

**AGREEMENT BETWEEN OWNER AND CONSTRUCTION MANAGER**

**PROJECT NO:**

**PROJECT NAME AND LOCATION:**

Jacksonville, FL

**OWNER:**

Jacksonville Aviation Authority

**CONSTRUCTION MANAGER:**

**ARCHITECT -ENGINEER:**

DRAFT

## **FORM OF AGREEMENT BETWEEN OWNER AND CONSTRUCTION MANAGER**

THIS AGREEMENT is made this \_\_\_\_ day of \_\_\_\_\_ 2019, by and between the Jacksonville Aviation Authority, hereinafter called the **Owner**, and \_\_\_\_\_ (the consultant) \_\_\_\_\_, hereinafter called the **Construction Manager**.

### **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. He covenants with the Owner to demonstrate high performance in the industry and his best skill and judgment and to cooperate with the Architect-Engineer in furthering the interests of the Owner. He agrees to exceptional business administration and superintendence and to use the best efforts industry-wide to complete the Project in the best and soundest way and in the most expeditious and economical manner consistent with the interests 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 Preconstruction 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 Exhibit A attached.

1.2 **EXTENT OF AGREEMENT** - This Agreement between the Owner and the Construction Manager supersedes any prior negotiations, representations or agreements. When drawings, specifications and other descriptive documents defining the work to be included under a construction authorization are complete, they shall be identified in the construction authorization issued by the Project Manager. When drawings, specifications and other descriptive documents defining the work to be included in the guaranteed maximum price (GMP) are complete, an Amendment to the Agreement shall be signed by the Owner and Construction Manager, acknowledging the GMP amount and the drawings, specifications and other descriptive documents upon which the GMP is based. To expedite the preparation of this GMP Amendment by the Owner, the Construction Manager shall obtain three (3) sets of signed, sealed and dated drawings, specifications and other documents upon which the GMP is based from the Architect-Engineer, 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 set of the documents to the Owner's Contracts Administrator along with his GMP proposal, while keeping one set for himself and returning one 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 the Owner and the Construction Manager.

- 1.3 It is the intent of the parties that this Agreement shall cover the Jacksonville International Airport Terminal Expansion (Concourse B and associated work). If the Owner elects to proceed with individual phases, the Construction Manager shall submit a GMP Proposal (as later defined). The Construction Manager shall meet with the Owner and the Architect/Engineer to review the GMP Proposal. If the GMP proposal is accepted, then a GMP Amendment (as later defined) shall be issued. If any GMP Proposal is unacceptable to the Owner, the Construction Manager shall recommend adjustments thereto, including the adjustments to the Work through value-engineering or other such mechanisms. Prior to acceptance or rejection of a GMP Proposal, other than the Preconstruction Phase Fee, the Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work for the Individual Phase, except as the Owner may authorize in writing. If a GMP Proposal is not accepted by the Owner, negotiations may be terminated by the Owner.

1.4 DEFINITIONS

- Architect-Engineer -
- Construction Authorization - The term Construction Authorization shall mean a written work order based on a defined scope of work excluding Construction Manager's fees as specified in Article 8, prepared by the Project Manager and issued to the Construction Manager. Construction Authorizations shall be used prior to the date of the GMP Amendment and all work performed pursuant to Construction Authorizations shall be included in the GMP.
- Construction Manager -
- Estimate - The Construction Manager's reasonable estimate of probable project construction cost.
- GMP Amendment - The term GMP Amendment shall mean a GMP Proposal for any individual project accepted by the Owner in writing in its sole discretion, which amendment shall become a part hereof upon Owner's and Construction Manager's execution of the same and shall at a minimum establish the individual project GMP, the substantial and final completion dates, the amount of liquidated damages, and the drawings and specifications applicable to the individual project.
- GMP Proposal - The term GMP Proposal shall mean a proposal for completing an individual project which shall include a proposed GMP, the proposed substantial and final completion dates and proposed liquidated damages.
- Individual Phase - The Individual Phase is each separate and distinct portion of the work which is incorporated into this Contract Agreement by a GMP Amendment.
- Owner - The Jacksonville Aviation Authority acting through its Board or those persons designated by the Board to act in his behalf.

- Owner's Representatives - The Project Manager, his superiors or designees.
- Preconstruction Phase Fee - The lump sum amount mutually agreed to by the parties in an Amendment for any pre-construction services, as the scope of those services are defined in the applicable Amendment.
- Project Manager - The person designated by the Owner to provide direct interface with the Construction Manager with respect to the Owner's responsibilities. (See Exhibit A.)
- Substantial Completion- The term Substantial completion as used herein shall mean that point at which the Work, or a designated portion thereof, is at a level of completion in substantial compliance with the Contract Documents such that the Owner or its designee can enjoy use or occupancy for its intended purpose. In the event the Work includes more than one Phase, the Owner, at its discretion, may set Substantial Completion dates for each Phase and may impose provisions for liquidated damages for each Phase.

- 1.5 OWNER'S CONSTRUCTION BUDGET - The Owner's funds budgeted and requested for construction of each individual project. The Owner's Construction Budget is \$ \_\_\_\_\_ including all Construction Manager fees, costs of the work and the Owner's and Construction Manager's construction and interface contingencies as defined in Articles 8 and 9. This acknowledgement of the Owner's budgeted funds is not to be construed as the Construction Manager's Guaranteed Maximum Price. A Guaranteed Maximum Price will be offered by separate documentation as outlined in Article 7.

## **ARTICLE 2 CONSTRUCTION MANAGER'S SERVICES**

The services which the Construction Manager shall provide include, but are not limited to, those described or specified herein. The services described or specified shall not be deemed to constitute a comprehensive specification having the effect of excluding services not specifically mentioned.

### 2.1 PROJECT MANAGEMENT INFORMATION SYSTEM (PMIS)

#### 2.2 General

1. Commencing immediately after contract award, the Construction Manager shall implement and shall utilize throughout the life of this Contract all subsystems of the Project Management Information System hereinafter referred to as PMIS.
2. The reports, documents, and data to be provided shall represent an accurate assessment of the current status of the Project and of the work remaining to be accomplished and it shall provide a sound basis for identifying variances and problems and for making management decisions. It shall be prepared and furnished to the Owner and the Architect-Engineer monthly and shall accompany each pay request.
3. If requested by the Project Manager, the Construction Manager shall conduct a comprehensive workshop in Jacksonville for participants designated by the Project Manager and additional seminars as required to provide instruction. This workshop and the seminars shall facilitate each participant's and the Owner's representatives' use and understanding of PMIS; shall support, in-part, the

function of organizing in concert with the Architect-Engineer for the design and construction of the Project; and shall establish, with the full concurrence of the Owner and the Architect-Engineer, procedures for accomplishing the management control aspect of the Project.

4. The PMIS shall be described in terms of the following major subsystems:
  - (a) Narrative Reporting, on a monthly basis,
  - (b) Schedule Control, on a monthly basis,
  - (c) Cost Control, and estimating,
  - (d) Project Accounting,
  - (e) Accounting and Payment, and
  - (f) Action Reports.

### 2.3 Narrative Reporting Subsystem

1. The Construction Manager shall prepare written reports as described hereunder. No other PMIS narrative reports shall be required. All reports shall be in 8 1/2" x 11" format.
2. The Narrative Reporting Subsystem shall include the following reports:
  - (a) A Monthly Executive Summary which provides an overview of current issues and pending decisions, future developments and expected achievements, and any problems or delays, including code violations found by Permitting Authority.
  - (b) A Monthly Cost Narrative describing the current construction cost estimate status of the Project.
  - (c) A Monthly Scheduling Narrative summarizing the current status of the overall project schedule. This report shall include an analysis of the various project schedules, a description of the critical path, and other analyses as necessary to compare planned performance with actual performance.
  - (d) A Monthly Accounting Narrative describing the current cost and payment status of the entire project. This report shall relate current encumbrances and expenditures to the budget allocations.
  - (e) A Monthly Construction Progress Report during the construction phase summarizing the work of the various subcontractors. This report shall include information from the weekly job site meetings as applicable such as general conditions, long lead supplies, current deliveries, safety and labor relations programs, permits, construction problems and recommendations, and plans for the succeeding month.
  - (f) A Daily Construction Diary during the construction phase describing events and conditions on the site. A visitor's log recording visits by the Architect-Engineer, Consultants, Owner's Representatives, Inspectors and all visitors. This log shall include, name and who represented, phone number, date, time of arrival and departure.
  - (g) A Monthly Disadvantaged Business Enterprise (DBE) report during the construction phase summarizing the participation of certified

subcontractors/material suppliers for the current month, and project to date. The report shall include the names, addresses, and dollar amount of each certified DBE participant.

- (h) The Construction Manager shall implement a direct tax savings purchase plan approved by the Department of Revenue that, upon acceptance, will be part of the Construction Manager's services.
- (i) All Construction Manager and subcontractor daily reports.

3. The reports outlined in subsection (2)(a) through (e) above shall be bound with applicable computer reports and submitted monthly during design and construction phases and shall be current through the end of the preceding month. Copies shall be transmitted to the Owner and the Architect-Engineer and others designated by the Project Manager with the monthly pay requisition.

Additional copies of the report outlined in subsection (2)(a) shall be bound separately and distributed monthly as directed by the Project Manager.

4. The diary described in subsection (2)(f) above shall be maintained at the site available to the Owner and Architect-Engineer. A bound copy of the complete diary shall be submitted to the Owner at the conclusion of the project and may be requested earlier by the Owner without waiving any right to obtain this data at project conclusion.

