.1 Permits, Fees and Notices - Unless otherwise provided in the Contract Documents, the Construction Manager shall secure and the Owner shall pay for any Brevard County building permit or other County permits and governmental fees and licenses necessary for proper execution of the Contract and which are legally required. Any other entity/jurisdiction permits (i.e.: City of Titusville, City of Melbourne, etc.) shall be included in the Guaranteed Maximum Price and secured and paid for by the Construction Manager. County Impact and Solid Waste fees will also be paid by the Owner. Copies of all permits shall be submitted to the Owner.
- 4.2 The Construction Manager shall comply with and give notices required by laws, ordinances, rules and regulations and lawful orders of public authorities bearing on performance of the work required for the Project.
- 4.3 It is not the Construction Manager's responsibility to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations. However, if the Construction Manager observes that portions of the Contract Documents are at variance therewith, and such variance was not discoverable during the Construction Manager's review of these documents for the purpose of determining the GMP, the Construction Manager shall promptly notify the Architect and Owner, in writing, and necessary changes shall be accomplished by appropriate modification.
- 4.4 If the Construction Manager performs Work knowing it to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without such notice to the Architect and Owner, the Construction Manager shall assume full responsibility for such Work and shall bear the attributable costs.

ARTICLE 5

SUBCONTRACTS

- 5.1 Definition - A Subcontractor is a person or organization who has a direct contract with

the Construction Manager to perform any of the work. Nothing contained in the Contract Document shall create any contractual relation between the Owner or Architect/Engineer and any Subcontractor.

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

5.3 Required Subcontractor and Subcontract Conditions.

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

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

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

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

(3) All subcontracts shall provide:

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

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

In the event of a change in the work the Subcontractor's claim for adjustments in the contract sum are limited exclusively to its actual cost for such change, plus,

no more than five percent (5%) for profit, and five percent (5%) for overhead.

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

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

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

ARTICLE 6

SCHEDULE, TIME OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

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

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

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

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

- 6.2 The date of Owner Occupancy shall occur as described in Article 2.9(7) and Article 1.3,

hereinabove. Warranties called for by this Agreement or by the Drawings and Specifications shall commence on the Date of Final Completion of the Project unless specified otherwise in the Project Specifications.

ARTICLE 7

GUARANTEED MAXIMUM PRICE FOR CONSTRUCTION

- 7.1 The Construction Manager will establish and submit in writing a Guaranteed Maximum Price to the Owner for its approval, guaranteeing the maximum price to the Owner, for the construction cost of the Project or designated part thereof, based on a review of the contract drawings and specifications. Such Guaranteed Maximum Price will be subject to increase or deduction for changes in the Project as provided in Article 10 and for Owner direct purchases, if any, in accordance with **Attachment "C"**. All costs in excess of the final approved GMP, as adjusted up or down in accordance with the terms of this agreement, are the responsibility of the Construction Manager. Any savings between the GMP, as adjusted, and the sum of the actual cost of the Project plus the Construction Manager's fees, will be returned to the Owner. The GMP includes all taxes in the Cost of the Project which were legally enacted and in effect at the time the GMP was established.
- 7.2 Owner-Direct Purchases - In the event the Owner opts to make Owner Direct Purchases, as outlined in **Attachment "C"**, the Guaranteed Maximum Price shall be reduced by the cost of the materials plus applicable sales tax so that all sales tax savings accrue to the benefit of the project contingency. The Construction Manager shall diligently process all Owner Direct Purchase invoices for the project in order for the Owner to benefit from applicable vendor discounts. The Construction Manager will be required to submit all invoices to Owner in sufficient amount of time in order for the project to benefit from the vendor discount. All costs associated with missed discounts by the Construction Manager will be deducted from the Construction Manager's contract via deductive change order at project completion. Owner reserves the right to waive the Construction Manager's responsibility for missing discounts.
- 7.3 At the time of execution of the contract, the Construction Manager will verify the time schedule for activities and work which is adopted by the Construction Team and used to determine the Construction Manager's cost of work. Surplus funds from bids received below the applicable line items, including line items within the General Conditions, in the GMP will be set aside for contingency. Construction contingency funds will be used for the purpose of defraying the expenses due to unforeseen circumstances relating to construction. The Construction Manager will be required to furnish documentation evidencing expenditures charged to this contingency prior to the release of funds by the Owner. Documentation for use of the Contingency shall be determined by the Construction Team. The Architect/Owner shall verify and approve the actual costs.

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

less.

ARTICLE 8

CONSTRUCTION MANAGER'S FEE

8.1 In consideration of the performance of the contract, the Owner agrees to pay the Construction Manager as compensation for his services fees as set forth in Subparagraphs 8.1.2 and 8.1.3. subject to the retainage specified in 8.1.1 below.

8.1.1 Construction Phase Fee - Prior to commencement of the Construction Phase, the Owner will direct the Construction Manager in writing to proceed into the Construction Phase. The Owner retains the right to review the need and effectiveness of any employee or employees assigned by the Construction Manager, should the Project Director question the need for the employee or employees. A percentage of the agreed upon Construction Phase Fee shall be paid monthly based on percentage (%) of work completed, less retainage, in accordance with subsection 12.1 below. The Construction Manager's first monthly Certificate for Payment shall be submitted no earlier than thirty (30) days following the issuance of the Notice to Proceed, and the final monthly payment shall be paid only when construction of the Project is finally completed, all original, final release of liens are received, closeout documentation has been submitted and occupancy of the Project accepted by the Owner. If construction is authorized only for a part of the Project, the fee paid shall be proportionate to the amount of work authorized by the Owner.

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

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

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

(a) Corporate costs including expenses and overhead and profit related to this project by the Construction Manager's principal and branch offices.

(b) Costs of all data processing, accounting, purchasing and associated staff which is performed at the home office.

(c) General operating expenses incurred in the management and supervision of the project, except as expressly included in Article 9.

(d) Salaries or other compensation of the Construction Manager's employees at his principal and branch offices.

(e) Those services set forth in Paragraph 2.1, 2.2, 2.3 and 2.4; except as expressly included in Article 9.

- (f) Relocation expenses for Construction Manager's personnel.
- (g) Costs of all project estimating, safety, scheduling and accounting staff.

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

ARTICLE 9

COST OF THE PROJECT

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

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

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

- (1) Labor wages paid for the on-site Project Superintendent directly responsible for the operation and supervision of the project, clerical and Quality Control personnel (as opposed to wages paid to management or supervisory personnel who are not part of the on-site project management) in the direct employ of the Construction Manager in the performance of the Construction Manager's work under this Agreement, acceptable salary or wage schedules and such fringe benefits, if any, as may be payable with respect thereto (labor burden not to exceed 40% for payroll and 15% for per diem).
- (2) Payments due to Subcontractors from the Construction Manager or made by the Construction Manager to Subcontractors for their work performed pursuant to contract under this Agreement.
- (3) Cost of the premiums for insurance above and beyond the minimum required by Brevard County (\$1 million) and cost of premiums for bonds which the Construction Manager is required to procure by this Agreement specifically for the construction of this project.

- (4) Sales, use, gross receipts or similar taxes related to allowable direct costs of the Project imposed by a governmental authority, and for which the Construction Manager is liable. No costs shall be paid by the Owner to the Construction Manager for any expenses made necessary to correct defective workmanship or to correct any work not in conformance with the Plans and Specifications or to correct any deficiency or damage caused by negligent acts by the Construction Manager.
- (5) If approved by the Owner, the Construction Manager, when qualified, may self-perform all or a portion of the work for any item listed on the estimate or GMP breakdown where it is deemed advantageous due to schedule or economic benefit for the direct cost of the work.
- (6) Legal costs reasonably and properly resulting from prosecution of the Project for the Owner, including handling claims for changes by subcontractors and vendors, subject to the following limitations:
 - (a) The Owner approved incurring such costs in advance, which approval shall not be unreasonably denied; and
 - (b) The legal costs were not incurred as result of the Construction Manager's own negligence or default.
- (7) Costs for such temporary facilities during construction, as approved by the Owner, including temporary water, heat, power, sanitary facilities, telephones, radios and computers with software.

9.3 Allowances

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

9.4 Public Records Law and Audit Requirements

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

All records or documents created by Construction Manager or provided to

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

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

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

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

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

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

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

ARTICLE 10

CHANGES IN THE PROJECT

- 10.1 Change Orders - The Owner, without invalidating this Agreement, may order Changes in the Project within the general scope of this Agreement consisting of additions, deletions or other revisions which may cause an increase or decrease in the GMP, and/or the Construction Completion Date. All changes in the Project GMP or Construction Completion Date not covered by an authorized

contingency, as described in Article 7.3 must be authorized by a written Change Order or Construction Change Directive, and signed by the Owner, Architect and Construction Manager before the change is implemented. It shall be the Owner's discretion as to whether each change order requires the A/E signature. **Maximum allowable mark-up on any change order is 5% Profit, 5% Overhead, and a 2% Bond.**

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

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

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

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

10.1.4 If none of the methods set forth in Clause 10.1.3 is agreed upon, the Construction Manager, provided he receives a written order signed by the Owner, shall promptly proceed with the work required by the Construction Change Directive involved. The cost of such work shall then be determined on the basis of the reasonable expenditures and savings of those performing the work attributed to the change. However, in the event a Change Order is issued under these conditions, the Architect/Engineer will establish an estimated cost of the work and the Construction Manager shall not perform any work whose cost

exceeds that estimate without prior written approval by the Owner. In such case, and also under Article 10.1.3 above, the Construction Manager shall keep and present, in such forms as the Owner may prescribe, an itemized accounting together with appropriate supporting data of the increase in the Cost of the Project as outlined in Article 9. The amount of decrease in the Guaranteed Maximum Price to be allowed by the Construction Manager to the Owner for any deletion or change which results in a net decrease in cost will be the amount of the actual net decrease in the Cost of the Project and the Construction Manager's fee subject to the limits set forth in Article 7.

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

10.1.6 Should the Construction Manager or his contracted subcontractors encounter:

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

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

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

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

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

10.2 **Claims for Additional Cost or Time**

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

10.2.1 If the Construction Manager is delayed at any time in the progress of the work by any act or neglect of the Owner or the Architect or of any employee of either or by any separate Construction Manager employed by the Owner or by any changes ordered in the work by labor disputes, fire, or unusual delay in transportation, unavoidable casualties or any causes beyond the Construction Manager's control or by delay authorized by the Owner pending resolution or disputes, and such delay extends the completion date, the Substantial Completion shall be extended by Change Order for such reasonable time as the Construction Team may determine.

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

price in a change order shall waive any change to the time and Contract price unless the parties mutually agree in writing to postpone a determination of the change to time and price resulting from the change order. Such a determination may be postponed not more than forty five (45) days to give the Construction Manager an opportunity to demonstrate a change in the time and price needed to complete the Work.

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

10.3 Minor Changes in the Project (Realignment of Work)

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

- 10.4 In any emergency affecting the safety of persons or property, the Construction Manager shall act at his discretion, to prevent threatened damage, injury or loss. Any increase in the Guaranteed Maximum Price or extension of time claimed by the Construction Manager on account of emergency work shall be determined as provided in Article 10.

ARTICLE 11

DISCOUNTS

- 11.1 All discounts for prompt payment shall accrue to the Owner to the extent the Cost of the Project is paid directly by the Owner or from a fund made available by the Owner to the Construction Manager for such payments.

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

ARTICLE 12

PAYMENTS TO THE CONSTRUCTION MANAGER

- 12.1 Monthly Statements - The Construction Manager shall submit to the Owner a sworn statement along with the Certificate for Payment, showing in detail all monies paid out, cost accumulated or costs incurred on account of the Cost of the Project during the previous period and the amount of the Construction Manager's fees due as provided in Article 8. This data shall be attached to the Certificate for Payment Form shown in

Attachment "N", and shall include, but not be limited, to the following:

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

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

Ten percent of each payment shall be held by the OWNER as retainage until 50-percent completion of such Project, which shall be deemed to have occurred when 50% of the GMP, as increased or decreased from time to time, has been expended. At that time, the retainage shall be reduced to 5% and the Construction Manager shall be entitled to request payment or release of up to 50% of the previously withheld retainage amounts, provided the retainage is not the subject of a good faith dispute, the subject of a claim brought pursuant to s. 255.05, Florida Statutes or otherwise the subject of a claim or demand by the OWNER.