#### 2.4 Scheduled Control Subsystem

1. Master Project Schedule - Upon award of this Contract, the Construction Manager shall submit a master project schedule covering the planning and design approvals, construction and Owner occupancy of the Project. This schedule will serve as the framework for the subsequent development of all detailed schedules. The master project schedule shall be produced and updated monthly throughout the project, and must be approved by the Owner or its designee. Such approval by the Architect-Engineer shall not constitute acceptance for the purposes of relieving the Construction Manager of its construction and scheduling responsibilities on the project.
2. Construction Schedule and Requirements for Overtime Work for Projects with Construction Costs in Excess of \$5,000,000 - Within thirty (30) days after the date of the Owner's issuance of a Notice to Proceed, the Construction Manager shall prepare and submit to the Architect-Engineer a construction schedule in quadruplicate graphically depicting the activities contemplated to occur as a necessary incident to performance of the work required to complete the project, showing the sequence in which the Construction Manager proposes for each such activity to occur and duration (dates of commencement and completion, respectively) of each such activity. The Architect-Engineer shall determine whether the construction schedule developed and submitted by the Construction Manager meets the requirements stated above and such determination shall be binding on the Construction Manager. Failure of the Construction Manager to develop and submit a construction schedule as aforesaid shall be sufficient grounds for the Architect-Engineer to find the Construction Manager in default and certify to the Owner that sufficient cause exists to terminate the contract or to withhold any payment, or any other remedy that exists pursuant to the contract or Florida law.

Following development and submittal of the construction schedule as aforesaid, the Construction Manager shall, at the end of each calendar month occurring thereafter during the period of time required to finally complete the subject project, or at such earlier intervals as circumstances may require, update and/or revise the construction schedule to show the actual progress of the work performed and the occurrence of all events which have affected the progress of performance of the work already performed or will affect the progress of the performance of the work yet to be performed in contrast with the planned progress of performance of such work, as depicted on the original construction schedule and all updates and/or revisions thereto as reflected in the updated and/or revised construction schedule last submitted prior to submittal of each such monthly update and revision. Each such update and/or revision to the construction schedule shall be submitted to the Architect-Engineer in duplicate. Failure of the Construction Manager to update, revise, and submit the construction schedule as aforesaid shall be sufficient grounds for the Architect-Engineer to find the Construction Manager in substantial default and certify to the Owner that sufficient cause exists to terminate the contract or to withhold payment to the Construction Manager until a schedule or schedule update acceptable to the Architect-Engineer is submitted, or any other remedy that exists pursuant to the contract or Florida law.

3. The Construction Manager shall prepare and incorporate into the schedule database, at the required intervals, the following schedules:
  - (a) Pre-Bid Schedules - The Construction Manager shall prepare a construction schedule for work encompassed in each bid package. The schedule shall be sufficiently detailed as to be suitable for inclusion in the bid package as a framework for contract completion by the successful bidder. It shall show the inter-relationships between the work of the successful bidder and that of other subcontractors, and shall establish milestones keyed to the overall master schedule.
  - (b) Subcontractor Construction Schedules - Upon the award of each subcontract, the Construction Manager shall jointly with the subcontractor, develop a schedule which is more detailed than the pre-bid schedule included in the specifications, taking into account the work schedule of the other subcontractors. The construction schedule shall include as many activities as necessary to make the schedule an effective tool for construction planning and for monitoring the performance of the subcontractor. The construction schedule shall also show pertinent activities for material purchase orders, manpower supply, shop drawing schedules and material delivery schedules.
  - (c) Occupancy Schedule - The Construction Manager shall develop, with input from the Architect-Engineer and the Owner, a detailed plan, inclusive of punch lists, final inspections, maintenance training and turnover procedures, to be used for ensuring accomplishment of a smooth and phased transition from construction to Owner occupancy. The Occupancy Schedule shall be produced and updated monthly from its inception through final Owner occupancy, and the approval by the Owner or its designee.

- 2.5 Cost Control Subsystem - The operation of this subsystem shall provide sufficient timely data and detail to permit the Construction Team to control and adjust the project requirements, needs, materials, equipment and systems by building and site elements so that construction will be completed at a cost which, together with all other project costs, will not exceed the maximum total project budget. Requirements of this subsystem include the following submissions at the following phases of the project:

Estimates:

1. At completion of Advanced Schematic Preconstruction Phase for each item or bid package.
  2. At completion of Design Development Phase for each item or bid package.
  3. At completion of 100% Construction Documents Phase for each item or bid package.
  4. At establishment of the Guaranteed Maximum Price.
  5. Construction Documents Estimates - Prior to the bid of each bid package, when the working drawings and specifications are complete, the Construction Manager shall prepare and submit a cost estimate on the basis of a quantitative material take-off with current local cost for each bid group by subcontract package.
- 2.6 Project Accounting Subsystem - The operation of this subsystem shall enable the Construction Team to plan effectively and to monitor and control the funds available for the project, cash flow, costs, change orders, payments, and other major financial factors by comparison of budget, estimate, total commitment, amounts invoiced, and amounts payable. This subsystem will be produced and updated monthly and includes the following reports which together will serve as a basic accounting tool and an audit trail. This report will also provide for accounting by building and site element.
1. Costs Status Report - Presenting the budget, estimate, and base commitment (awarded contracts and purchase orders) for any given contract or budget line item. It shall show approved change orders for each contract which when added to the base commitment will become the total commitment. Pending change orders will also be shown to produce the total estimated probable cost to complete the work.
  2. Payment Status Report - Showing the value in place (both current and cumulative), the amount invoiced (both current and cumulative), the retained, the amount payable (both current and cumulative), and the balance remaining. A summary of this report shall accompany each pay request.
  3. Detailed Status Report - Showing the complete activity history of each item in the project accounting structure. It shall include the budget, estimate and base commitment figures for each contract. It shall give the change order history including change order numbers, description, proposed and approved dates,



and the proposed and approved dollar amounts. It shall also show all pending or rejected change orders.

4. Cash Flow Diagram - Showing the projected accumulation of cash payments against the project. Cash flow projections shall be generated for anticipated monthly payments as well as cumulative payments.
5. Job Ledger - Shall be maintained as necessary to supplement the operation of the project accounting subsystem. The job ledger will be used to provide construction cost accountability for general conditions work, on-site reimbursable expenses, and costs requiring accounting needs.
6. The Construction Manager shall provide copies of paid invoices, subcontractors' schedule of values, receipts from vendors, and other requested documentation to substantiate expenditures which are the subject of any pay application.

## 2.7 Project Manual

1. Upon award of contract the Construction Manager shall develop a comprehensive Project Manual. This shall provide a plan for the control, direction, coordination and evaluation of work performed throughout the project organization including identification of key personnel, responsibilities of Construction Manager, Owner and Architect-Engineer; work flow diagrams; and strategy for bidding the work. The Project Manual shall be updated as necessary throughout the design, construction and Owner occupancy phases. Three (3) copies of the Project Manual and any updates shall be submitted to the Owner and Architect-Engineer. In developing the Project Manual, the Construction Manager shall coordinate with and obtain the acceptance of the Owner and the Architect-Engineer. Acceptance shall not relieve the Construction Manager of his responsibilities to control, direct and coordinate the project.
2. Contents of Project Manual - The Project Manual shall describe in detail the procedures for executing the work and the organizations participating. The Project Manual shall include as a minimum the following sections:
  - (a) Project Definition - The known characteristics of the project or subprojects shall be described in general terms which will provide the participants a basic understanding of the project or sub- projects.
  - (b) Project Goals - The schedule, budget, physical, technical and other objectives for the project shall be defined.
  - (c) Project Strategy - A narrative description of the project delivery methods shall be utilized to accomplish the project goals.
  - (d) Project Work Plan - A matrix display of the program of work to be performed by the Construction Manager, the Architect-Engineer and the Owner during each phase of the project.
  - (e) Project Organization - A summary organization chart showing the inter-relationships between the Owner, the Construction Manager and the Architect-Engineer, and other supporting organizations and permitting review

agencies. Detailed charts, one each for the Construction Manager, the Architect-Engineer, the Using Agency and Owner, showing organizational elements participating in the project shall be included.

- (f) Responsibility Performance Chart - A detailed matrix showing the specific responsibilities and inter-relationships of the Owner, the Architect-Engineer, and Construction Manager, which must be consistent with the provisions of these contract documents. Acceptance of the manual shall not constitute a waiver of any requirement by the Owner. The Responsibility Performance Chart shall indicate major responsibility, and minor responsibility, for each specific task required to deliver the project. The Construction Manager shall develop a similar chart for the personnel within his own organization who are assigned to the project.
- (g) Flow Diagrams - These charts shall display the flow of information and the decision process for the review and approval of shop drawings and submittals, progress and change orders.
- (h) Written Procedures - The Construction Manager will provide written procedures for communications and coordination required between Construction Team members related to the design and construction of the Project. Procedures shall cover such items as correspondence, minutes, reports, inspections, team meetings, technical reviews, design reviews, and other necessary communications.