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

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

Documents; or

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

- 12.2 Final Payment - Final payment constituting the unpaid balance of the Cost of the Project and the Construction Manager's fee, shall be due and payable in accordance with Florida Statutes after an *acceptable* Certificate of Final Completion has been issued **and all contractual closeout obligations have been met by the Construction Manager**. Before issuance of final payment, the Construction Manager, subcontractors and agents shall submit original, sworn, notarized statements that all payrolls, material bills, and other debts connected with the Project have been paid or otherwise satisfied, warranty information is complete, Final As-Builts in AutoCad format acceptable to the Owner, have been submitted and instruction and documentation for the Owner's operating and maintenance personnel is complete.
- 12.3 Payments for Materials and Equipment - Payments will be made for material and equipment not incorporated in the work but insured, itemized, delivered and suitably stored at the site or another location subject to prior approval and acceptance by the Owner on each occasion.
- 12.4 Withholding Payments to Subcontractors - The Construction Manager shall not withhold payments to Subcontractors if such payments have been made to the Construction Manager. Should this occur for any reason, the Construction Manager shall immediately return such monies to the Owner, adjusting pay requests and project bookkeeping, as required.

ARTICLE 13

INSURANCE, INDEMNITY WAIVER OF SUBROGATION

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

- (2) The Owner shall cause any other Construction Manager who may have a contract with the Owner to perform construction or installation work in the area where work will be performed under this Agreement, to agree to indemnify the Owner and the Construction Manager and hold them harmless from all claims for bodily injury and property damage (other than property insured under Paragraph 13.2(3)) that may arise from the Construction Manager's operations.

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

13.2 Insurance

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

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

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

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

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

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

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

- d. Performance and Payment Bonds - With limits of not less than 100% of the total construction cost of this project. Payment and Performance Bond shall be recorded in the official record of the County in which the project is located. These bonds shall remain in effect at least until one (1) year after the date when the final payment is approved. Any bonding company submitting a Bid Bond, Performance Bond or Payment Bond to Brevard County must be licensed to transact a fidelity and surety business in the State of Florida, and hold a Certificate of Authority from the Secretary of the Treasury under Act of Congress, approved by July 30, 1947 (U.S.C. 613), and approved by Brevard County. Acceptable surety companies shall be licensed to do business in Florida and shall have an A.M. Best Rating of "A-" and financial size V or higher.
- e. Builder's Risk Coverage - The Construction Manager shall take out and maintain during the life of this Agreement a "Builder's Risk Policy" completed value form as a cost of the Project, issued to provide coverages on an "all risk" basis including theft. This coverage shall not be lapsed or canceled because of partial occupancy by the Owner prior to final acceptance of the Project.

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

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

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

- (1) The name of the insured Construction Manager, the specific job by name and job number, the name of the insurer, the number of the policy, its effective date, and its termination date.
- (2) The General Liability and Auto Liability certificates of insurance shall indicate that the policies have been endorsed to cover the County as an additional insured to the extent of liability assumed by the Construction Manager under this Agreement, and that these policies may not be canceled or modified without thirty (30) days prior written notice to the County.
- (3) The insurance coverages enumerated above constitute the minimum requirements and shall in no way lessen or limit the liability of the Construction Manager under the terms of the Contract.

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

13.3 Waiver of Subrogation

- 13.3.1 The Owner and the Construction Manager waive all rights against each other, for damages caused by perils covered by insurance provided under Article 13.2 to the extent covered by such insurance except such rights as they may have to the proceeds of such insurance held by the Owner and Construction Manager as trustees. The Construction Manager shall require similar waivers from all Subcontractors and their Sub-subcontractors.
- 13.3.2 The Owner and Construction Manager waive all rights against each other for loss or damage to any equipment used in connection with the Project and covered by any property insurance. The Construction Manager shall require similar waivers from all subcontractors and their sub-subcontractors.
- 13.3.3 The Owner waives subrogation against the Construction Manager on all property and consequential loss policies carried by the Owner on adjacent properties and under property and consequential loss policies purchased for the Project after its completion.
- 13.3.4 If the policies of insurance referred to in this Article require an endorsement to provide for continued coverage where there is a waiver of subrogation, the Owner of such policies will cause them to be so endorsed. Failure to obtain proper endorsement nullifies the waiver of subrogation.

ARTICLE 14

TERMINATION OF THE AGREEMENT AND OWNER'S RIGHT TO PERFORM CONSTRUCTION MANAGER'S OBLIGATION

- 14.1 Termination by the Construction Manager - If the Project is stopped for a period of thirty (30) days under an order of any court or other public authority having jurisdiction or as a result of an act of government, such as a declaration of a national emergency making materials unavailable, through no act or fault of the Construction Manager, or if the Project should be stopped for a period of thirty (30) days by the Owner, then the Construction Manager may, upon seven (7) days written notice to the Owner, request undisputed payment for all work executed, the Construction Manager's fee earned to date, and for any proven loss sustained upon any materials, equipment, tools, construction equipment, and machinery, including reasonable profit, damages and terminal expenses incurred by the Construction Manager.
- 14.2 Owner's Right to Perform Construction Manager's Obligations and Termination by Owner for Cause -
- (1) If the Construction Manager fails to perform any of its obligations under this Agreement, the Owner may, after seven (7) days written notice during which period the Construction Manager fails to perform such obligations, make good such deficiencies. The GMP, or the actual cost of the Project, whichever is less, shall be reduced by the cost to the Owner to making good such deficiencies and the Construction Manager's Construction Phase Fee shall be reduced by an amount required to manage the making good of such deficiencies.
 - (2) If the Construction Manager is adjudged a bankrupt, or if he makes a general

assignment for the benefit of his creditors, or if a receiver is appointed on account of his insolvency, or if he persistently or repeatedly refuses or fails, except in case for which extension of time is provided, to supply enough properly skilled workmen or proper materials and fails to maintain an established schedule (failure to maintain schedule shall be defined as any activity on the critical path that falls forty-five (45) days or more behind schedule) which has been adopted by the Construction Team, or if he fails to make prompt payment to subcontractors for materials or labor, or persistently disregards laws, rules, ordinances, regulations, or orders of any public authority having jurisdiction, or otherwise is guilty of a substantial violation of a provision of the Agreement, then the Owner may, without prejudice to any right or remedy and after giving the Construction Manager and his surety, if any, seven (7) days written notice, during which period Construction Manager fails to cure the violation, terminate the employment of the Construction Manager and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Construction Manager, and may finish the Project by whatever method he may deem expedient. In such case, the Construction Manager shall not be entitled to receive any further payment until the Project is finished nor shall he be relieved from his obligations assumed under Article 7. Reasonable termination expenses incurred by the Owner may be deducted from any payments left owing the Construction Manager (excluding monies owed the Construction Manager for subcontract work).

14.3 Termination by Owner for Convenience

- (1) If the Owner terminates this Agreement other than pursuant to Article 14.2(2) or Article 14.3(2), he shall reimburse the Construction Manager for any unpaid cost of the Project due him under Article 9, plus that part of the unpaid balance of the Construction Phase Fee in an amount as will increase the payment on account of his fee to a sum which bears the same ratio to the Construction Phase Fee as the Cost of the Project at the time of termination bears to the Guaranteed Maximum Price, if established, otherwise to the Owner's Construction Budget. The Owner shall also pay to the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment retained. In case of such termination of Agreement the Owner shall reimburse the Construction Manager for obligations and commitments made before notice of termination was received by the Construction Manager.
- (2) After the establishment of the Guaranteed Maximum Price or at the completion of the Construction Phase, if the final cost estimates or lack of legislative funding make the Project no longer feasible from the standpoint of the Owner, the Owner may terminate this Agreement and pay the Construction Manager his proportionate fee due in accordance with Article 8.1, plus any costs incurred pursuant to Articles 9 and 10.
- (3) Any termination by Owner for cause which is later determined to be invalid shall be considered a termination by Owner for convenience.

14.4 Termination for Prohibition Against Contracting With Scrutinized Companies

- (1) Pursuant to § 287.135(2), Florida Statutes, a company is ineligible to, and may not, bid on, submit a proposal for, or enter into or renew a contract with an agency or local government entity for goods or services of \$1 million or more if at the time of bidding or submitting a proposal for a new contract or renewal of an existing contract, the company: (1) is on the Scrutinized Companies that Boycott Israel List, created pursuant to s. 215.4725, or is engaged in a boycott of Israel; (2) is on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to s. 215.473; or (3) is engaged in business operations in Cuba or Syria.
- (2) As required by § 287.135(5), Florida Statutes, prior to entering into a contract (formal contract or purchase order in excess of \$1 million dollars to provide goods or services to Brevard County, individual with authority to execute this Agreement for the Construction Manager shall file a sworn statement with the contracting officer or Purchasing Director, as applicable verifying that none of the three conditions above exist. If the Construction Manager is found to have falsified the affidavit attached as **Attachment "O"**, the County/Owner may terminate the contract.
- (3) If subsequent to the submittal of the attached affidavit, the Contractor (1) has been placed on the Scrutinized Companies that Boycott Israel List, or is engaged in a boycott of Israel; (2) is on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List; or (3) is engaged in business operations in Cuba or Syria, the County/Owner may terminate the contract

ARTICLE 15

ASSIGNMENT AND GOVERNING LAW

- 15.1 Neither the Owner nor the Construction Manager shall assign his interest in this Agreement without the written consent of the other except as to the assignment of proceeds.
- 15.2 This Agreement shall be governed by the Laws of the State of Florida.
- 15.3 Venue and Attorney's Fees: Venue for any legal action brought by any party to this Agreement to interpret, construe or enforce this Agreement shall be in a court of competent jurisdiction in and for Brevard County, Florida. In the event of any legal action to enforce the terms of this Agreement, each party shall bear its own attorney's fees and costs and any trial shall be non-jury.
- 15.4 Severability: If any provision of this Agreement is held by a Court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired.

ARTICLE 16

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

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

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

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

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

The Construction Manager agrees that the Owner shall not be liable for any claim that the Construction Manager fails to submit as a Request for Change Order as provided in this section.

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

16.3 For work the Construction Manager performs with its own forces, and in addition to the adjustments provided for in Article 8, the Construction Manager's exclusive remedy for delays in performance of the construction caused by events beyond its control, including

delays claimed to be caused by or attributable to the Owner or the Architect/Engineer, including claims based on breach of contract or negligence, shall be a claim submitted in compliance with Article 16.1 above, for an extension of the scheduled construction time. In the event of a change in such work that will modify the GMP, the Construction Manager's claim for adjustment in contract sum are limited exclusively to its actual costs for such changes, including costs involved in claim preparation, plus five percent (5%) overhead, five percent (5%) profit and a two percent (2%) bond in the General Conditions. The Construction Manager expressly agrees that the foregoing constitute its sole and exclusive remedies for delays and changes in such work, and eliminate any other remedies for claim for increase in the contract price, delays, changes in the work, damages, losses or additional compensation.

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

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

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

16.5 Within thirty (30) days after denial of a request for a change order or contract modification by the project manager or engineer involving (1) an amount in excess of the County Manager's expenditure authority or (2) for the amount the contractor claims to be due at the time the project is ready for beneficial use or occupation, the County may, at the County's option in lieu of the procedure specified in subparagraph 16.4, submit the dispute to a mediator with knowledge or experience in construction management, as agreed upon by the parties. Upon referral to a mediator, the County and contractor shall each pay half the estimated cost of the mediator, up front. Within fifteen (15) days after the date of submittal, the mediator, applying the standards set forth in subparagraph

16.4, shall investigate the dispute and submit a written recommendation for disposition of the dispute to the County Manager or a designee with the qualifications specified in subparagraph 16.4. Within fifteen (15) days after receiving the mediator's recommendation, the County Manager shall submit the recommendation to the County Commission, along with a staff report analyzing the dispute and mediator's recommendation. Based on the standards set forth in subparagraph 16.4 above, the Commission shall decide whether to grant or deny, in whole or in part, the amounts recommended by the mediator. The Commission's decision will be deemed final action on the disputed claim for the purposes of ripening the decision for judicial review. If the mediator recommends that no change order or contract modification be granted, the contractor shall reimburse the county for any amounts paid by the county to the mediator.

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

ARTICLE 17

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

- 17.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Construction Manager claims that a delay or additional cost is involved because of such action by the Owner, the Construction Manager shall make such claim as provided in this Agreement.
- 17.2 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Construction Manager, who shall cooperate with them. The Construction Manager shall participate with other separate contractors and the Owner in reviewing their construction schedules when directed to do so. The Construction Manager shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Construction Manager, separate contractors and the Owner until subsequently revised.
- 17.3 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights which apply to the Construction Manager under the Conditions of the Contract.
- 17.4 The Construction Manager shall afford the Owner, and separate contractors, reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities and shall connect and coordinate the Contractor's construction and operations with the Construction Manager, as required.

- 17.5 If part of the Construction Manager's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Construction Manager shall, prior to proceeding with that portion of the Work, promptly report to the Architect/Engineer or Owner apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Construction Manager to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Construction Manager's Work, except as to defects not then reasonably discoverable.
- 17.6 Costs caused by delays or by improperly timed activities or defective construction shall be borne by the party responsible thereof.
- 17.7 The Construction Manager shall promptly remedy damage wrongfully caused by the Construction Manager to completed or partially completed construction or to property of the Owner or separate contractors.

ARTICLE 18

FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) REQUIREMENTS

During the performance of this Agreement, the CONSTRUCTION MANAGER agrees as follows:

- 5.1. The CONSTRUCTION MANAGER will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The CONSTRUCTION MANAGER will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CONSTRUCTION MANAGER agrees to post in conspicuous places, available to all employees and applicants for employment, notices to be provided setting forth the provisions of this non-discrimination clause.
- 5.2. The CONSTRUCTION MANAGER will, in all solicitations or advertisements for employees placed by or on behalf of the CONSTRUCTION MANAGER, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.
- 5.3. The CONSTRUCTION MANAGER will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or worker's representatives of the CONSTRUCTION MANAGER's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- 5.4. The CONSTRUCTION MANAGER will comply with all provisions of Executive Order 11246 of September 24, 1965, and the rules, regulations and relevant orders of the Secretary of Labor.

- 5.5. The CONSTRUCTION MANAGER will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
- 5.6. In the event of the CONSTRUCTION MANAGER's non-compliance with the non-discrimination clauses of this Agreement or with any of the said rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and the CONSTRUCTION MANAGER may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- 5.7. The CONSTRUCTION MANAGER will include the portion of the sentence immediately preceding paragraph (5.1) and the provisions of paragraphs (5.1) through (5.7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The CONSTRUCTION MANAGER will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance, provided, however, that in the event the CONSTRUCTION MANAGER becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the CONSTRUCTION MANAGER may request the United States to enter into such litigation to protect the interests of the United States.
- 5.8. **Clean Air Act and the Federal Water Pollution Control Act:** (For all contracts in excess of \$150,000)
- A. **Clean Air Act** –
- i. The CONSTRUCTION MANAGER agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
 - ii. The CONSTRUCTION MANAGER agrees to report each violation to the County through its Facilities Department and understands that the Brevard County Facilities Department will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
 - iii. The CONSTRUCTION MANAGER agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.
- B. **Federal Water Pollution Control Act** -

- i. The CONSTRUCTION MANAGER agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- ii. The CONSTRUCTION MANAGER agrees to report each violation to the County through its Facilities Department and understands and agrees that the Brevard County Facilities Department will, in turn, report each violation to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- iii. The CONSTRUCTION MANAGER agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

5.9. Suspension and Debarment:

- A. This Agreement is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the CONSTRUCTION MANAGER is required to verify that neither the CONSTRUCTION MANAGER, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- B. The CONSTRUCTION MANAGER must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- C. This certification is a material representation of fact relied upon by the County. If it is later determined that the CONSTRUCTION MANAGER did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the State of Florida (Division of Emergency Management) and the County, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- D. The CONSTRUCTION MANAGER agrees to comply with the requirements of 2 C.F.R. pt.180, subpart C and 2 C.F.R. pt. 3000, subpart C while this Agreement is valid. The Contractor agrees to include a provision requiring such compliance in its lower tier covered transactions.

5.10. Byrd Anti-Lobbying Amendment, 31 U.S.C. . § 1352 (as amended):

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee or a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier-to-tier up to the recipient.

5.11. Procurement of Recovered Materials:

In the performance of this Agreement, the CONSTRUCTION MANAGER shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired:

- A. Competitively within a timeframe providing for compliance with the Agreement performance schedule;
- B. Meeting Agreement performance requirements; or
- C. At a reasonable price.

Information about this requirement, along with the list of EPA-designate items, is available at EPA's Comprehensive Procurement Guidelines website at <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

5.12. Additional FEMA Requirements:

A. Access to Records:

- i. The CONSTRUCTION MANAGER agrees to provide the County, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers and records of the CONSTRUCTION MANAGER which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts and transcriptions.
- ii. The CONSTRUCTION MANAGER agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- iii. The CONSTRUCTION MANAGER agrees to provide the FEMA Administrator or his authorized representative access to construction or other work sites pertaining to the work being completed under the Agreement.

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

The CONSTRUCTION MANAGER shall not use DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

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

The CONSTRUCTION MANAGER acknowledges that FEMA financial assistance will be used to fund this Agreement and resulting Agreements only. The CONSTRUCTION MANAGER will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures and directives.

D. No Obligation by Federal Government:

The Federal Government is not a party to this Agreement and is not subject to any obligations or liabilities to the non-Federal entity, CONSTRUCTION

MANAGER, or any other party pertaining to any matter resulting from the Agreement.

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

The CONSTRUCTION MANAGER acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the CONSTRUCTION MANAGER's actions pertaining to this Agreement.

ARTICLE 19

MISCELLANEOUS

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

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

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

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

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

19.5 **Minority Employment Information** - The Board of County Commissioners requires construction contracts, who would otherwise be required to file and EEO Form 1 Report under Federal Law (currently Federal law requires filing for employers with more than 15 employees), to submit an EEO Form 1 Report with the submission of their GMP. This requirement extends to any subcontractors who are required to submit the EEO Form 1 Report (over 15 employees) under Federal law. Failure to submit an EEO Form 1 Report with your GMP will be reason to declare your proposal "non-responsive" to the proposal

requirements. However, the information will be used for statistical purposes only and will not be used in any way as a basis to award a contract. See **Attachment "P"**.

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

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

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

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

ATTEST:

BOARD OF COUNTY COMMISSIONERS OF
BREVARD COUNTY, FLORIDA

Scott Ellis, Clerk

Rita Pritchett, Chair
Brevard County Commission

Reviewed for legal form and content:

As Approved By the Brevard County
Commission on: _____

Shannon L. Wilson, Deputy County Attorney

Date

TBD

BY: Construction Manager

STATE OF FLORIDA
COUNTY OF BREVARD

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

NOTARY PUBLIC

Typed/Printed Name

ATTACHMENT "A"

CONSTRUCTION TEAM ASSIGNED REPRESENTATIVES

Owner

Brevard County Facilities Department

Tim Lawry

Mary Bowers

Sherry Collett

Project Director

Construction Coordinator

Support Services Manager/Contracts

Special Projects Coordinator II

Architect-Engineer

Construction Manager

President

Vice President/Principal-In-Charge

Project Manager

Project Administrator

Project Superintendent

Estimator/Cost Control

Schedules

ATTACHMENT "B"

PROJECT SCOPE OF WORK

Provide all labor, materials, and equipment for

ATTACHMENT "C"

DIRECT PURCHASING PROCEDURE
CONSTRUCTION MANAGEMENT AGREEMENT

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

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

- a) **Contract:** Construction Management Agreement by and between Construction Manager and Brevard County Board of County Commissioners, Viera, Florida to provide labor, materials, and equipment for

- b) **County Purchased Materials:** Materials purchased directly by the Owner through execution and delivery of a Purchase Order.
- c) **GMP -** Guaranteed Maximum Price established under the Contract.
- d) **Materials:** Tangible Personal Property necessary for completion of the Project.
- e) **Materials Deduction Summary:** Written document signed by Owner's representative and Construction Manager setting forth the amounts of County Purchased Materials, plus applicable taxes were the purchase not exempt from such taxes, as reflected in the parties' previously executed deductive change order(s) to the Contract showing deduction of such Materials from the GMP.
- f) **Owner:** See Definition in Article I, section 1.3.
- g) **Owner's Representative:** See Definition in Article I, section 1.3.
- h) **Project:** See Definition in Article I, section 1.3.
- i) **Purchase Order:** The Owner's request for Materials from a particular vendor or supplier when fully executed and delivered to the Construction Manager, and the Owner's promise to pay for the Material specified upon delivery and acceptance at the Project Site, and presentation of an invoice by the Construction Manager to the Owner certifying payment of same.
- j) **Material Requisition:** A request by the Construction Manager to the Owner that

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ATTACHMENT "D"

DRAWINGS AND SPECIFICATIONS

To be attached

ATTACHMENT "E"

**CONSTRUCTION MANAGER'S
PRELIMINARY CONSTRUCTION SCHEDULE**

To be attached

ATTACHMENT "F"

ORDINANCE 98-37

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- A Contractor's Pre-Qualification Statement for the prime contractor and subcontractors performing parts of work identified in the bidding documents as critical to the project's success. The Pre-Qualification Statement shall be provided on a form to be established by the County Manager;
- Most current financial statement, but not more than one (1) year old, indication of bondability, or, if project is under \$100,000, other evidence of financial capability as identified in the bid documents;
- Resumes of Contractor and Subcontractor's key personnel, including project manager and superintendent levels, showing job history, education related to work to be performed and any license, training, and experience related to the work which that individual will perform;
- List of subcontractors and suppliers, and items of work to be performed by the Contractor's own work force;
- County evaluations of the performance on County projects;
- References obtained from individuals or businesses with whom the contractor or subcontractor has performed work or conducted business;
- Any other relevant qualifications, data or information identified in the bidding documents to be critical to the success of the project.

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

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

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

- Conviction or a judgment obtained in a court of competent jurisdiction for:
- Commission of a fraud or a criminal offense as an incident to obtaining, attempting to obtain, or in the performance of a 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 contract provision, as set forth below, when the violation is of a character so as to justify debarment action such as:

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

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

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

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

the other provisions shall remain in full force and effect.

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

ATTACHMENT "G"

PUBLIC CONSTRUCTION PAYMENT BOND

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

THE CONDITIONS OF THIS BOND are that if Principal:

1. Promptly makes payments to all claimants, as defined in Section 255.05(1), Florida Statutes, supplying Principal with labor, materials, or supplies, used directly or indirectly by Principal in the prosecution of the work provided for in the contract dated _____, 20____, between Principal and Owner for construction of _____, the contract being attached hereto and made a part of this bond by reference, in such time and without delay, and in the manner prescribed in the contract; and
2. Pays Owner all losses, damages, expenses, costs, and attorney's fees, including appellate proceedings, that Owner sustains because of a default by Principal under the contract, then this bond is void; otherwise it remains in full force. Any changes in or under the contract documents and compliance or noncompliance with any formalities connected with the contract does not affect Surety's obligation under this bond.