## 2.8 DESIGN REVIEW AND RECOMMENDATIONS

1. Review and Recommendations and Warranty. - The Construction Manager shall familiarize himself thoroughly with the evolving architectural, civil, mechanical, plumbing, electrical, and structural plans and specifications and shall follow the development of design from Preliminaries through Working Drawings. He shall make recommendations with respect to the selection of systems and materials, and cost reducing alternatives including assistance to the Architect-Engineer, and the Owner in evaluating alternative comparisons versus long term cost effects. The evaluation shall speak to the benefits of the speed of erection and early completion of the project. He shall furnish pertinent information as to the availability of materials and labor that will be required. He shall submit to the Owner, Permitting Authority and Architect-Engineer such comments as may be appropriate concerning construction feasibility and practicality. He shall call to the Project Manager's and the Architect-Engineer's attention any apparent defects in the design, drawings and specifications or other documents. He shall prepare an estimate of the construction cost utilizing the unit quantity survey method.
2. Review Reports and Warranty - Within 45 days after receiving the Construction Documents for each phase of the project, the Construction Manager shall perform a specific review thereof, focused upon factors of a nature encompassed in Paragraph (1) above and on factors set out in Paragraph (5). Promptly after completion of the review, he shall submit to the Project Manager and Permitting Authority, with copies to the Architect-Engineer, a written report covering suggestions or recommendations previously submitted, additional suggestions or recommendations as he may deem appropriate, and all actions taken by the Architect-Engineer with respect to same, any comments he may deem to be

appropriate with respect to separating the work into separate contracts, alternative materials, and all comments called for under Article 2.3(5).

AT COMPLETION OF THE CONSTRUCTION MANAGER'S REVIEW OF THE PLANS AND SPECIFICATIONS, EXCEPT ONLY AS TO SPECIFIC MATTERS AS MAYBE IDENTIFIED BY APPROPRIATE COMMENTS PURSUANT TO THIS SECTION, THE CONSTRUCTION MANAGER SHALL WARRANT, WITHOUT ASSUMING ANY ARCHITECTURAL OR ENGINEERING RESPONSIBILITY, THAT THE PLANS AND SPECIFICATIONS ARE CONSISTENT, PRACTICAL, FEASIBLE AND CONSTRUCTIBLE. CONSTRUCTION MANAGER SHALL WARRANT THAT THE WORK DESCRIBED IN THE PLANS AND SPECIFICATIONS FOR THE VARIOUS BIDDING PACKAGES IS CONSTRUCTIBLE WITHIN THE SCHEDULED CONSTRUCTION TIME.

DISCLAIMER OF WARRANTY: - THE OWNER DISCLAIMS ANY WARRANTY THAT THE PLANS AND SPECIFICATIONS FOR THE PROJECT ARE ACCURATE, PRACTICAL, CONSISTENT OR CONSTRUCTIBLE.

3. Long Lead Procurements - The Construction Manager shall review the design for the purpose of identifying long lead procurement items (machinery, equipment, materials and supplies). When each item is identified, the Construction Manager shall notify the subcontractors, the Project Manager and the Architect-Engineer 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 invitations for bids. The Construction Manager shall keep himself informed of the progress of the respective subcontractors or suppliers, manufacturing or fabricating such items and advise Project Director, Owner and Architect-Engineer of any problems or prospective delay in delivery.
4. 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. He 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.
5. Interfacing
  - (a) 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) Without assuming any design responsibilities of the Architect-Engineer, the Construction Manager shall include in the reports required under Article 2.3(2) comments on overlap with any other separate subcontracts, omissions, lack of correlation between drawings, and any other deficiencies noted, in order that the Project Manager and Architect-Engineer may arrange for necessary corrections.

- 6. Job-Site Facilities - The Construction Manager shall arrange for all job-site facilities necessary to enable the Construction Manager and the Owner's representatives and the Architect-Engineer to perform their respective duties.

Tangible personal property, otherwise referred to as Job-Site facilities, include but are not limited to such things as trailers, toilets, typewriters, computers and any other equipment necessary to carry on the project. The method of acquiring such job-site facilities which are planned to become the property of the Owner at the conclusion of the project shall be evaluated based on cost over the life of the project. Owning versus leasing shall be considered by the Construction Manager obtaining at least two (2) proposals for leasing and at least two (2) proposals for purchasing and then analyzing which is least expensive over the usage life of the item. The Construction Manager shall present his evaluation with recommendation to the Owner for approval. When the Construction Manager wishes to supply Job-Site Facilities from his own equipment pool, he shall first evaluate buying versus leasing as discussed above. If leasing is found to be the least expensive approach, then he may lease such Job-Site Facilities from his own equipment pool at a price not greater than the lowest of the lease proposals obtained.

For all such facilities purchased which may become the property of the Owner at the conclusion of the project, the Construction Manager shall maintain ownership responsibilities of such facilities until the project conclusion. Reimbursement for cost of such equipment will be made at the conclusion of the project at the documented purchase price. At that time, the Construction Manager shall provide the Owner with a complete inventory for each unit of equipment. The inventory shall describe the equipment and identify the purchase price, serial number, model number and condition. Where said equipment has a title, said title shall be properly transferred to the Owner or to his designee.

The Construction Manager is responsible for proper care and maintenance of all equipment while in his control. At the time of transfer to the Owner, the Owner may refuse acceptance of the equipment if the Owner determines in its sole discretion that the equipment has not been properly cared for by the Construction Manager or that such acquisition would not otherwise be in the best interest of the Owner. In such event, the Construction Manager will be reimbursed for such item in accordance with Article 9 .2(4) hereof.

- 7. Weather Protection - The Construction Manager shall 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. He shall submit to the Construction Team his recommendations as to needed requirements of this nature and as to the contract or contracts in which they should be included.

## 8. Market Analysis and Stimulation of Bidder Interest

- (a) The Construction Manager shall monitor conditions in the construction market to identify factors that will or may affect costs and time for completing the project; he shall make analysis as necessary to:  
(1) determine and report on availability of labor, material, equipment, potential bidders, and possible impact of any shortages or surpluses of labor or material; and (2) in light of such determinations, make recommendations as may be appropriate with respect to long lead procurement, separation of construction into bid packages, sequencing of work, use of alternative materials, equipment or methods, other economics in design or construction, and other matters that will promote cost savings and completion within the scheduled time.
- (b) Within 30 days after receiving Notice to Proceed, the Construction Manager shall submit a written "Construction Market Analysis and Prospective Bidders Report" setting out recommendations and providing information as to prospective bidders. As various bid packages are prepared for bidding, the Construction Manager shall submit to the Project Manager and the Architect-Engineer a list of potential bidders. The Construction Manager shall be responsible to stimulate bidder interest in the local market place and identify and encourage bidding competition.
- (c) The Construction Manager shall carry out an active program of stimulating interest of qualified contractors and suppliers in bidding on the work and of familiarizing those bidders with the requirements of this project.

## 2.9 CONSTRUCTION PHASE

1. 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 to coordinate, inspect and provide general direction of the work and progress of the subcontractors and he shall provide no less than those personnel during the respective phases of construction that are set forth in Exhibit "A" to this agreement. He shall not change any of those persons named in Exhibit "A" 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 unreasonably withheld.
2. Lines of Authority - The Construction Manager shall establish and maintain lines of authority for his personnel and shall provide this definition to the Owner and all other affected parties such as the code inspectors of the Permitting Authority, 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 Architect-Engineer may attend meetings between the Construction Manager and his subcontractors; however, such attendance shall not diminish either the authority or responsibility of the Construction Manager to administer the subcontractor(s).
3. Schedule and Project Manual Provisions - The Construction Manager shall provide subcontractors and the Owner, its representatives and the Architect-Engineer with copies of the Project Manual developed and updated as required by

Article 2.2 expanded for the Construction Phase employing their respective milestones, beginning and finishing dates, their respective responsibilities for performance and the relationships of their work with respect to subcontractors and suppliers. He shall also continue to 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 project schedule. The schedule shall include all phases of the construction work, material supplies, long lease procurement, approval of shop drawings, change orders in progress, schedules for change orders, and performance testing requirements. He shall advise the Owner, its representatives and the Architect-Engineer of their required participation in any meeting or inspection giving each at least one week notice unless such notice is made impossible by conditions beyond his control. He shall hold job-site meetings at least once each month with the Construction Team and at least once each week with the subcontractors and the Architect-Engineer's Field Representative, or more frequently as required by work progress, to review progress, discuss problems and their solutions and coordinate future work with all subcontractors.

#### 4. Solicitation of Bids

- (a) Without assuming responsibilities of the Architect-Engineer, and unless waived in writing by the Owner, the Construction Manager shall prepare invitations for bids, or requests for proposal when applicable, for all procurements of long lead items, materials and services, and for Subcontractor contracts. Such invitations for bids shall be prepared in accordance with the following guidelines:
- i. Contracts not exceeding \$15,000 may be entered into by the Construction Manager with the firm which submits the lowest written quotation. The Construction Manager shall request a minimum of three (3) written quotations. These quotations shall be entered on a bid tabulation sheet and a copy of such tabulation sent to the Owner, Architect-Engineer, and Director of Disadvantaged Business Affairs. The successful quotation shall be confirmed by written contract or purchase order to the recommended firm defining the scope and quality of work to be provided.
  - ii. Contracts exceeding \$15,000 but not exceeding \$200,000 may be entered into by the Construction Manager with the firm who is qualified and submits the lowest responsive proposal. The Construction Manager shall request at least three (3) firms to submit sealed written proposals based on written drawings and/or specifications. The written proposals shall **all** be opened publicly at the location, date and time named by the Construction Manager in his request for proposal. A tabulation of the results shall be furnished to the Owner, Architect-Engineer, Director of Disadvantaged Business Affairs and to each firm.
  - iii. Contracts exceeding \$200,000 but not exceeding \$500,000 may be entered into by the Construction Manager with the firm who is qualified and submits the lowest responsive proposal. The

Construction Manager shall advertise these projects at least once with the last advertisement appearing at least 21 calendar days prior to the established bid opening date. These proposals shall be based on approved plans and specifications. Bids shall be received and opened publicly at the location, date and time established in the bid advertisement.