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

Witness:

Principal Seal

Its: _____
Title

Witness:

Surety Seal

Its: _____
Title

ATTACHMENT "H"

PUBLIC CONSTRUCTION PERFORMANCE BOND

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

THE CONDITIONS OF THIS BOND are that if Principal:

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

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

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

Witness:

Principal Seal

Its: _____
Title

Witness:

Surety Seal

Its: _____
Title

ATTACHMENT "I"

**CONSTRUCTION MANAGER'S
GUARANTEED MAXIMUM PRICE**

ATTACH HERE

ATTACHMENT "J"

CERTIFICATE OF SUBSTANTIAL COMPLETION

(Insert Form Here)

ATTACHMENT "K"

CERTIFICATE OF FINAL COMPLETION

PROJECT NO. & TITLE:

ARCHITECT:

CONTRACT DATE:

CONTRACTOR:

DATE OF FINAL COMPLETION:

CERTIFICATE OF ARCHITECT/ENGINEER

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

A/E Firm Name: _____ By: _____

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

THROUGH THE SUBSTANTIAL COMPLETION PHASE

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

THROUGH THE FINAL COMPLETION PHASE

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

Architect: _____ Date: _____

Project Manager: _____ Date: _____

Facilities Construction Manager: _____ Date: _____

ATTACHMENT "L"

ALLOWABLE COSTS, OVERHEAD

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

ATTACHMENT "M"
(Direct Cost Items)
GENERAL CONDITIONS

SUPERINTENDENT

JOB SITE SECRETARY/CLERK

QUALITY CONTROL

SURVEY

PERMITS

IMPACT/CONNECTION FEES

CONSTRUCTION DRAWINGS/SPECS

PROGRESS PHOTOGRAPHS *(IF REQUESTED BY THE OWNER)*

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

SPECIAL SECURITY *(IF REQUESTED BY THE OWNER)*

PAYMENT & PERFORMANCE BONDS

BUILDERS RISK INSURANCE

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

TEMPORARY UTILITIES *(AS APPROVED BY THE OWNER)*

TEMPORARY JOBSITE FENCING *(INITIAL INSTALLATION ONLY)*

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

ATTACHMENT "N"
CERTIFICATE FOR PAYMENT

(INSERT FORM HERE)

ATTACHMENT "O"

VENDOR AFFIDAVIT REGARDING SCRUTINIZED COMPANY LIST

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

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

STATE OF FLORIDA
COUNTY OF _____

BEFORE ME, the undersigned authority, personally appeared _____, who, being by me first duly sworn, made the following statement:

1. The Business address of _____ (name of bidder or contractor) is _____.
2. My relationship to _____ (name of bidder or contractor) is _____ (relationship such as sole proprietor, partner, president, vice president).
3. I understand that "Boycott of Israel" has the same meaning as defined in §215.4725, Florida Statutes, and means refusing to deal, terminating business activities, or taking other actions to limit commercial relations with Israel, or persons or entities doing business in Israel or in Israeli-controlled territories, in a discriminatory manner. A statement by a company that it is participating in a boycott of Israel, or that it has initiated a boycott in response to a request for a boycott of Israel or in compliance with, or in furtherance of, calls for a boycott of Israel, may be considered by the State Board of Administration to be evidence that a company is participating in a boycott of Israel. The term does not include restrictive trade practices or boycotts fostered or imposed by foreign countries against Israel.
4. I understand that "business operations" means, for purposes specifically related to Cuba or Syria, engaging in commerce in any form in Cuba or Syria, including, but not limited to, acquiring, developing, maintaining, owning, selling, possessing,

leasing, or operating equipment, facilities, personnel, products, services, personal property, real property, military equipment, or any other apparatus of business or commerce.

5. _____ (name of the bidder or contractor) is not on the Scrutinized Companies that Boycott Israel List, created pursuant to s. 215.4725, Florida Statutes, or is engaged in a boycott of Israel.

6. _____ (name of the bidder or contractor) is not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to s. 215.473, Florida Statutes.

7. _____ (name of the bidder or contractor) is not engaged in business operations in Cuba or Syria.

Signature

Sworn to and subscribed before me in the state and county first mentioned above on the _____ day of _____, 20____.

Notary Public

(affix seal)

My commission expires:

ATTACHMENT "P"

MINORITY EMPLOYMENT INFORMATION

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

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

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

Company Name: _____

Signature: _____ Date: _____

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

Company Name: _____

Signature: _____ Date: _____

Company Name: _____

Company Address: _____

Company Telephone: _____

Signature: _____ Printed Signature: _____

ATTACHMENT "Q"

PUBLIC ENTITY CRIME ACKNOWLEDGMENT

A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid/quote/proposal on a contract to provide goods or services to a public entity, may not submit a bid/quote/proposal on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids/quotes/proposals on leases of rental property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for Category Two (\$15,000) for a period of thirty six (36) months from the date of being placed on the convicted vendor list.

NON-COLLUSION AFFIDAVIT OF PRIME BIDDER

State of Florida
County of Brevard

_____, being duly sworn, deposes and says that:

- (1) Affiant is _____ of _____, the Bidder that has submitted a bid/quote/proposal;
- (2) Affiant is fully informed respecting the preparation and contents of the bid/quote/proposal and of all pertinent circumstances respecting such bid/quote/proposal;
- (3) Such bid/quote/proposal is genuine and is not a collusive or sham bid/quote/proposal;
- (4) Neither the said Bidder nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, has in any way colluded, conspired, connived or agreed, directly or indirectly with any other Bidder, firm or person to submit a collusive or sham bid/quote/proposal in connection with the Contract for which the bid/quote/proposal has been submitted or to refrain from bidding in connection with such Contract, or has in any manner, directly or indirectly, sought by Contract, or has in any manner, directly or indirectly, sought by the agreement or collusion or communication or conference with any other bidder, firm or person to fix the price or prices in the bid/quote/proposal or of any other Bidder, or to fix any overhead, profit or cost element of the bid/quote/proposal price or the bid/quote/proposal price of any other bidder, or to secure through any collusion, conspiracy, connivance or unlawful agreement any advantage against the Board of County Commissioners of Brevard County, Florida, or any person interested in the Contract; and
- (5) The price or prices negotiated for the bid/quote/proposal are fair and proper and are not tainted by any collusion, conspiracy, connivance, or unlawful agreement

on the part of the Bidder or any of its agents, representatives, owners, employees, or parties of interest, including affiant.

Signature

Title

Subscribed and sworn to before me this ____ day of _____, 20__.

Notary Public

My Commission expires: _____

CONTINUING ARCHITECTURAL/ENGINEERING DESIGN CONSULTANT SERVICES AGREEMENT

This is an Agreement entered into this 12th day of July 2018, by and between **BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS**, a political subdivision of the State of Florida, hereinafter referred to as COUNTY and **Schenkel Shultz Architecture**, a corporation under the laws of the State of Florida, hereinafter referred to as CONSULTANT, whose address is 200 E. Robinson Street, Suite 300, Orlando, FL 32801.

WHEREAS, the County has a need for the services of a consultant to provide architectural/engineering design services under a continuing contract per Florida Statute 287.055;

WHEREAS, the County issued a Request for Qualifications #RFQ-4-18-06 for such services and has selected the CONSULTANT to provide said services;

WHEREAS, this is an Agreement for professional services for projects in which the construction costs do not exceed \$2 million, for study activity when the fee for services for each study does not exceed \$200,000, or for work of a specified nature projects, that may be funded or submitted for reimbursement by/through the Federal Emergency Management Agency, as outlined herein.

For and in consideration of the mutual agreement hereinafter contained, the COUNTY hereby retains the CONSULTANT and the CONSULTANT hereby covenants to provide continuing architectural/engineering services as prescribed herein.

SECTION I - GENERAL IDENTIFICATION OF SERVICES

All continuing architectural/engineering services provided by the CONSULTANT for the COUNTY shall be identified in Work Orders. Work Orders shall entail a description of services to be performed, a statement of fees, proposed schedule for compensation, a projected schedule for completion of the work, project team members assigned to supervise/perform services provided under the Work Order, and any other terms or conditions specific to the Work Order to be performed by the CONSULTANT, including terms that may be specific to projects that may be funded or submitted for reimbursement by/through the Federal Emergency Management Agency. A Work Order shall not give rise to any contractual rights until approved by the COUNTY in the form of a written Notice to Proceed signed by an authorized representative of the COUNTY. The written Notice to Proceed and specific Work Order, as approved by the COUNTY, shall together constitute an addendum to this Agreement.

The Federal Emergency Management Agency (FEMA) Clauses and Certifications included herein, or attached hereto, control over any conflicting clauses contained within the separate Agreements, covering the work for each Project, between the COUNTY and the CONSULTANT, when the Work involved will be submitted by/through FEMA for reimbursement to the COUNTY.

The FEMA Clauses and Certifications are attached hereto, and incorporated by this reference, as Attachment "A."

SECTION II - COUNTY OBLIGATIONS

The COUNTY shall furnish to the CONSULTANT, upon request, any data available in the COUNTY'S files pertaining to the work to be performed under this Agreement.

SECTION III - CONTINUING DESIGN CONSULTANT SERVICES

Upon receipt of a Notice to Proceed on a Work Order, CONSULTANT agrees to perform continuing architectural/engineering services associated with the requested work in accordance with the negotiated terms of the applicable Work Order, and in accordance with accepted professional standards and practices. The CONSULTANT agrees to correct any errors and omissions and prepare any revisions which may be required because the CONSULTANT'S plans and specifications were found defective, without any increase in price of the applicable Work Order. This remedy shall be cumulative to all other remedies available under law.

In connection with continuing architectural/engineering services to be rendered pursuant to this Agreement, the CONSULTANT further agrees to:

- A. Maintain an adequate staff of qualified personnel;
- B. Comply with federal, state and local laws applicable to the work;
- C. Cooperate fully with the COUNTY in the scheduling and coordination of all phases of the work;
- D. Cooperate and coordinate with other COUNTY consultants, as directed by the COUNTY;
- E. Report the status of the work to the COUNTY upon request and hold pertinent data, calculations, field notes, records, sketches and other projects open to the inspection of the COUNTY or its authorized agent at any time;
- F. Submit for COUNTY review design computations, sketches and other data representative of the work's progress at the percentage stages of completion which may be stipulated in the applicable Work Order. **This shall include a Division 16 Estimate of Probable Construction Cost at each design submittal.** Submit for COUNTY approval the final work product upon incorporation of any modifications requested by the COUNTY during any previous review. Any COUNTY approval of the CONSULTANT'S plans, design or specifications shall not be deemed to diminish the CONSULTANT'S responsibility;
- G. Confer with the COUNTY during the further development and implementation of improvements for which the CONSULTANT has provided design or other services;
- H. Interpret plans and other documents, correct CONSULTANT errors and omissions and prepare any necessary plan revisions not involving change in the scope of work required, at no additional cost;

- I. Prior to final approval of the work by the COUNTY, as Owner, the CONSULTANT shall submit any of CONSULTANT'S construction documents to any review committee, third party consultant or any county, city, state or federal agency from which a permit or other approval is required, and revise CONSULTANT'S construction documents as may be required by such permitting or approval agencies. Any approval obtained from the COUNTY or any other agency shall not be deemed to diminish or discharge the CONSULTANT'S responsibility provided for in this Agreement.

Regarding any resulting construction, the CONSULTANT will review all pre-qualification documents, bids and make recommendations regarding award to the lowest responsible bidder. The CONSULTANT shall review and approve the contractor's Schedule of Values.

Prior to commencement of construction, the CONSULTANT shall attend a pre-construction conference. Representatives from the Owner, Contractor and CONSULTANT shall attend to discuss policies and procedures to be followed during the construction period, and answer questions regarding design intent, clarification or interpretation of the construction documents.

The CONSULTANT will review and approve or reject, as appropriate, all Contractor Applications for Payment submitted during the construction of work.

The CONSULTANT will review and approve or reject, as appropriate, all contractor submitted as-built drawings, warranties and operation and maintenance manuals for completeness and conformance with the contract requirements and submit to the Owner indicating their approval.

The CONSULTANT will prepare record drawings and specifications showing significant changes in the work made during construction based on marked-up prints, drawings and other data furnished by the contractor to the CONSULTANT, utilizing AutoCad Release 12 or newer software or compatible approved by the Owner. **One (1) set of reproducible record drawings, in electronic format, is to be submitted to the Owner with Certificate of Final Completion.**

The CONSULTANT will prepare and distribute meeting minutes at all design phase meetings and progress meetings, in a format approved by the Owner. In addition to the regular scheduled construction site visits and progress meetings, this Agreement shall include, at no additional cost to the Owner, the Substantial & Final Completion Inspection(s) and the warranty inspection with the appropriate written reports and certifications.

The CONSULTANT shall respond promptly and completely to all Requests For Information or clarifications regarding the drawings and specifications so as not to cause a delay in the construction schedule.

SECTION IV - TIME OF COMPLETION

The services to be rendered by the CONSULTANT for each section of the work shall commence upon receipt of a written Notice to Proceed from the COUNTY subsequent to the execution of the Agreement, and shall be completed within the time stated in the Work Order.

SECTION V - COMPENSATION

The COUNTY agrees to pay and the CONSULTANT agrees to accept, for services rendered pursuant to this Agreement, fees and other compensation computed in accordance with one or a combination of the methods outlined below, and as specified in an approved Work Order:

- A. **Hourly Rate** - the CONSULTANT shall be compensated at the attached Hourly Rate Schedule (Attachment "B") for each hour of time engaged directly in the work.
- B. **Reimbursable Expenses** - The CONSULTANT shall be compensated for certain work-related expenditures not covered by fees for consulting services, provided such expenditures are previously authorized by the COUNTY in an approved Work Order. Upon receipt of satisfactory back up materials, the CONSULTANT will be compensated for such reimbursable expenses. Such expenses may include:
 - 1. Expenses for document reproduction. These expenses shall be reimbursed on a direct cost basis.
 - 2. Mileage – These expenses shall be reimbursed at the COUNTY's authorized cost (¢) per mile.
- C. At least thirty (30) days prior to each anniversary date of this Agreement either party may request an adjustment to the rates provided for herein to apply in the forthcoming year. Failure of the parties to agree on a new rate shall constitute a basis for issuing a Notice of Termination by the COUNTY. Any proposed change in rates by the CONSULTANT shall be subject to the prior approval of the COUNTY.
- D. In the event CONSULTANT experiences any delay resulting from circumstances beyond its control, or a change in the scope of work which will result in an increase or decrease in a Work Order's price or time, CONSULTANT shall provide immediate notice to the COUNTY for consideration of additional compensation or time. Additional compensation shall be limited to direct costs resulting from the delay or change in work.