- iv. Contracts exceeding \$500,000 shall be treated the same as described under Paragraph 3 above except that the advertisement shall be run for at least 30 days prior to the established bid opening and at least 5 days prior to any scheduled pre-bid conference.
  - v. Individual purchases of materials or rentals or leases of equipment amounting to less than \$1,000.00 each may be made without bids or quotes when reasonably necessary to expedite work on the project; however, the Construction Manager shall not divide or separate a procurement in order to avoid the requirements set forth above.
5. Site utilities may be acquired at market rates from the entity(ies) providing such in the franchise area.
- (a) 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 Manager and Architect-Engineer in written form.
  - (b) For each separate construction contract exceeding \$200,000, the Construction Manager shall, unless waived by Owner, conduct a pre-bid conference with prospective bidders, the Architect-Engineer and Project Manager. 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.
  - (c) For all contracts exceeding \$15,000, the Construction Manager shall establish a pre-qualification procedure for applicable subcontract trades.
  - (d) In any event where the Construction Manager intends to subcontract with a non-lowest bidder, the Construction Manager shall give written notice of such event together with an explanation and receive written approval from the Owner prior to entering into a subcontract.
  - (e) All proposed awards shall be submitted to the Owner or its designee for approval. Such approval shall not be unreasonably withheld.
6. Bonds - The Construction Manager shall provide to the Owner, a 100% Performance Bond and a 100% Labor and Material Payment Bond, each in an amount not less than the total construction cost as defined in Article 9 and inclusive of the Construction Manager's fees, The Bonds utilized for this project

shall be provided and issued on the forms included herein. No qualification or modification to the Bond forms are permitted.

(a) To be acceptable to the Jacksonville Aviation Authority as Surety for Performance Bonds and Labor and Material Payment Bonds, a Surety Company shall comply with the following provisions:

- i. The Surety Company shall have a currently valid Certificate of Authority, issued by the State of Florida, Department of Insurance, authorizing it to write surety bonds in the State of Florida.
- ii. The Surety Company shall have a currently valid Certificate of Authority issued by the United States Department of Treasury under Sections 9304 to 9308 of Title 31 of the United States Code.
- iii. The Surety Company shall be in full compliance with the provisions of the Florida Insurance Code.
- iv. The Surety Company shall have at least twice the minimum surplus and capital required by the Florida Insurance Code at the time the invitation to bid is issued.
- v. If the Contract Award Amount exceeds \$500,000, the Surety Company shall also comply with the following provisions:
  - The Surety Company shall have at least the following minimum ratings in the latest issue of Best's Key Rating Guide:

CONTRACT AMOUNT	POLICY HOLDER'S RATING	REQUIRED FINANCIAL RATING
\$500,000 TO \$1,000,000	A-	CLASS I
\$1,000,000 TO \$5,000,000	A-	CLASS II
\$5,000,000 TO \$10,000,000	A-	CLASS III
\$10,000,000 TO \$25,000,000	A-	CLASS IV
\$25,000,000 TO \$50,000,000	A-	CLASS V
\$50,000,000 TO \$100,000,000	A-	CLASS VI

(b) The Surety Company shall not expose itself to any loss on anyone risk in an amount exceeding ten (10) percent of its surplus to policyholders, provided:

- i. Any risk or portion of any risk being reinsured shall be deducted in determining the limitation of the risk as prescribed in this section. These minimum requirements shall apply to the reinsuring carrier provided authorization or approval by the State of Florida,



Department of Insurance, to do business in this state have been met.

- ii. In the case of the surety insurance company, in addition to the deduction for reinsurance, the amount assumed by any co-surety, the value of any security deposited, pledged or held subject to the consent of the surety and for the protection of the surety shall be deducted.
7. 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. He shall 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 he shall continue to exert his 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.
8. 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. He 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, a written authorization 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. He 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. He shall request the Architect-Engineer to make interpretations of the drawings or specifications requested of him by the subcontractors to promote timely response. He shall advise the Project Manager and Architect-Engineer when timely response is not occurring on any of the above.
9. Permits - The Construction Manager shall secure all necessary approvals from the Permitting Authority and all necessary utility connection permits, the cost of which will be considered a direct cost item.
10. Job Site Requirements
  - (a) The Construction Manager shall provide for each of the following activities as a part of his Construction Phase fee:
    - i. Maintain a log of daily activities, including manpower records, weather, delays, major decisions.

- ii. Maintain a roster of companies on the project with names and telephone numbers of key personnel.
  - iii. Establish and enforce job rules governing parking, clean-up, use of facilities and worker discipline.
  - iv. Provide labor relations management for a harmonious, productive project.
  - v. 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
  - vi. Provide a quality control program as developed under Article 2.4(6) hereinabove.
  - vii. Miscellaneous office supplies that support the construction efforts which are consumed by his own forces.
  - viii. Travel to and from his home office to the project site as the project requires.
- (b) The Construction Manager shall provide personnel and equipment or shall arrange for separate subcontracts to provide each of the following as a direct cost item:
- i. Schedule the services of independent testing laboratories and provide the necessary testing of materials to ensure conformance to contract requirements.
  - ii. The printing and distribution of all required bidding documents and shop drawings, including the sets required by the Permitting Authority's inspectors.

11. Job Site Administration - The Construction Manager shall provide as part of his construction phase fee, job site administrative functions during construction to assure proper documentation, including but not limited to such things as the following:

- (a) Job Meetings - Hold weekly progress and coordination meetings to provide for an easy flowing project. Implement procedures and assure timely submittals, expedite processing approvals and return of shop drawings, samples, etc. Coordinate and expedite critical ordering including direct tax saving purchases and delivery of materials, work sequences, inspection and testing, labor allocation, etc. Review and coordinate each subcontractor's work. Review and implement revisions to the Schedule. Monitor and promote safety requirements. In addition, regular project status meetings will be held between the Architect-Engineer, the Owner and the Construction Manager either biweekly or monthly, whichever is designated by the Project Manager.

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 record 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.

- (b) Shop Drawing Submittals/Approvals - Provide staff to check shop drawings and to implement procedures for submittal and transmittal to the Architect-Engineer of such drawings for action, and closely monitor their submittal and approval process.
- (c) Material and Equipment Expediting - Provide staff to closely monitor material and equipment deliveries, critically important checking and follow-up procedures on supplier commitments of all subcontractors.
- (d) Payments to Subcontractors - Develop and implement a procedure for review, processing, and payment of applications by subcontractors for progress and final payments. All financial documents and records shall be maintained pursuant to reasonable accounting practices designed to afford the Owner the ability to have the documents audited with the minimum of cost and disruption.
- (e) Document Interpretation - Refer **all** questions for interpretation of the documents prepared by the Owner and/or Architect-Engineer to the Architect-Engineer.
- (f) 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.
- (g) Subcontractor's Progress - Prepare periodic punch lists for subcontractor's work including unsatisfactory or incomplete items and schedules for their completion.
- (h) Substantial Completion - Ascertain when the work or designated portions thereof are ready for the Architect-Engineer's substantial completion inspection. From the Architect-Engineer's list of incomplete or unsatisfactory items, prepare a schedule for their completion indicating completion dates for the Owner's review. If the Construction Manager wishes the Architect-Engineer to conduct a pre-substantial completion inspection in conjunction with his own forces, the Architect-Engineer will prepare the pre-substantial punch list from which the Construction Manager will develop a completion schedule. The Architect-Engineer will issue a certificate of substantial completion when the work on his pre-substantial punch list has been accomplished. The failure of the Architect-Engineer to identify deficient workmanship on any of the above-mentioned lists shall not relieve the Construction Manager of its

responsibility to have all work completed pursuant to the contract requirements.

- (i) Final Completion - Monitor the Subcontractor's performance on the completion of the project and provide notice to the Owner and Architect-Engineer that the work is ready for final inspection. Secure and transmit to the Owner, through the Architect-Engineer, all required guarantees, affidavits, releases; bonds and waivers, manuals, record drawings, and maintenance books including the Final Completion form.
- (j) 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 trade Construction Managers.
- (k) Record Drawings - During the progress of the work, the Construction Manager shall require the plumbing, air conditioning, heating, ventilating, elevator, and electrical subcontractors to record on their field sets of drawings the locations, as installed, of all conduit, pipe and duct lines whether concealed or exposed which were not installed as shown on the contract drawings. The Construction Manager shall also record all drawing revisions that have been authorized by change order that effect wall or partition locations, door and window locations and other template changes. The routing of conduit runs shall be shown on these drawings.

Each drawing shall be noted "Record Drawings" and shall bear the date and name of the subcontractors that performed the work. Where the work was installed exactly as shown on the contract drawings, the sheets shall not be disturbed except as noted above.

The Construction Manager shall review the completed record drawings and ascertain that all data furnished on the drawings are accurate and truly represent the work as actually installed. When manholes, boxes, underground conduits, plumbing, hot or chilled water lines, inverts, etc. are involved as part of the work, the Construction Manager shall furnish true elevations and locations, all properly referenced by using the original bench mark used for the institution or for this project.

12. Administrative Records - The Construction Manager will maintain at the job site, unless agreed to otherwise by the Project Manager, on a current basis, files and records such as, but not limited to, the following:

- Contracts or Purchase Orders
- Shop Drawing Submittal/Approval Logs
- Equipment Purchase/Delivery Logs
- Contract Drawings and Specifications with Addenda
- Warranties and Guarantees
- Cost Accounting Records
- Sales Tax Recovery Status Report
- Labor Costs
- Material Costs
- Equipment Costs
- Cost Proposal Requests
- Payment Request Records

- Meeting Minutes
- Cost-Estimates
- Bulletin Quotations
- Lab Test Reports
- Insurance Certificates and Bonds
- Contract Changes
- Purchase Orders
- Material Purchase Delivery Logs
- Technical Standards
- Design Handbooks
- As-Built" Marked Prints
- Operating & Maintenance Instructions
- Daily Progress Reports
- Monthly Progress Reports
- Correspondence Files Transmittal Records' Inspection Reports
- Bid/Award Information
- Bid Analysis and Negotiations
- Punch Lists
- PMIS Schedule and Updates
- Suspense (Tickler) Files of Outstanding Requirements
- Project Manual

The project records shall be available at all times to the Owner and Architect-Engineer for reference, review, and copying.

13. Owner Occupancy - The Construction Manager shall provide services during the design and construction phases, which will provide a smooth and successful Owner occupancy of the project. He shall provide consultation and project management to facilitate Owner occupancy and provide transitional services to get the work, as completed by the Construction Managers, "on line" in such conditions as will satisfy Owner operational requirements.

He 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.

He 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. He shall provide operational training in equipment use for building operators.

He shall secure required guarantees and warranties, assemble and deliver same to the Owner in a manner that will facilitate their maximum enforcement and assure their meaningful implementation.

He shall continuously review "Record Drawings" and mark up progress prints to provide as much accuracy as possible.

After Substantial Completion, it is expected that Construction Phase Closeout will occur per the time set forth in the GMP Amendment.

14. 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 year from the Date of Substantial Completion or for such longer periods of time 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.

15. OWNER'S AUDIT RIGHTS. The Construction Manager's records shall be open to inspection and subject to audit or reproduction by the Owner or Owner's agent or its authorized representative (at Owner's expense) to the extent necessary to adequately permit, at reasonable times after reasonable notice, verification of Cost of the Work. Construction Manager's records shall be maintained and made available to the Owner or Owner's agent for not less than three (3) years after date of final completion, unless extended by written request of the Owner.

The Construction Manager shall require all subcontractors and material suppliers (payees) to comply with the provisions of this article by insertion of the requirements hereof in a written contract agreement between the Construction Manager and payee. The Construction Manager will cooperate and will cause all of the Construction Manager's subcontractors to cooperate in furnishing or in making available to Owner, at reasonable times upon reasonable notice, information, materials, and data. Except in the event of termination under Article 14, these provisions shall not apply to lump sum subcontracts, purchase orders (including lump sum change orders) and lump sum GMP line items.

The Owner or its authorized representative shall have reasonable access to the Construction Manager's facilities, shall have reasonable access to all necessary Construction Manager's records, and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with this article.

If an audit inspection or examination in accordance with this article, discloses overcharges (net of any undercharges) by the Construction Manager to the Owner in excess of one percent (1%) of the total contract, the Construction Manager shall pay the Owner the actual proven net overcharge plus the cost actually paid by the Owner for the audit. Construction Manager shall not be responsible for the cost of any contingent fee audits. Interest on any overpayments to the Construction Manager shall be recoverable by the Owner at the legal rate.

### **ARTICLE 3 OWNER'S RESPONSIBILITIES**

- 3.1 OWNER'S INFORMATION - The Owner shall provide information that it possesses regarding his requirements for the project.

- 3.2 OWNER'S REPRESENTATIVE - 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 notify the Construction Manager of approved changes in Project. He 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.
- 3.4 SITE SURVEY AND REPORT - The Owner shall provide for the furnishing for the site of the project all surveys describing the physical characteristics, soil reports, and subsurface investigations, legal limitations, utility locations, and a legal description. The Owner does not warrant the completeness or current accuracy of any reports.
- 3.5 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.
- 3.6 LEGAL SERVICES - The Owner shall furnish such legal services as may be necessary for obtaining any approvals and easements and such auditing services as he may require.
- 3.7 DRAWINGS AND SPECIFICATIONS - The Construction Manager will be furnished a reproducible set of all copies of Drawings and Specifications ready for printing.
- 3.8 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.
- 3.9 PROJECT FAULT DEFECTS - If the Owner becomes aware of any fault or defect in the Project or non-conformance with the drawings and specifications, he shall give written notice thereof to the Construction Manager.
- 3.10 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. The Construction Manager shall not commence any work, unless authorized in writing by the Owner.
- 3.11 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.
- 3.12 LINES OF AUTHORITY - The Owner shall establish and maintain lines of authority for his personnel and shall provide this definition to the Construction Manager

- 3.13 PERMITTING & CODE INSPECTIONS - The Owner or its designee will assist as requested by the Construction Manager, with ultimate responsibility resting with the Construction Manager.

#### **ARTICLE 4 PERMITTING AND INSPECTION**

Before Construction can begin, it is necessary for the Construction Manager to obtain a Construction Document Review. In addition, construction will be inspected for code compliance, compliance with drawings and specifications, and quality by inspectors working for the Permitting Authority. The building permitting and code inspection requirements shall be as described in Articles 4.1 through 4.2 hereinafter.

- 4.1 CONSTRUCTION DOCUMENT REVIEW - The Construction Manager shall provide the following information to the Permitting Authority and shall obtain approval from the Permitting Authority prior to beginning construction:
1. Two (2) sets of documents, signed, sealed and dated by the Architect-Engineer, with all addenda enclosed with each set. These documents may be sent to the Permitting Authority.
- 4.2 CODE INSPECTIONS - All projects require detailed code compliance inspections during construction in disciplines determined by the Permitting Authority. These disciplines normally include, but are not necessarily limited to, structural, mechanical, electrical, plumbing and general building.

Inspection personnel will be provided by the Permitting Authority: names, addresses, and phone numbers of the inspectors will be provided to the Construction Manager.

The Construction Manager shall notify the appropriate inspector(s), no less than 24 hours in advance, that the work is ready for inspection and before the work is covered up. Work not inspected and approved prior to cover-up shall be uncovered for inspection when directed by the Permitting Authority. All costs for uncovering and reconstruction shall be borne by the Construction Manager.

All inspections shall be made for conformance with the applicable building codes, compliance with drawings and specifications, and quality.

Cost for all re-inspections of work found defective and subsequently repaired shall be borne by the Construction Manager.

#### **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 at the site. Nothing contained in the Contract Document shall create any contractual relation between the Owner or Architect-Engineer and any subcontractor.
- 5.2 PROPOSALS - Subject to Article 9 and, in accordance with Article 2.4(4), the Construction Manager shall request and receive proposals from subcontractors and suppliers and will award those contracts to the qualified low bidder after he has reviewed each proposal and is satisfied that the subcontractor is qualified to perform the work.



5.3 REQUIRED SUBCONTRACTOR'S QUALIFICATIONS AND SUBCONTRACT CONDITIONS.

5.4 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 these Documents, 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 Sub-subcontractor. Copies of all contracts shall be provided to the Owner upon request.

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-subcontractors.

5.5 Subcontract Requirements

1. On all subcontracts where the bid exceeds \$50,000, the Construction Manager may require subcontractors to provide a 100% performance bond and a 100% labor and material payment bond from a surety company authorized to do business in the State of Florida by the Department of Insurance. If the Construction Manager wishes to award subcontracts to subcontractors unable to supply this bonding, he may request special authorization to do so. Upon providing justifiable background information, such authorization shall not be withheld unreasonably.
2. On all subcontracts where the bid exceeds \$200,000, each subcontractor must submit a completed experience questionnaire and financial statement in accordance with the Construction Manager's requirements. The subcontractor's financial condition must demonstrate that adequate fixed and liquid assets and equipment are available to properly perform the subcontract.
3. Workforce - The subcontractor must agree to perform no less than 15% of the project construction work utilizing its own employees.
4. Subcontractor Experience - The subcontractor must have successfully completed no less than two projects of similar size and complexity within the last five years, or demonstrate a plan for successfully accomplishing the work.
5. Supervision - The subcontractor must agree to provide field (on-site) supervision through a named superintendent for each trade (general concrete forming and placement, masonry, mechanical, plumbing, electrical and roofing) included in the subcontract. In addition, the subcontractor shall assign and name a qualified employee for scheduling direction for its work. The supervisory employees of the

subcontractor (including field superintendent, foreman and schedulers at all levels) must have been employed in a supervisory (leadership) capacity of substantially equivalent level on a similar project for at least two years within the last five years. The subcontractor shall include a resume of experience for each employee identified by him to supervise and schedule his work.

6. All subcontracts shall provide:

- (a) LIMITATION OF REMEDY - NO DAMAGES FOR DELAY OR DISRUPTION - That the subcontractor's exclusive remedy for delays or disruptions 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 will be limited to 5% markup per tier with a maximum of 10% for overhead and profit for the subcontractor (or sub-subcontractor) who is actually performing the work. In no event shall the total markup exceed 20% of the value of the material and/or labor involved in the change in the work.