SECTION VI - PAYMENT AND PARTIAL PAYMENTS

Subject to the COUNTY'S right to withhold any amounts reasonably necessary to complete or correct defective or substandard work, the COUNTY shall make monthly payments or partial payments to the CONSULTANT for all authorized work performed during the previous calendar month in accordance with the "Florida Prompt Payment Act."

- A. The CONSULTANT shall submit signed invoices to the COUNTY;
- B. The amount of each invoice submitted shall be the amount due for all services performed to date in connection with authorized work, as certified by the CONSULTANT. Each invoice shall include any authorized reimbursable expenses and must reference the particular Work Order which authorized the services performed. The invoice shall be accompanied by copies of invoices for reimbursable expenses;

- C. Invoices for work other than lump sum shall include a breakdown for each part of the work billed for each item and personnel as identified in Attachment "A". Copies of all invoices paid by the CONSULTANT for expenses shall be included with the CONSULTANT's invoice.

SECTION VII - SCHEDULE OF WORK

The COUNTY shall have the sole right to determine on which units or sections of the work the CONSULTANT shall proceed with and in what order. Should a Work Order revision cause a change in scope, cost or schedule, the CONSULTANT shall submit such revisions for review and, if warranted, approval by the COUNTY in writing.

SECTION VIII - RIGHT OF DECISIONS

All services shall be performed by the CONSULTANT to reasonable professional standards and practices and to the reasonable requirements of the COUNTY. COUNTY staff shall decide and dispose of all claims, questions and disputes arising under this Agreement. Such determination shall be final, conclusive and binding upon the parties hereto unless such determination is clearly arbitrary or unreasonable. In the event the CONSULTANT does not concur with the decisions of the COUNTY, within ten (10) calendar days after determination by COUNTY staff, the CONSULTANT shall present any such objections in writing to COUNTY staff and, upon request, any adverse determination shall be referred to an appeal board comprised of a representative of Purchasing Services, of the County Manager's Office and of the Facilities Department for review and disposition at a hearing to be held within ten (10) calendar days after receipt of the appeal.

This paragraph does not constitute a waiver of either party's right to proceed in a court of competent jurisdiction, provided that prior to filing any suit the CONSULTANT goes through the appeal process established in this Agreement and provided further that the CONSULTANT strictly abides by the ten day time deadline set forth in this paragraph.

SECTION IX - OWNERSHIP OF DOCUMENTS

All reports, tracings, plans, specifications, maps, contract documents and other work products developed by the CONSULTANT pursuant to this Agreement shall become the property of the COUNTY. When each individual section of work requested pursuant to this Agreement is complete, all of the above work products shall be delivered to the COUNTY for its use.

SECTION X - REUSE OF DOCUMENTS

The CONSULTANT may not reuse plans, specifications or reports specifically developed by the CONSULTANT for the COUNTY without express written permission from the COUNTY. The COUNTY may reuse any plans, specifications or reports provided under this Agreement under the following conditions:

- (a) The COUNTY shall notify the CONSULTANT of such reuse;
- (b) The COUNTY and CONSULTANT shall agree to compensation for such reuse;
- (c) The provisions of Florida Statutes 287.055 (10) (H) are followed; and
- (d) The County shall hold CONSULTANT harmless from any property damage or

personal injury which may result from such reuse.

SECTION XI - NOTICES

Any legal notices from the CONSULTANT to the COUNTY shall be considered delivered when posted by certified mail or delivered in person to the COUNTY.

Any legal notices from the COUNTY to the CONSULTANT shall be considered delivered when posted by certified mail to the CONSULTANT at the last address left on file with the COUNTY or delivered in person to CONSULTANT or the CONSULTANT'S authorized representative.

Notice under this Agreement shall be given as above to the following authorized representatives:

On behalf of the County:

Brevard County Public Works - Facilities
Attn: Mary Bowers, Support Services Manager
2725 Judge Fran Jamieson Way, Building A-207
Viera, Florida 32940

On behalf of the CONSULTANT

Schenkel Shultz Architecture
Attn: Johnnie D. Lohrum Jr., LEED, AP
200 E. Robinson Street, Suite 300
Orlando, Florida 32801

SECTION XII - AUDIT RIGHTS/PUBLIC RECORDS

The COUNTY or any of its duly authorized representatives reserves the right to audit the records of the CONSULTANT related to this Agreement at any time during the prosecution of the work included herein and for a period of three (3) years after final payment is made.

Both parties understand that Brevard County is subject to the Florida Public Records Law, Chapter 119, Florida Statutes. "Public Records" are defined "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency" Fla. Stat. 119.011(12).

Pursuant to Florida Statute Chapter 119, generally, and 119.0701 specifically, if records created by the COUNTY or the CONSULTANT related to the performance of the services under this Agreement do not fall under a specific exemption under Florida or federal law, the records - whether created or maintained by the CONSULTANT or the COUNTY- must be provided to anyone making a public records request. It will be the CONSULTANT'S duty to identify any information in records created by the CONSULTANT which it deems is exempt under Florida or federal law and identify the statute number which requires the information be held exempt.

A request to inspect or copy public records relating to this Agreement must be made directly to

the COUNTY. If the COUNTY does not possess the requested records, the COUNTY shall immediately notify the CONSULTANT of the request, and the CONSULTANT must provide the COUNTY with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided pursuant to Florida Statute Chapter 119 and Brevard County Board Policy.

Should any person or entity make a public records request of the COUNTY which requires or would require the COUNTY to allow inspection or provide copies of records which the CONSULTANT maintains are exempt under the Public Records Law or otherwise confidential, it shall be the CONSULTANT'S obligation to provide the County within a reasonable time of notification by the COUNTY to the CONSULTANT of the records request, of the specific exemption or confidentiality provision to allow the County to comply with the requirements of Florida Statute 119.07(1)(e) and (f). Should the County face any kind of legal action to require or enforce inspection or production of any records provided by the CONSULTANT to the County which the CONSULTANT maintains are exempt or confidential from such inspection/production as a public record, the CONSULTANT shall hire and compensate attorney(s) who shall represent the interests of the County as well as the CONSULTANT in defending such action. The CONSULTANT shall also pay any costs to defend such action and shall pay any costs and attorney's fees which may be awarded pursuant to Fla. Stat. 119.12.

Should the CONSULTANT fail to provide the public records to the COUNTY within a reasonable time, the CONSULTANT is subject to penalties under s. 119.10.

The CONSULTANT shall ensure that all public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the Agreement if the CONSULTANT does not transfer the records to the COUNTY.

Upon completion of the Agreement, the CONSULTANT shall transfer, at no cost, to the COUNTY all public records in possession of the CONSULTANT or keep and maintain public records required by the COUNTY to perform the service. If the CONSULTANT transfers all public records to the COUNTY upon completion of the Agreement, the CONSULTANT shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the CONSULTANT keeps and maintains public records upon completion of the Agreement, the CONSULTANT shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the COUNTY, upon request from the COUNTY's custodian of public records, in a format that is compatible with the information technology systems of the COUNTY.

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) 633-2050.

SECTION XIII – SUBCONTRACTING

The CONSULTANT shall not subcontract, assign, or transfer any work under this Agreement without the written approval of the COUNTY. When applicable, the CONSULTANT shall cause the names of any subcontracted firms responsible for major portions (or separate specialty) of the work to be inserted in the pertinent documents or data.

SECTION XIV - CONTINGENT FEES

The CONSULTANT represents that no person or company was employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except bona fide employee, any fee commission, contribution, donation, gift or any other consideration, contingent upon, or resulting from award of this Agreement.

For any breach or violation of this provision, the COUNTY shall have the right to terminate this Agreement, without liability, and, at its discretion, to deduct from the contract price or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration and any damages and shall be responsible for reporting the details of such breach or violation to the proper legal authorities where and when appropriate.

SECTION XV - TERMINATION/MODIFICATION OF AGREEMENT

- A. Either party may terminate this Agreement for any reason upon thirty (30) days written notice, provided that, in the event CONSULTANT so terminates, any outstanding approved Work Order upon which a Notice to Proceed has been issued is completed by the CONSULTANT.
- B. In the event of termination by the COUNTY, the COUNTY's sole obligation to the CONSULTANT shall be payment for those portions of work satisfactorily completed which were previously authorized by approved Work Order. Such payment shall be determined on the basis of hours of work performed by the CONSULTANT and agreed upon by the COUNTY up to the time of termination. In the event of such termination, the COUNTY may, without penalty or other obligation to the CONSULTANT, elect to employ other persons to perform the same or similar services.
- C. The terms of this Agreement may be modified upon the mutual agreement of the CONSULTANT and the COUNTY as confirmed in writing.
- D. In the event that the CONSULTANT changes the firm's name, merges with another company, becomes a subsidiary, substitutes any project team members, or makes other substantial change in structure or in principals, the COUNTY reserves the right to terminate this Agreement subject to the terms prescribed above.
- E. The CONSULTANT shall not be allowed to substitute project team members named in its response, during the course of the contract, without prior written permission of the COUNTY.

SECTION XVI - DURATION OF AGREEMENT

This Agreement shall remain in full force and effect for a period of one (1) year after its date of execution, although actual completion of services hereunder may extend beyond such term, unless this Agreement is terminated by mutual consent of the parties as otherwise provided herein. The performance of specially and properly authorized projects may extend beyond the Agreement's one-year effective term and shall be compensated in accordance with Section IV hereof. In addition, subject to the COUNTY'S sole discretion, if no change in fees under Schedule "A" or paragraph V.D. is proposed, this Agreement may be extended in one (1) year increments for up to three (3) years beyond the initial one (1) year period of the Agreement.

SECTION XVII – DEFAULT

In the event the CONSULTANT fails to comply with the provisions of this Agreement, the COUNTY may declare the CONSULTANT in default by written notification. In the event partial payment has been made for continuing architectural and engineering services not completed, the CONSULTANT shall return any sums due to the COUNTY as a result of CONSULTANT'S default within ten (10) days after notice and demand that said sums are due. The CONSULTANT shall not be compensated on a percentage of any deficient continuing architectural and engineering services which have been performed at the time the COUNTY declares a default. The COUNTY shall pay for that portion, if any, of the performed work which is used or useful by any other consultant retained by the COUNTY to finish the work to the extent that the COUNTY does not incur additional costs over those set forth in the CONSULTANT's canceled Work Order. Any default by the COUNTY for causes which are later determined to be invalid shall be considered a termination by the COUNTY for convenience and compensated as provided in Section XV.

SECTION XVIII - INDEMNIFICATION AND INSURANCE

The CONSULTANT shall provide the following described insurance policies with insurers acceptable to the COUNTY. The CONSULTANT shall provide and maintain at all times during the terms of the Agreement, without cost or expense to the COUNTY, policies of insurance generally known as comprehensive general liability and auto liability policies, and professional errors and omissions liability coverage. These policies of insurance shall cover the CONSULTANT for any and all claims, demands, and expenses whatsoever, including defense and causes for action for general damages, bodily injury and property damage arising out of or to the extent caused by negligent acts, errors or omissions of the CONSULTANT. Said policies shall provide limits in the amount not less than \$500,000 per occurrence to cover any and all claims arising in connection with any particular accident or occurrence.

The CONSULTANT shall provide and maintain Workers' Compensation insurance (as required by law) for all employees to provide services under the scope of this Agreement. The COUNTY shall be entitled to thirty (30) days written notice of any changes or cancellations of said policies. These insurance requirements shall not relieve or limit the liability of the CONSULTANT. The COUNTY does not in any way represent that these types or amounts of insurance are sufficient or adequate to protect the CONSULTANT'S interests or liabilities, but are merely minimums.

The CONSULTANT agrees to indemnify, defend and hold the COUNTY harmless against any

and all claims, causes of action or liability for bodily injury, sickness, disease, death or personal injury or damage to property or loss of use resulting therefrom to the extent caused by negligent acts, errors or omissions of the CONSULTANT. The CONSULTANT agrees to indemnify and pay on behalf of the COUNTY the cost of the COUNTY'S legal defense of all claims described herein. Such payment on behalf of the COUNTY shall be in addition to any and all other legal remedies available to the COUNTY and shall not be considered to be the COUNTY's exclusive remedy. It is agreed by the parties hereto that specific consideration has been paid under this Agreement for this hold harmless provision. The COUNTY agrees to hold the CONSULTANT harmless from any property damage or personal injury which may result from the COUNTY'S negligent acts relating to the performance of this Agreement.

SECTION XIX - QUALITY CONTROL

The CONSULTANT shall provide a high level of quality control and accuracy. The COUNTY may request additional data collection or re-analysis of data at no expense to the COUNTY. If the original data collected and/or the data analysis is found to be accurate and reasonable, the CONSULTANT shall be compensated for the additional work in accordance with Section IV of this Agreement.

The CONSULTANT acknowledges that the COUNTY will periodically evaluate the CONSULTANT's performance and that the evaluation will be used by the COUNTY in determining the CONSULTANT'S qualifications for future contracts with COUNTY.

SECTION XX - NON EXCLUSIVE AGREEMENT

The parties acknowledge that this Agreement is not an exclusive Agreement and the COUNTY may employ other architects, engineers, professional or technical personnel to furnish services for the COUNTY, as the COUNTY, in its sole discretion, finds is in the public interest. The COUNTY reserves the right to assign such work to the CONSULTANT as it may approve in the sole discretion of the COUNTY.

SECTION XXI - TRUTH IN NEGOTIATIONS

In accordance with the provisions of Chapter 287.055, Florida Statutes, the CONSULTANT agrees to execute a truth-in-negotiations certificate (Attachment "B") and agrees the original contract price and any additions may be adjusted to exclude any significant sums by which the contract price was increased due to inaccurate, incomplete or non-current wage rates and other factual unit costs.

SECTION XXII - INTEREST OF MEMBERS OF COUNTY AND OTHERS

No officers, members or employees of the COUNTY, and no members of its governing body, and no other public official of the governing body of the locality or localities in which services for the facilities are situated or carried out, who exercised any functions or responsibilities in the review or approval of the undertaking or carrying out of this project, shall participate in any decision relating to this Agreement which affects their personal interest, or have any personal or pecuniary interest, direct or indirect, in this Agreement or the proceeds thereof.

The CONSULTANT shall not engage the services of any person or persons now employed by the County, including any department, agency, board or commission thereof, to provide the

services relating to this Agreement without the written consent from the County.

SECTION XXIII - INTEREST OF CONSULTANT

The CONSULTANT covenants that it presently has no conflict of interest and shall not acquire any interest, direct or indirect, which shall conflict in any manner or degree with the performance of services required to be performed under this Agreement. The CONSULTANT further covenants that, in the performance of this Agreement, no person having any such conflict of interest shall be employed by the Consultant.

SECTION XXIV - ENTIRETY OF AGREEMENT

This writing, together with Work Orders and signed Authorizations to Proceed that may follow, embody the entire Agreement and understanding between the parties hereto, and there are not other agreements and understandings, oral or written, with reference to the subject matter hereof that are not merged herein.

No alteration, change or modification of the terms of this Agreement shall be valid unless made in writing, signed by both parties hereto as an addendum to this Agreement, or as specifically prescribed in a Work Order.

SECTION XXV – GOVERNING LAW

This Agreement, regardless of where executed, shall be governed by and construed according to the laws of the State of Florida.

SECTION XVI – VENUE

Venue for any legal action by any party to this agreement to interpret, construe or enforce this Agreement, shall be in a court of competent jurisdiction in and for Brevard County, Florida and any trial shall be nonjury and any trial shall be non-jury.

SECTION XVII – ATTORNEYS FEES

In the event either party sues the other to enforce the terms of this Agreement, or any Work Orders issued hereunder, each party shall bear its own attorney's fees and costs.

SECTION XVIII – CONSTRUCTION OF AGREEMENT

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

(intentionally left blank)

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

ATTEST:



Scott Ellis, Clerk

BREVARD COUNTY BOARD OF
COUNTY COMMISSIONERS



Rita Pritchett – Chairman

As Approved By The Board: Oct 10 2017

SCHENKEL SHULTZ
ARCHITECTURE



By: MANAGING PARTNER
DANIEL C. LAGGAN

ATTACHMENT "A"

FEMA CLAUSES AND CERTIFICATIONS

During the performance of this Agreement, the CONSULTANT agrees as follows:

1. The CONSULTANT will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The CONSULTANT will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CONSULTANT agrees to post in conspicuous places, available to all employees and applicants for employment, notices to be provided setting forth the provisions of this non-discrimination clause.
2. The CONSULTANT will, in all solicitations or advertisements for employees placed by or on behalf of the CONSULTANT, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.
3. The CONSULTANT will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or worker's representatives of the CONSULTANT's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The CONSULTANT will comply with all provisions of Executive Order 11246 of September 24, 1965, and the rules, regulations and relevant orders of the Secretary of Labor.
5. The CONSULTANT will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
6. In the event of the CONSULTANT's non-compliance with the non-discrimination clauses of this Agreement or with any of the said rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and the CONSULTANT may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
7. The CONSULTANT will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The

CONSULTANT will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance, provided, however, that in the event the CONSULTANT becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States.

8. **Clean Air Act and the Federal Water Pollution Control Act:** (For all contracts in excess of \$150,000)

A. **Clean Air Act** –

- i. The CONSULTANT agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- ii. The CONSULTANT agrees to report each violation to the COUNTY through its Facilities Department and understands that the Brevard County Facilities Department will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- iii. The CONSULTANT agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

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

- i. The CONSULTANT agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- ii. The CONSULTANT agrees to report each violation to the COUNTY through its Facilities Department and understands and agrees that the Brevard County Facilities Department will, in turn, report each violation to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- iii. The CONSULTANT agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

9. **Suspension and Debarment:**

- A. This Agreement is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the CONSULTANT is required to verify that neither the CONSULTANT, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- B. The CONSULTANT must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- C. This certification is a material representation of fact relied upon by the COUNTY. If it is later determined that the CONSULTANT did not comply with 2 C.F.R. pt.

180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the State of Florida (Division of Emergency Management) and the County, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

- D. The CONSULTANT agrees to comply with the requirements of 2 C.F.R. pt.180, subpart C and 2 C.F.R. pt. 3000, subpart C while this Agreement is valid. The CONSULTANT agrees to include a provision requiring such compliance in its lower tier covered transactions.

10. **Byrd Anti-Lobbying Amendment, 31 U.S.C. . § 1352 (as amended):**

Contractors, including the CONSULTANT, who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee or a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier-to-tier up to the recipient.

11. **Procurement of Recovered Materials:**

In the performance of this Agreement, the CONSULTANT shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired:

- A. Competitively within a timeframe providing for compliance with the Agreement performance schedule;
- B. Meeting Agreement performance requirements; or
- C. At a reasonable price.

Information about this requirement, along with the list of EPA-designate items, is available at EPA's Comprehensive Procurement Guidelines website at <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

12. **Additional FEMA Requirements:**

A. **Access to Records:**

- i. The CONSULTANT agrees to provide the COUNTY, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers and records of the CONSULTANT which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts and transcriptions.
- ii. The CONSULTANT agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

iii. The CONSULTANT agrees to provide the FEMA Administrator or his authorized representative access to construction or other work sites pertaining to the work being completed under the Agreement.

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

The CONSULTANT shall not use DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

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

The CONSULTANT acknowledges that FEMA financial assistance will be used to fund this Agreement and resulting Agreements only. The CONSULTANT will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures and directives.

D. No Obligation by Federal Government:

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

E. Fraud and False or Fraudulent or Related Acts:

The CONSULTANT acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the CONSULTANT's actions pertaining to this Agreement.

ATTACHMENT "B"

RFQ-4-18-06
CONTINUING ARCHITECTURAL/ENGINEERING DESIGN SERVICES
STANDARD HOURLY RATE SCHEDULE

POSITION	HOURLY RATE
Principal	\$160.00
Project Director/Manager	\$150.00
Project Architect	\$140.00
Project Engineer	\$140.00
CAD Designer	\$90.00
CAD Drafter/Operator/Technician	\$70.00
Admin/Word Processing	\$60.00

ATTACHMENT "C"

PUBLIC ENTITY CRIME AFFIDAVIT

A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid/quote/proposal on a contract to provide goods or services to a public entity, may not submit a bid/quote/proposal on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids/quotes/proposals on leases of rental property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

CONTINUING ARCHITECTURAL/ENGINEERING DESIGN CONSULTANT SERVICES AGREEMENT

This is an Agreement entered into this 12th day of July 2018, by and between **BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS**, a political subdivision of the State of Florida, hereinafter referred to as COUNTY and **Tsark Architecture**, a corporation under the laws of the State of Florida, hereinafter referred to as CONSULTANT, whose address is 2813 Glasbern Circle, West Melbourne, Florida 32904.

WHEREAS, the County has a need for the services of a consultant to provide architectural/engineering design services under a continuing contract per Florida Statute 287.055;

WHEREAS, the County issued a Request for Qualifications #RFQ-4-18-06 for such services and has selected the CONSULTANT to provide said services;

WHEREAS, this is an Agreement for professional services for projects in which the construction costs do not exceed \$2 million, for study activity when the fee for services for each study does not exceed \$200,000, or for work of a specified nature projects, that may be funded or submitted for reimbursement by/through the Federal Emergency Management Agency, as outlined herein.

For and in consideration of the mutual agreement hereinafter contained, the COUNTY hereby retains the CONSULTANT and the CONSULTANT hereby covenants to provide continuing architectural/engineering services as prescribed herein.

SECTION I - GENERAL IDENTIFICATION OF SERVICES

All continuing architectural/engineering services provided by the CONSULTANT for the COUNTY shall be identified in Work Orders. Work Orders shall entail a description of services to be performed, a statement of fees, proposed schedule for compensation, a projected schedule for completion of the work, project team members assigned to supervise/perform services provided under the Work Order, and any other terms or conditions specific to the Work Order to be performed by the CONSULTANT, including terms that may be specific to projects that may be funded or submitted for reimbursement by/through the Federal Emergency Management Agency. A Work Order shall not give rise to any contractual rights until approved by the COUNTY in the form of a written Notice to Proceed signed by an authorized representative of the COUNTY. The written Notice to Proceed and specific Work Order, as approved by the COUNTY, shall together constitute an addendum to this Agreement.

The Federal Emergency Management Agency (FEMA) Clauses and Certifications included herein, or attached hereto, control over any conflicting clauses contained within the separate Agreements, covering the work for each Project, between the COUNTY and the CONSULTANT, when the Work involved will be submitted by/through FEMA for reimbursement to the COUNTY.

The FEMA Clauses and Certifications are attached hereto, and incorporated by this reference, as Attachment "A."

SECTION II - COUNTY OBLIGATIONS

The COUNTY shall furnish to the CONSULTANT, upon request, any data available in the COUNTY'S files pertaining to the work to be performed under this Agreement.

SECTION III - CONTINUING DESIGN CONSULTANT SERVICES

Upon receipt of a Notice to Proceed on a Work Order, CONSULTANT agrees to perform continuing architectural/engineering services associated with the requested work in accordance with the negotiated terms of the applicable Work Order, and in accordance with accepted professional standards and practices. The CONSULTANT agrees to correct any errors and omissions and prepare any revisions which may be required because the CONSULTANT'S plans and specifications were found defective, without any increase in price of the applicable Work Order. This remedy shall be cumulative to all other remedies available under law.