Each subcontract shall require the subcontractor to expressly agree that the foregoing constitute the 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, losses or additional compensation.

- (b) Each subcontract shall require that any claims by subcontractor for time extensions or additional compensation shall be submitted to the Construction Manager within seven (7) days, unless within that time period a written request for up to thirty (30) days is made, of the time discovered and in the manner in which the Construction Manager must submit such claims shall result in a waiver of such claims. Any such claim must include a time impact analysis as a justification for any equitable time or cost adjustment, and a subcontractor's refusal to provide such a timely analysis shall be considered a failure of conditions precedent to advance the claim in any future litigation.

- 5.6 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 his subcontractors, their agents and employees, and all other persons performing any of the work or supplying materials under a contract to the Construction Manager.

- 5.7 SUBCONTRACTS TO BE PROVIDED - The Construction Manager shall include a copy of each subcontract, including the general supplementary conditions, in the project manual, unless specified otherwise.

**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, 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, for which the Construction Manager and its Surety shall be liable. The parties have agreed to establish reasonable liquidated damages that will be stated in each GMP and Amendment consistent with Paragraph 17.13.

- 6.2 The date of Owner Occupancy shall occur as described in Article 2.4(12) hereinabove. Warranties called for by this Agreement or by the Drawings and Specifications shall commence on the Date of Substantial Completion.
- 6.3 The liquidated damages agreed to by the parties for the initial work under this contract shall be set forth in an attachment to this agreement. The liquidated damages for all other projects shall be included in each GMP amendment.

#### **ARTICLE 7 GUARANTEED MAXIMUM PRICE FOR CONSTRUCTION**

- 7.1 When the Design Development Documents are sufficiently complete to establish the scope of work for the project or any portion thereof, as generally defined by a design document listing to be provided by the Architect-Engineer and Construction Manager upon execution of this Agreement, which is to be used only as a guide in developing the specifications and plan data necessary to establish a Guaranteed Maximum Price, or at such time thereafter designated by the Owner, 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. Such Guaranteed Maximum Price will be subject to modification for changes in the project as provided in Article 10. However, the actual price paid for the work by the Owner shall be the actual cost of all work subcontracts, supply contracts, direct labor costs, direct supervision costs, and direct job costs as defined under Article 9, plus the Construction Manager's fees or the GMP, whichever is less when the work is complete.
- 7.2 The GMP will only include those taxes in the cost of the project which are legally enacted at the time the GMP is established.
- 7.3 When the project is bid and 100% of the Trade Contracts have been executed, the contingency within the GMP may be decreased in proportion to the percent of the work completed. In other words, if 10% of the work has been completed and the Owner requests that the contingency within the GMP be adjusted, then 10% of the contingency within the GMP will be removed from the GMP by change order. The Owner's decision to not reduce such contingency shall not be deemed a waiver of its right to do so at a later date.
- 7.4 At the time of submission of a Guaranteed Maximum Price, the Construction Manager will verify the time schedule for activities and work which were previously adopted pursuant to this agreement and used to determine the Construction Manager's cost of work. In addition to the cost of work, a GMP will include an agreed upon sum as the construction contingency which is included 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 Owner, reflected in the Project Manual and displayed monthly in the PMIS. The Architect-Engineer shall verify the actual costs. If bids are received below the applicable line items in the GMP, the surplus will be added to the contingency.

If bids are received above the applicable line item in the GMP, the deficiency will be taken from the contingency; 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 as acknowledged by the Owner or negotiate for its performance for the specified line item lump sum amount or less.

The GMP, Construction Manager's fee, and all costs to complete the construction for the first phase shall be set forth and included as an attachment to this agreement.

## **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 8.1.1, 8.1.2 and 8.1.3.

8.2 Preconstruction Phase Fee - For the performance of the services set forth under paragraphs 2.2 through 2.5 and for profit and overhead related to these services, a total fee of \$\_\_\_\_\_. The Preconstruction Phase Fee shall be paid in monthly payments of \$\_\_\_\_\_ and a final payment of \$\_\_\_\_\_ at completion of Preconstruction Phase Services. The first monthly payment shall become due thirty days following the issuance of this contract with the Preconstruction Phase Services.

The Construction Manager's personnel to be assigned during this phase and their duties and responsibilities to this project and the duration of their assignments is shown on Exhibit C.

8.3 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 Construction Manager's compensation for work or services performed during the Construction Phase shall be a fee of \_\_\_\_\_ (However, the Owner retains the right to review the need and effectiveness of any employee or employees assigned by the Construction Manager, should the Project Manager question the need for the employee or employees). The Construction Phase Fee shall be invoiced and paid in \_\_\_\_\_ monthly payments of \_\_\_\_\_ each and one final payment of \_\_\_\_\_. The first monthly payment shall become due thirty days following the issuance of the first Construction Authorization by the Project Manager and the final monthly payment shall be paid only when construction of the project is finally completed.

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. Adjustment 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 in whole or in part by or from negligent acts of the Construction Manager or its subcontractors or suppliers.
  - (b) Should the duration of the construction stipulated herein for final completion extend beyond \_\_\_ months after the Notice-To-Proceed, receipt of final drawings and specifications, or receipt of all necessary permits, whichever is later, due to no fault of the Construction Manager, the Construction Manager's Additional Construction Phase Fee will be \_\_\_\_\_ per working day, for each day or portion thereof. The Construction Manager's staff during such time extensions shall be that shown in Exhibit D-1.
  - (c) The Construction Manager will not be due any additional Overhead and Profit on increases in the Guaranteed Maximum Price (GMP) that do not exceed \_\_\_\_\_. Should the GMP be increased by more than \_\_\_\_\_ under the terms of Article 10 thereafter due to no fault of the Construction Manager, the Construction Manager's additional Overhead and Profit for the Construction Phase will be 4.25 percent of that portion of the accumulative increases in the GMP that exceed the GMP by more than \_\_\_\_\_.
  - (d) Construction Manager's Exclusive Remedy – In the event the construction Substantial or Final Completion date is extended, regardless of whether delay is caused by any act or neglect of the Owner or the Architect-Engineer, or is attributable to the Owner or the Architect-Engineer, the Construction Manager's sole and exclusive remedy is an extension of the construction completion date and payment of additional Construction Phase fees and Overhead and Profit for Construction Phase as provided above.
2. Costs and Expenses Included in Fee – The following are included in the Construction Manager's fee for services during the Construction Phase:
  - (a) Salaries or other compensation of the Construction Manager's employees at his principal office and branch offices.

The Construction Manager's personnel to be assigned during the construction phase, their duties and responsibilities to this project and the duration of their assignments are shown on Exhibit D-1.
  - (b) General operating expenses related to this project of the Construction Manager's principal and branch offices.
  - (c) The costs of all data processing staff.
  - (d) Salaries or other compensation of the Construction Manager's employees at the job site. The Construction Manager's personnel to be assigned to the site

during the Construction Phase under the job site management and supervision fee, their duties and responsibilities and the duration of their assignment are shown on Exhibit D-1.

- (e) General operating expenses incurred in the management and supervision of the project, except as expressly included in Article 9.
- (f) Those services set forth in Article 2.3.10.
- (g) Job office supplies – include paper, pencils, paper clips, file folders, staples, etc., and janitorial supplies (photo copy or blue print paper not included).
- (h) Relocation expenses for Construction Manager's personnel.
- (i) Direct tax saving purchase program.

8.4 Overhead And Profit For Construction Phase – For overhead, profit and general expenses of any kind, except as may be expressly included in Article 9, for services provided during and related to the construction phase, the fee shall be \_\_\_\_\_ and shall be paid proportionally to the ratio of the cost of the work in place, excluding stored materials and less retainage (see Article 12.1), as it bears on the latest estimate of the total construction cost or to the GMP or to the Owner's Construction Budget, whichever is less. The balance of the fee shall be paid when construction of the project is finally completed. 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. The Construction Manager's exclusive remedy for any adjustments in the Overhead and Profit for construction phase fee is provided in Article 8.3.

## **ARTICLE 9 COST OF THE PROJECT**

9.1 DEFINITION - The term Cost of the Project shall mean costs necessarily incurred in the Project during the Construction Phase for Construction services and paid by the Construction Manager which are not included in Article 8. Such costs shall include the items set forth below in this Article.

The Owner agrees to pay the Construction Manager for the Cost of the Project as defined in Article 9. Such payment shall be in addition to the Construction Manager's fees stipulated in Article 8.

9.2 DIRECT COST ITEMS

1. Wages paid for labor (as opposed to wages paid to management or supervisory personnel) in the direct employ of the Construction Manager in the performance of his work under Agreement, times a multiple of 1.51 to cover fringe benefits. The Owner may require an audit of the burden rate during the project, and should the rate decrease, the savings shall be credited to the Owner.
2. Cost of all materials, supplies and equipment incorporated or permanently installed on the project, including costs of transportation and storage thereof (including an acceptable off-site location).