In connection with continuing architectural/engineering services to be rendered pursuant to this Agreement, the CONSULTANT further agrees to:

- A. Maintain an adequate staff of qualified personnel;
- B. Comply with federal, state and local laws applicable to the work;
- C. Cooperate fully with the COUNTY in the scheduling and coordination of all phases of the work;
- D. Cooperate and coordinate with other COUNTY consultants, as directed by the COUNTY;
- E. Report the status of the work to the COUNTY upon request and hold pertinent data, calculations, field notes, records, sketches and other projects open to the inspection of the COUNTY or its authorized agent at any time;
- F. Submit for COUNTY review design computations, sketches and other data representative of the work's progress at the percentage stages of completion which may be stipulated in the applicable Work Order. **This shall include a Division 16 Estimate of Probable Construction Cost at each design submittal.** Submit for COUNTY approval the final work product upon incorporation of any modifications requested by the COUNTY during any previous review. Any COUNTY approval of the CONSULTANT'S plans, design or specifications shall not be deemed to diminish the CONSULTANT'S responsibility;
- G. Confer with the COUNTY during the further development and implementation of improvements for which the CONSULTANT has provided design or other services;
- H. Interpret plans and other documents, correct CONSULTANT errors and omissions and prepare any necessary plan revisions not involving change in the scope of work required, at no additional cost;

- I. Prior to final approval of the work by the COUNTY, as Owner, the CONSULTANT shall submit any of CONSULTANT'S construction documents to any review committee, third party consultant or any county, city, state or federal agency from which a permit or other approval is required, and revise CONSULTANT'S construction documents as may be required by such permitting or approval agencies. Any approval obtained from the COUNTY or any other agency shall not be deemed to diminish or discharge the CONSULTANT'S responsibility provided for in this Agreement.

Regarding any resulting construction, the CONSULTANT will review all pre-qualification documents, bids and make recommendations regarding award to the lowest responsible bidder. The CONSULTANT shall review and approve the contractor's Schedule of Values.

Prior to commencement of construction, the CONSULTANT shall attend a pre-construction conference. Representatives from the Owner, Contractor and CONSULTANT shall attend to discuss policies and procedures to be followed during the construction period, and answer questions regarding design intent, clarification or interpretation of the construction documents.

The CONSULTANT will review and approve or reject, as appropriate, all Contractor Applications for Payment submitted during the construction of work.

The CONSULTANT will review and approve or reject, as appropriate, all contractor submitted as-built drawings, warranties and operation and maintenance manuals for completeness and conformance with the contract requirements and submit to the Owner indicating their approval.

The CONSULTANT will prepare record drawings and specifications showing significant changes in the work made during construction based on marked-up prints, drawings and other data furnished by the contractor to the CONSULTANT, utilizing AutoCad Release 12 or newer software or compatible approved by the Owner. **One (1) set of reproducible record drawings, in electronic format, is to be submitted to the Owner with Certificate of Final Completion.**

The CONSULTANT will prepare and distribute meeting minutes at all design phase meetings and progress meetings, in a format approved by the Owner. In addition to the regular scheduled construction site visits and progress meetings, this Agreement shall include, at no additional cost to the Owner, the Substantial & Final Completion Inspection(s) and the warranty inspection with the appropriate written reports and certifications.

The CONSULTANT shall respond promptly and completely to all Requests For Information or clarifications regarding the drawings and specifications so as not to cause a delay in the construction schedule.

SECTION IV - TIME OF COMPLETION

The services to be rendered by the CONSULTANT for each section of the work shall commence upon receipt of a written Notice to Proceed from the COUNTY subsequent to the execution of the Agreement, and shall be completed within the time stated in the Work Order.

SECTION V - COMPENSATION

The COUNTY agrees to pay and the CONSULTANT agrees to accept, for services rendered pursuant to this Agreement, fees and other compensation computed in accordance with one or a combination of the methods outlined below, and as specified in an approved Work Order:

- A. **Hourly Rate** - the CONSULTANT shall be compensated at the attached Hourly Rate Schedule (Attachment "B") for each hour of time engaged directly in the work.
- B. **Reimbursable Expenses** - The CONSULTANT shall be compensated for certain work-related expenditures not covered by fees for consulting services, provided such expenditures are previously authorized by the COUNTY in an approved Work Order. Upon receipt of satisfactory back up materials, the CONSULTANT will be compensated for such reimbursable expenses. Such expenses may include:
 1. Expenses for document reproduction. These expenses shall be reimbursed on a direct cost basis.
 2. Mileage – These expenses shall be reimbursed at the COUNTY's authorized cost (¢) per mile.
- C. At least thirty (30) days prior to each anniversary date of this Agreement either party may request an adjustment to the rates provided for herein to apply in the forthcoming year. Failure of the parties to agree on a new rate shall constitute a basis for issuing a Notice of Termination by the COUNTY. Any proposed change in rates by the CONSULTANT shall be subject to the prior approval of the COUNTY.
- D. In the event CONSULTANT experiences any delay resulting from circumstances beyond its control, or a change in the scope of work which will result in an increase or decrease in a Work Order's price or time, CONSULTANT shall provide immediate notice to the COUNTY for consideration of additional compensation or time. Additional compensation shall be limited to direct costs resulting from the delay or change in work.

SECTION VI - PAYMENT AND PARTIAL PAYMENTS

Subject to the COUNTY'S right to withhold any amounts reasonably necessary to complete or correct defective or substandard work, the COUNTY shall make monthly payments or partial payments to the CONSULTANT for all authorized work performed during the previous calendar month in accordance with the "Florida Prompt Payment Act."

- A. The CONSULTANT shall submit signed invoices to the COUNTY;
- B. The amount of each invoice submitted shall be the amount due for all services performed to date in connection with authorized work, as certified by the CONSULTANT. Each invoice shall include any authorized reimbursable expenses and must reference the particular Work Order which authorized the services performed. The invoice shall be accompanied by copies of invoices for reimbursable expenses;

- C. Invoices for work other than lump sum shall include a breakdown for each part of the work billed for each item and personnel as identified in Attachment "A". Copies of all invoices paid by the CONSULTANT for expenses shall be included with the CONSULTANT's invoice.

SECTION VII - SCHEDULE OF WORK

The COUNTY shall have the sole right to determine on which units or sections of the work the CONSULTANT shall proceed with and in what order. Should a Work Order revision cause a change in scope, cost or schedule, the CONSULTANT shall submit such revisions for review and, if warranted, approval by the COUNTY in writing.

SECTION VIII - RIGHT OF DECISIONS

All services shall be performed by the CONSULTANT to reasonable professional standards and practices and to the reasonable requirements of the COUNTY. COUNTY staff shall decide and dispose of all claims, questions and disputes arising under this Agreement. Such determination shall be final, conclusive and binding upon the parties hereto unless such determination is clearly arbitrary or unreasonable. In the event the CONSULTANT does not concur with the decisions of the COUNTY, within ten (10) calendar days after determination by COUNTY staff, the CONSULTANT shall present any such objections in writing to COUNTY staff and, upon request, any adverse determination shall be referred to an appeal board comprised of a representative of Purchasing Services, of the County Manager's Office and of the Facilities Department for review and disposition at a hearing to be held within ten (10) calendar days after receipt of the appeal.

This paragraph does not constitute a waiver of either party's right to proceed in a court of competent jurisdiction, provided that prior to filing any suit the CONSULTANT goes through the appeal process established in this Agreement and provided further that the CONSULTANT strictly abides by the ten day time deadline set forth in this paragraph.

SECTION IX - OWNERSHIP OF DOCUMENTS

All reports, tracings, plans, specifications, maps, contract documents and other work products developed by the CONSULTANT pursuant to this Agreement shall become the property of the COUNTY. When each individual section of work requested pursuant to this Agreement is complete, all of the above work products shall be delivered to the COUNTY for its use.

SECTION X - REUSE OF DOCUMENTS

The CONSULTANT may not reuse plans, specifications or reports specifically developed by the CONSULTANT for the COUNTY without express written permission from the COUNTY. The COUNTY may reuse any plans, specifications or reports provided under this Agreement under the following conditions:

- (a) The COUNTY shall notify the CONSULTANT of such reuse;
- (b) The COUNTY and CONSULTANT shall agree to compensation for such reuse;
- (c) The provisions of Florida Statutes 287.055 (10) ~~(11)~~ are followed; and
- (d) The County shall hold CONSULTANT harmless from any property damage or

personal injury which may result from such reuse.

SECTION XI - NOTICES

Any legal notices from the CONSULTANT to the COUNTY shall be considered delivered when posted by certified mail or delivered in person to the COUNTY.

Any legal notices from the COUNTY to the CONSULTANT shall be considered delivered when posted by certified mail to the CONSULTANT at the last address left on file with the COUNTY or delivered in person to CONSULTANT or the CONSULTANT'S authorized representative.

Notice under this Agreement shall be given as above to the following authorized representatives:

On behalf of the County:

Brevard County Public Works - Facilities
Attn: Mary Bowers, Support Services Manager
2725 Judge Fran Jamieson Way, Building A-207
Viera, Florida 32940

On behalf of the CONSULTANT

Tsark Architecture
Attn: Gregory I. Tsark, Principal
2813 Glasbern Circle
West Melbourne, Florida 32904

SECTION XII - AUDIT RIGHTS/PUBLIC RECORDS

The COUNTY or any of its duly authorized representatives reserves the right to audit the records of the CONSULTANT related to this Agreement at any time during the prosecution of the work included herein and for a period of three (3) years after final payment is made.

Both parties understand that Brevard County is subject to the Florida Public Records Law, Chapter 119, Florida Statutes. Stat. 119.011(12).

Pursuant to Florida Statute Chapter 119, generally, and 119.0701 specifically, if records created by the COUNTY or the CONSULTANT related to the performance of the services under this Agreement do not fall under a specific exemption under Florida or federal law, the records - whether created or maintained by the CONSULTANT or the COUNTY- must be provided to anyone making a public records request. It will be the CONSULTANT'S duty to identify any information in records created by the CONSULTANT which it deems is exempt under Florida or federal law and identify the statute number which requires the information be held exempt.

A request to inspect or copy public records relating to this Agreement must be made directly to the COUNTY. If the COUNTY does not possess the requested records, the COUNTY shall immediately notify the CONSULTANT of the request, and the CONSULTANT must provide the COUNTY with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided pursuant to Florida

Statute Chapter 119 and Brevard County Board Policy.

Should any person or entity make a public records request of the COUNTY which requires or would require the COUNTY to allow inspection or provide copies of records which the CONSULTANT maintains are exempt under the Public Records Law or otherwise confidential, it shall be the CONSULTANT'S obligation to provide the County within a reasonable time of notification by the COUNTY to the CONSULTANT of the records request, of the specific exemption or confidentiality provision to allow the County to comply with the requirements of Florida Statute 119.07(1)(e) and (f). Should the County face any kind of legal action to require or enforce inspection or production of any records provided by the CONSULTANT to the County which the CONSULTANT maintains are exempt or confidential from such inspection/production as a public record, the CONSULTANT shall hire and compensate attorney(s) who shall represent the interests of the County as well as the CONSULTANT in defending such action. The CONSULTANT shall also pay any costs to defend such action and shall pay any costs and attorney's fees which may be awarded pursuant to Fla. Stat. 119.12.

Should the CONSULTANT fail to provide the public records to the COUNTY within a reasonable time, the CONSULTANT is subject to penalties under s. 119.10.

The CONSULTANT shall ensure that all public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the Agreement if the CONSULTANT does not transfer the records to the COUNTY.

Upon completion of the Agreement, the CONSULTANT shall transfer, at no cost, to the COUNTY all public records in possession of the CONSULTANT or keep and maintain public records required by the COUNTY to perform the service. If the CONSULTANT transfers all public records to the COUNTY upon completion of the Agreement, the CONSULTANT shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the CONSULTANT keeps and maintains public records upon completion of the Agreement, the CONSULTANT shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the COUNTY, upon request from the COUNTY's custodian of public records, in a format that is compatible with the information technology systems of the COUNTY.

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) 633-2050.

SECTION XIII – SUBCONTRACTING

The CONSULTANT shall not subcontract, assign, or transfer any work under this Agreement without the written approval of the COUNTY. When applicable, the CONSULTANT shall cause the names of any subcontracted firms responsible for major portions (or separate specialty) of

the work to be inserted in the pertinent documents or data.

SECTION XIV - CONTINGENT FEES

The CONSULTANT represents that no person or company was employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except bona fide employee, any fee commission, contribution, donation, gift or any other consideration, contingent upon, or resulting from award of this Agreement.

For any breach or violation of this provision, the COUNTY shall have the right to terminate this Agreement, without liability, and, at its discretion, to deduct from the contract price or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration and any damages and shall be responsible for reporting the details of such breach or violation to the proper legal authorities where and when appropriate.

SECTION XV - TERMINATION/MODIFICATION OF AGREEMENT

- A. Either party may terminate this Agreement for any reason upon thirty (30) days written notice, provided that, in the event CONSULTANT so terminates, any outstanding approved Work Order upon which a Notice to Proceed has been issued is completed by the CONSULTANT.
- B. In the event of termination by the COUNTY, the COUNTY's sole obligation to the CONSULTANT shall be payment for those portions of work satisfactorily completed which were previously authorized by approved Work Order. Such payment shall be determined on the basis of hours of work performed by the CONSULTANT and agreed upon by the COUNTY up to the time of termination. In the event of such termination, the COUNTY may, without penalty or other obligation to the CONSULTANT, elect to employ other persons to perform the same or similar services.
- C. The terms of this Agreement may be modified upon the mutual agreement of the CONSULTANT and the COUNTY as confirmed in writing.
- D. In the event that the CONSULTANT changes the firm's name, merges with another company, becomes a subsidiary, substitutes any project team members, or makes other substantial change in structure or in principals, the COUNTY reserves the right to terminate this Agreement subject to the terms prescribed above.
- E. The CONSULTANT shall not be allowed to substitute project team members named in its response, during the course of the contract, without prior written permission of the COUNTY.

SECTION XVI - DURATION OF AGREEMENT

This Agreement shall remain in full force and effect for a period of one (1) year after its date of execution, although actual completion of services hereunder may extend beyond such term, unless this Agreement is terminated by mutual consent of the parties as otherwise provided herein. The performance of specially and properly authorized projects may extend beyond the

Agreement's one-year effective term and shall be compensated in accordance with Section IV hereof. In addition, subject to the COUNTY'S sole discretion, if no change in fees under Schedule "A" or paragraph V.D. is proposed, this Agreement may be extended in one (1) year increments for up to three (3) years beyond the initial one (1) year period of the Agreement.

SECTION XVII – DEFAULT

In the event the CONSULTANT fails to comply with the provisions of this Agreement, the COUNTY may declare the CONSULTANT in default by written notification. In the event partial payment has been made for continuing architectural and engineering services not completed, the CONSULTANT shall return any sums due to the COUNTY as a result of CONSULTANT'S default within ten (10) days after notice and demand that said sums are due. The CONSULTANT shall not be compensated on a percentage of any deficient continuing architectural and engineering services which have been performed at the time the COUNTY declares a default. The COUNTY shall pay for that portion, if any, of the performed work which is used or useful by any other consultant retained by the COUNTY to finish the work to the extent that the COUNTY does not incur additional costs over those set forth in the CONSULTANT's canceled Work Order. Any default by the COUNTY for causes which are later determined to be invalid shall be considered a termination by the COUNTY for convenience and compensated as provided in Section XV.

SECTION XVIII - INDEMNIFICATION AND INSURANCE

The CONSULTANT shall provide the following described insurance policies with insurers acceptable to the COUNTY. The CONSULTANT shall provide and maintain at all times during the terms of the Agreement, without cost or expense to the COUNTY, policies of insurance generally known as comprehensive general liability and auto liability policies, and professional errors and omissions liability coverage. These policies of insurance shall cover the CONSULTANT for any and all claims, demands, and expenses whatsoever, including defense and causes for action for general damages, bodily injury and property damage arising out of or to the extent caused by negligent acts, errors or omissions of the CONSULTANT. Said policies shall provide limits in the amount not less than \$500,000 per occurrence to cover any and all claims arising in connection with any particular accident or occurrence.

The CONSULTANT shall provide and maintain Workers' Compensation insurance (as required by law) for all employees to provide services under the scope of this Agreement. The COUNTY shall be entitled to thirty (30) days written notice of any changes or cancellations of said policies. These insurance requirements shall not relieve or limit the liability of the CONSULTANT. The COUNTY does not in any way represent that these types or amounts of insurance are sufficient or adequate to protect the CONSULTANT'S interests or liabilities, but are merely minimums.

The CONSULTANT agrees to indemnify, defend and hold the COUNTY harmless against any and all claims, causes of action or liability for bodily injury, sickness, disease, death or personal injury or damage to property or loss of use resulting therefrom to the extent caused by negligent acts, errors or omissions of the CONSULTANT. The CONSULTANT agrees to indemnify and pay on behalf of the COUNTY the cost of the COUNTY'S legal defense of all claims described herein. Such payment on behalf of the COUNTY shall be in addition to any and all other legal remedies available to the COUNTY and shall not be considered to be the COUNTY'S exclusive

remedy. It is agreed by the parties hereto that specific consideration has been paid under this Agreement for this hold harmless provision. The COUNTY agrees to hold the CONSULTANT harmless from any property damage or personal injury which may result from the COUNTY'S negligent acts relating to the performance of this Agreement.

SECTION XIX - QUALITY CONTROL

The CONSULTANT shall provide a high level of quality control and accuracy. The COUNTY may request additional data collection or re-analysis of data at no expense to the COUNTY. If the original data collected and/or the data analysis is found to be accurate and reasonable, the CONSULTANT shall be compensated for the additional work in accordance with Section IV of this Agreement.

The CONSULTANT acknowledges that the COUNTY will periodically evaluate the CONSULTANT's performance and that the evaluation will be used by the COUNTY in determining the CONSULTANT'S qualifications for future contracts with COUNTY.

SECTION XX - NON EXCLUSIVE AGREEMENT

The parties acknowledge that this Agreement is not an exclusive Agreement and the COUNTY may employ other architects, engineers, professional or technical personnel to furnish services for the COUNTY, as the COUNTY, in its sole discretion, finds is in the public interest. The COUNTY reserves the right to assign such work to the CONSULTANT as it may approve in the sole discretion of the COUNTY.

SECTION XXI - TRUTH IN NEGOTIATIONS

In accordance with the provisions of Chapter 287.055, Florida Statutes, the CONSULTANT agrees to execute a truth-in-negotiations certificate (Attachment "B") and agrees the original contract price and any additions may be adjusted to exclude any significant sums by which the contract price was increased due to inaccurate, incomplete or non-current wage rates and other factual unit costs.

SECTION XXII - INTEREST OF MEMBERS OF COUNTY AND OTHERS

No officers, members or employees of the COUNTY, and no members of its governing body, and no other public official of the governing body of the locality or localities in which services for the facilities are situated or carried out, who exercised any functions or responsibilities in the review or approval of the undertaking or carrying out of this project, shall participate in any decision relating to this Agreement which affects their personal interest, or have any personal or pecuniary interest, direct or indirect, in this Agreement or the proceeds thereof.

The CONSULTANT shall not engage the services of any person or persons now employed by the County, including any department, agency, board or commission thereof, to provide the services relating to this Agreement without the written consent from the County.

SECTION XXIII - INTEREST OF CONSULTANT

The CONSULTANT covenants that it presently has no conflict of interest and shall not acquire any interest, direct or indirect, which shall conflict in any manner or degree with the performance of services required to be performed under this Agreement. The CONSULTANT further

covenants that, in the performance of this Agreement, no person having any such conflict of interest shall be employed by the Consultant.

SECTION XXIV - ENTIRETY OF AGREEMENT

This writing, together with Work Orders and signed Authorizations to Proceed that may follow, embody the entire Agreement and understanding between the parties hereto, and there are not other agreements and understandings, oral or written, with reference to the subject matter hereof that are not merged herein.

No alteration, change or modification of the terms of this Agreement shall be valid unless made in writing, signed by both parties hereto as an addendum to this Agreement, or as specifically prescribed in a Work Order.

SECTION XXV – GOVERNING LAW

This Agreement, regardless of where executed, shall be governed by and construed according to the laws of the State of Florida.

SECTION XVI – VENUE

Venue for any legal action by any party to this agreement to interpret, construe or enforce this Agreement, shall be in a court of competent jurisdiction in and for Brevard County, Florida and any trial shall be nonjury and any trial shall be non-jury.

SECTION XVII – ATTORNEYS FEES

In the event either party sues the other to enforce the terms of this Agreement, or any Work Orders issued hereunder, each party shall bear its own attorney's fees and costs.

SECTION XVIII – CONSTRUCTION OF AGREEMENT

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

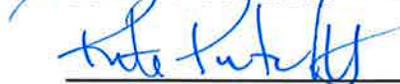
IN WITNESS WHEREOF, the parties have hereunto set their hands and seals on the day and year first above written.

ATTEST:



Scott Ellis, Clerk

BREVARD COUNTY BOARD OF
COUNTY COMMISSIONERS



Rita Pritchett – Chairman **OCT 10 2017**
As Approved By The Board: _____

TSARK ARCHITECTURE


By: Gregory I. Tsark

ATTACHMENT "A"

FEMA CLAUSES AND CERTIFICATIONS

During the performance of this Agreement, the CONSULTANT agrees as follows:

1. The CONSULTANT will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The CONSULTANT will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CONSULTANT agrees to post in conspicuous places, available to all employees and applicants for employment, notices to be provided setting forth the provisions of this non-discrimination clause.
2. The CONSULTANT will, in all solicitations or advertisements for employees placed by or on behalf of the CONSULTANT, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.
3. The CONSULTANT will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or worker's representatives of the CONSULTANT's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The CONSULTANT will comply with all provisions of Executive Order 11246 of September 24, 1965, and the rules, regulations and relevant orders of the Secretary of Labor.
5. The CONSULTANT will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
6. In the event of the CONSULTANT's non-compliance with the non-discrimination clauses of this Agreement or with any of the said rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and the CONSULTANT may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
7. The CONSULTANT will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The CONSULTANT will take such action with respect to any subcontract or purchase order

as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance, provided, however, that in the event the CONSULTANT becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States.

8. **Clean Air Act and the Federal Water Pollution Control Act:** (For all contracts in excess of \$150,000)

A. **Clean Air Act** –

- i. The CONSULTANT agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- ii. The CONSULTANT agrees to report each violation to the COUNTY through its Facilities Department and understands that the Brevard County Facilities Department will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- iii. The CONSULTANT agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

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

- i. The CONSULTANT agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- ii. The CONSULTANT agrees to report each violation to the COUNTY through its Facilities Department and understands and agrees that the Brevard County Facilities Department will, in turn, report each violation to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- iii. The CONSULTANT agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

9. **Suspension and Debarment:**

- A. This Agreement is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the CONSULTANT is required to verify that neither the CONSULTANT, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- B. The CONSULTANT must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- C. This certification is a material representation of fact relied upon by the COUNTY. If it is later determined that the CONSULTANT did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies

available to the State of Florida (Division of Emergency Management) and the County, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

- D. The CONSULTANT agrees to comply with the requirements of 2 C.F.R. pt.180, subpart C and 2 C.F.R. pt. 3000, subpart C while this Agreement is valid. The CONSULTANT agrees to include a provision requiring such compliance in its lower tier covered transactions.

10. **Byrd Anti-Lobbying Amendment, 31 U.S.C. . § 1352 (as amended):**

Contractors, including the CONSULTANT, who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee or a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier-to-tier up to the recipient.

11. **Procurement of Recovered Materials:**

In the performance of this Agreement, the CONSULTANT shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired:

- A. Competitively within a timeframe providing for compliance with the Agreement performance schedule;
- B. Meeting Agreement performance requirements; or
- C. At a reasonable price.

Information about this requirement, along with the list of EPA-designate items, is available at EPA's Comprehensive Procurement Guidelines website at <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

12. **Additional FEMA Requirements:**

A. **Access to Records:**

- i. The CONSULTANT agrees to provide the COUNTY, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers and records of the CONSULTANT which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts and transcriptions.
- ii. The CONSULTANT agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- iii. The CONSULTANT agrees to provide the FEMA Administrator or his authorized representative access to construction or other work sites pertaining to the work being completed under the Agreement.

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

The CONSULTANT shall not use DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

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

The CONSULTANT acknowledges that FEMA financial assistance will be used to fund this Agreement and resulting Agreements only. The CONSULTANT will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures and directives.

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

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

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

The CONSULTANT acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the CONSULTANT's actions pertaining to this Agreement.

ATTACHMENT "B"

RFQ-4-18-06
CONTINUING ARCHITECTURAL/ENGINEERING DESIGN SERVICES
STANDARD HOURLY RATE SCHEDULE

POSITION	HOURLY RATE
Principal	\$160.00
Project Director/Manager	\$150.00
Project Architect	\$140.00
Project Engineer	\$140.00
CAD Designer	\$90.00
CAD Drafter/Operator/Technician	\$70.00
Admin/Word Processing	\$60.00

ATTACHMENT "C"

PUBLIC ENTITY CRIME AFFIDAVIT

A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid/quote/proposal on a contract to provide goods or services to a public entity, may not submit a bid/quote/proposal on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids/quotes/proposals on leases of rental property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.