3. 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.
4. Cost including transportation and maintenance of all materials, supplies, equipment, temporary facilities and hand tools not owned by the workmen, which are employed or consumed in the performance of the work, cost on such items used but not consumed which may be turned over to the Owner at the end of the project and cost less salvage value on such items used but not consumed which remain the property of the Construction Manager. For those items to be turned over to the Owner at the end of the project, Article 2.3(6) shall apply.
5. Rental charges on all necessary machinery and equipment, exclusive of hand tools used at the site of the Project, whether rented from the Construction Manager or other, including installation, repairs and replacements, dismantling, removal, costs' of lubrication, transportation and delivery costs thereof, which are used in the support of a sub-contractor or the Construction Manager's own forces in the performance of the work, at rental charges consistent with those prevailing in the area.
6. Cost of the premiums for all insurance and cost of premiums for all bonds which the Construction Manager is required to procure by this Agreement specifically for the construction project. This includes any sub-contractor bonds the Construction Manager deems appropriate and shall be included in the GMP.
7. Sales, use, gross receipts, intangible tax on receivables (less billings on profit included in such receivables) or similar taxes related to allowable direct costs of the Project imposed by any governmental authority, and for which the Construction Manager is liable.
8. The cost of corrective work subject, however, to the GMP and except for any corrective work made necessary because of defective workmanship or other causes contributed to by the Construction Manager or his subcontractors or suppliers.

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.

9. Minor expenses at the site, which are directly related such as telegrams, long distance telephone calls, telephone service, expressage, postage, and similar petty cash items in connection with the Project to be billed at cost.
10. Costs for trash and debris control and removal from the site.
11. Cost incurred due to an emergency affecting the safety of persons and property.
12. If requested by the Owner, the Construction Manager will perform all or a portion of any item in Article 9 for the cost of the work.
13. If approved by the Owner, the Construction Manager, when qualified, may 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.

14. Transportation greater than 100 miles from the site for those personnel employed directly for the project, not including relocation expenses. Such transportation must be approved in advance by the Owner and may not exceed the limits established by Florida Statutes 112.061.
15. Costs of all reproductions used for bidding or information purposes required by the project to directly benefit the project. .
16. Costs for watchman and security services for the project.
17. Costs for efficient logistical control of the site, including horizontal and vertical transportation of materials and personnel. Also, costs for adequate storage and parking space.
18. Costs for such temporary facilities during construction, as approved by the Owner, including temporary water, heat, power, sanitary facilities, telephones, radios and computers, office equipment and software.
19. Permit fees and costs for any job site items not referenced herein, not normally provided by subcontractors, which will be provided by the Construction Manager to complete the work.
20. Cost of utilizing a computer aided design and drafting application (CADD) for record drawings as described in Article 2.4(10)(k). Upon completion of the work, the Construction Manager shall obtain two (2) sets of disk files from the Architect-Engineer and record to scale all as-built conditions. The disk shall be submitted to the Architect-Engineer when completed, together with two sets of blue line or black line prints for certification and forwarding to the Client Agency, at the time of final completion.

## **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, the GMP, and the Construction Completion Date, being adjusted accordingly. All changes in the Project not covered by an authorized contingency must be authorized by Change Order signed by the Owner before the change is implemented.
  1. A Change Order is a written order to the Construction Manager, signed by the Owner issued after the execution of this Agreement, authorizing a Change in the Project, the Construction Manager's fee, or the Construction Completion date. Each adjustment in the GMP resulting from a change order shall clearly separate the amount attributable to the Cost of the Project. Execution of a Change Order by the CM serves as a waiver and an accord and satisfaction of all issues related to the work identified in the Change Order.
  2. The increase or decrease in the Guaranteed Maximum Price resulting from a change in the Project shall be determined in one or more of the following ways:



- (a) By mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation by the Architect-Engineer and Owner;
  - (b) By unit prices stated in the Agreement or subsequently agreed upon;
  - (c) By cost as defined in Article 9 and a mutually acceptable fixed or percentage fee; or
  - (d) By the method provided in Subparagraph 10.1.3.
3. If none of the methods set forth in Clause 10.1.2 is agreed upon, the Construction Manager, provided he receives a written order signed by the Owner, shall promptly proceed with the Work 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 10.1.2 above, the Construction Manager shall keep and present, in such form 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.
4. 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.
5. Should concealed conditions encountered in the performance of the Work below the surface of the ground or should concealed or unknown conditions in an existing structure be at variance with the conditions indicated by the Drawings, Specifications, or Owner furnished information, unless otherwise disclaimed, or should unknown physical conditions below the surface of the ground or should concealed or unknown conditions in an existing structure of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Agreement, be encountered, 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.

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.

If the Construction Manager is delayed or disrupted at any time in the progress of the work by any active interference of the Owner or the Architect, and such delay or disruption extends the completion date, the Substantial Completion may be

extended by Change Order. The Construction Manager must include time impact analysis justifying any request for equitable price and time extension and is limited to the actual direct costs as set forth in Article 8. For any other delay or disruption, the Construction Manager's sole remedy is an equitable time extension.

Only delays or disruptions 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.

No Owners representative has the authority to allow or require constructive acceleration; actual acceleration shall only be compensable upon specific written approval by the Owner's representative after receipt of an acceptable time impact analysis and evaluation of a recovery schedule that would reasonably justify such action. If there is a concurrent delay and the Construction Manager's Time Impact Analysis so demonstrates to the Architect/Engineer's satisfaction, the Construction Manager shall receive an excusable non-compensable time adjustment by Owner as to the activity impacted.

- 10.3 MINOR Changes In The Project - The 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 effected by written order and included in the Project Manual and displayed monthly in the PMIS. Changes shall be approved by the Project Manager, Architect-Engineer.
- 10.4 EMERGENCIES - 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 AND PENALTIES**

- 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. All penalties incurred due to fault of the Construction Manager for late payment of cost of the project will be paid by the Construction Manager.

## **ARTICLE 12 PAYMENTS TO THE CONSTRUCTION MANAGER**

- 12.1 MONTHLY STATEMENTS - The Construction Manager shall submit to the Owner a statement, sworn to along with the cost reports required under Article 2.1.5, 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 Partial Pay Request. Ten percent (10%) retainage shall be held on all payments until the contract is fifty percent (50%) complete, except when approved by the Owner certain suppliers and subcontractors may be paid the entire amount due when such payment is generally the practice of the industry. At 50% completion, the Owner may approve a reduction of the retainage from 10% to 5% at his discretion. Retainage shall not be withheld on services or fees set forth in Article 8.

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 after the Owner has accepted occupancy of the Project, provided that the Project be then finally completed, that the Construction Manager has verified by his signature that he has completed all items specified and that this Agreement has been finally performed. However, if there should remain work to be completed, the Construction Manager and the Architect-Engineer shall list those items prior to receiving final payment and the Owner may retain a sum equal to 200% of the estimated cost of completing any unfinished work and portion of the Construction Manager's retainage, provided that said unfinished items are listed separately and the estimated cost of completing any unfinished items are likewise listed separately. Thereafter, Owner shall pay to Construction Manager, monthly, the amount retained for each incomplete item after each of said items is completed.

12.3 PAYMENTS TO SUBCONTRACTORS – The Construction Manager shall promptly, within 15 days after receipt of payment from the Owner, pay all the amount due subcontractors less a retainage of ten percent (10%) until the project is fifty percent (50%) complete, and based on Construction Manager's evaluation of the subcontractor's acceptable performance, the Owner may approve a reduction in retainage from 10% to 5% thereafter. If there should remain items to be completed, the Construction Manager and Architect-Engineer shall list those items required for completion and the Construction Manager shall require the retainage of a sum equal to 200% of the estimated cost of completing any unfinished items, provided that said unfinished items are listed separately and the estimated cost of completing any unfinished items likewise listed separately. Thereafter, the Construction Manager shall pay to the subcontractors, monthly, the amount retained for each incomplete item after each of said items is completed. Before issuance of final payment without any retainage, the subcontractor shall submit satisfactory evidence that all payrolls, material bills and other indebtedness connected with the Project have been paid or otherwise satisfied, warranty information is complete, as-built markups have been submitted and instruction for the Owner's operating and maintenance personnel is complete, and submit a waiver of claim and certificate of payment affidavit.

Final payment may be made to certain select subcontractors whose work is satisfactorily completed prior to the total completion of the Project but only upon approval of the Owner.

12.4 PAYMENTS FOR MATERIALS AND EQUIPMENT - Payments will be made for material and equipment not incorporated in the work but delivered and suitably stored at the site or another location subject to prior approval and acceptance by the Owner on each occasion.

- 12.5 WITHHOLDING PAYMENTS TO SUBCONTRACTORS - The Construction Manager shall not unreasonably withhold payments to subcontractors if such payments have been made to the Construction Manager.

**ARTICLE 13**  
**INSURANCE, INDEMNITY AND WAIVER OF SUBROGATION**

- 13.1 INDEMNIFICATION - To the fullest extent permitted by law, the CONSTRUCTION MANAGER agrees to indemnify, defend and hold harmless the AUTHORITY, its officers, agents, volunteers, and employees from and against all claims, damages, losses, and expenses, including but not limited to attorneys' fees, court costs, or other alternative dispute resolution costs arising out of, resulting from, or otherwise but for the performance or furnishing of work or services under this Agreement or Project; provided that any such claim, damage, loss or expense is attributable to bodily injury, sickness, disease, death, or personal injury, or property damage, including the loss of use or diminution in value resulting therefrom; but only to the extent caused in whole or in part by the actual or alleged negligent acts, errors, or omissions of the CONTRACTOR, CONTRACTOR's subcontractor(s), or anyone directly or indirectly employed or hired by CONTRACTOR or anyone for whose acts CONTRACTOR may be liable. The AUTHORITY reserves the right, but not the obligation, to participate in defense without relieving CONTRACTOR of any obligation hereunder.

The CONSTRUCTION MANAGER agrees, to maintain on a primary basis during the life of this Contract, or the performance of work hereunder, insurance coverage's, limits, and endorsements as required herein or set forth in the Insurance Coverage & Limit Table below.

The CONSTRUCTION MANAGER agrees the insurance requirements herein as well as AUTHORITY'S review or acknowledgement, is not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by the CONSTRUCTION MANAGER under this Contract.

13.2 CONSTRCUTION MANAGERS INSURANCE

1. The Construction Manager shall not commence any construction work in connection with this Agreement until he has obtained all of the following types of insurance and such insurance has been approved by the Owner, nor shall the Construction Manager allow any subcontractor to commence work on his subcontract until all similar insurance required of the subcontractor has been so obtained and approved. All insurance policies shall be with insurers qualified and doing business in Florida the Owner shall be an additional insured with primary coverage on all the policies recited herein and shall be entitled to the fullest coverage permitted by law. All insurance deductibles must be preapproved by the Authority.

2. COMMERCIAL GENERAL LIABILITY (Designated Projects or Premises) - The CONSTRUCTION MANAGER agrees to maintain Commercial General Liability on a Designated Premises or Projects basis. This requirement may also be satisfied by the CONSTRUCTION MANAGER endorsing its existing Commercial General Liability with a CG 2501 Amendment of Limits Of Insurance (Designated Projects or Premises), or equivalent endorsement, providing dedicated project liability limits. The Commercial General Liability may not include any specific endorsement excluding nor limiting coverage for Products/Completed Operations, Independent Contractors, Contractual Liability, Broad Form Property Damage, X-C-U Coverage's, or Cross Liability.
3. BUSINESS AUTOMOBILE LIABILITY - The CONSTRUCTION MANAGER agrees to maintain Business Automobile Liability coverage for owned, scheduled, non-owned and hired automobile liability. In the event the CONSTRUCTION MANAGER doesn't own automobiles, the CONSTRUCTION MANAGER agrees to maintain Hired & Non-Owned Auto Liability, which may be provided by way of endorsement to the Commercial General Liability, or separate Business Auto Liability coverage.
4. CONSTRUCTION MANAGER'S (Per-Project) POLLUTION LEGAL LIABILITY - The CONSTRUCTION MANAGER agrees to maintain Contractor's Pollution Legal Liability on a per-project basis. The CONSTRUCTION MANAGER agrees the policy shall include a minimum three (3) year Discovery (tail) reporting period. The CONSTRUCTION MANAGER agrees the Retroactive Date equals or precedes the effective of the Contract or the performance of services hereunder. The CONSTRUCTION MANAGER agrees the Self-Insured-Retention shall not exceed \$25,000 unless approved by the AUTHORITY.
5. CONSTRUCTION MANAGER'S (Per-Project) PROFESSIONAL LIABILITY - If the construction method is "design-build," the CONSTRUCTION MANAGER agrees to maintain Contractor's Professional Liability on a per-project basis. The CONSTRUCTION MANAGER agrees the policy shall include a minimum three (3) year Discovery (tail) reporting period. The CONSTRUCTION MANAGER agrees the Retroactive Date equals or precedes the effective of the Contract or the performance of services hereunder. The CONSTRUCTION MANAGER agrees the Self-Insured-Retention shall not exceed \$25,000 unless approved by the AUTHORITY.
6. WORKER'S COMPENSATION & EMPLOYER'S LIABILITY - The CONSTRUCTION MANAGER agrees to maintain its own Worker's Compensation & Employers Liability Insurance in accordance with Chapter 440, Florida Statutes, as now or thereafter amended. Coverage shall be provided on a primary basis.  
**(NOTE: Elective exemptions or coverage through an employee leasing arrangement will NOT satisfy this requirement).**

7. COMMERCIAL (Per-Project) UMBRELLA/EXCESS LIABILITY - The CONSTRUCTION MANAGER agrees to maintain Commercial Umbrella/Excess Liability on a per-project basis with concurrent policy dates to coverage afforded by the underlying Commercial General Liability. The CONSTRUCTION MANAGER agrees to endorse the AUTHORITY as an “Additional Insured” on the Commercial Umbrella/Excess Liability, unless the Commercial Umbrella/Excess Liability provides coverage on a pure/true follow-form basis, or the AUTHORITY is automatically defined as an Additional Protected Person. The CONSTRUCTION MANAGER agrees the Self-Insured-Retention shall not exceed \$50,000 unless approved by the AUTHORITY.
8. ADDITIONAL INSURED ENDORSEMENT - The CONSTRUCTION MANAGER agrees to endorse the AUTHORITY as an Additional Insured on the Commercial General Liability with a CG 2010 Additional Insured - Owners, Lessees, or Contractors, or similar endorsement providing equal or broader Additional Insured coverage.

Additionally, the CONSTRUCTION MANAGER agrees to endorse the AUTHORITY as an Additional Insured, or Loss Payee under the CONTRACTOR’S Builder’s Risk, Inland Marine Transit/Installation Insurance (when applicable), and Additional Insured under the Contractor’s (Per-Project) Pollution Liability and Commercial (Per-Project) Umbrella/Excess Liability as required herein.

The name of the organization identified in each Additional Insured endorsement’s schedule shall read “Jacksonville Aviation Authority”.

9. BUILDER’S RISK - The CONSTRUCTION MANAGER, prior to notice to proceed or commencement of work, whichever occurs first, agrees to maintain an Inland Marine Builder’s Risk coverage form providing coverage to protect the interests of the AUTHORITY, CONTRACTOR, sub-contractors, architects, and engineers, including property acquired under a sales tax incentive program, property in transit, and property on or off-premises, which shall become part of the building, or Project. Coverage shall be written on a All-Risk, Replacement Cost, and Completed Value Form basis in an amount at least equal to 100% of the projected completed value of the Project as well as subsequent modifications of that sum, unless an agreed amount is otherwise stated as follows \$\_\_\_\_\_. The CONSTRUCTION MANAGER agrees not to maintain a wind or flood sublimit less than 25% of the projected completed value of the project, or the otherwise agreed stated amount. The CONSTRUCTION MANAGER agrees any flat deductible(s) shall not exceed \$25,000 unless approved by the AUTHORITY, and any wind percentage deductible (when applicable) shall not exceed five-percent (5%). Any reduction of the wind percentage deductible from five percent (5%) shall be approved by the AUTHORITY.

The CONSTRUCTION MANAGER agrees to endorse the policy with a manuscript endorsement eliminating the automatic termination of coverage in the event the building is occupied in whole or in part, or put to its intended use, or partially accepted by AUTHORITY. The manuscript endorsement shall amend the automatic termination clause to only terminate coverage if the policy expires, is cancelled, the AUTHORITY's interest in the building ceases, or the building is accepted or insured by the AUTHORITY.

The AUTHORITY reserves the right, but not the obligation, to provide Builder's Risk coverage under its own insurance program at its sole discretion. Prior to binding coverage, the CONSTRUCTION MANAGER agrees to provide the AUTHORITY with a copy of the Builder's Risk quotation secured from underwriters by CONSTRUCTION MANAGER'S insurance agent. The AUTHORITY will review the quotation and notify the CONSTRUCTION MANAGER to bind the coverage as required above, unless the AUTHORITY elects to provide its own Builder's Risk coverage. If the Authority elects its own coverage, the AUTHORITY agrees to notify the CONSTRUCTION MANAGER in writing and this Builder's Risk section of the Article 13 will be deleted in its entirety and replaced with the Builder's Risk insurance requirements outlined in Article 13.

10. INLAND MARINE TRANSIT/INSTALLATION FLOATER - The CONSTRUCTION MANAGER agrees to maintain Inland Marine Transit/Installation Floater (provided the coverage is not afforded by the Inland Marine Builder's Risk) to cover the CONSTRUCTION MANAGER'S, sub-contractors or AUTHORITY'S interest in property in-transit, or property stored on or off premises which will become part of the building.
11. DEDUCTIBLES, COINSURANCE PENALTIES, & SELF-INSURED RETENTION - The CONSTRUCTION MANAGER agrees to be fully and solely responsible for any costs or expenses as a result of a coverage deductible, coinsurance penalty, or self-insured retention; including any loss not covered because of the operation of such deductible, coinsurance penalty, self-insured retention, or coverage exclusion or limitation. For deductible amounts that exceed the amounts stated herein that are acceptable to AUTHORITY, the CONSTRUCTION MANAGER agrees, when requested by AUTHORITY, to maintain a Commercial Surety Bond in an amount equal to said deductible amount.
12. WAIVER OF SUBROGATION - The CONSTRUCTION MANAGER agrees by entering into this written Contract to a Waiver of Subrogation in favor of the AUTHORITY, CONSTRUCTION MANAGER, sub-contractor, architects, or engineers for each required policy providing coverage during the life of this Contract. When required by the insurer, or should a policy condition not permit the CONSTRUCTION MANAGER to enter into an pre-loss agreement to waive

subrogation without an endorsement, the CONSTRUCTION MANAGER agrees to notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or an equivalent endorsement. This Waiver of Subrogation requirement shall not apply to any policy, which includes a condition that specifically prohibits such an endorsement, or voids coverage should the CONSTRUCTION MANAGER enter into such an agreement on a pre-loss basis.

13. RIGHT TO REVISE OR REJECT - The CONSTRUCTION MANAGER agrees the AUTHORITY reserves the right, but not the obligation, to review or revise any insurance requirement, not limited to limits, coverage's and endorsements based on insurance market conditions affecting the availability or affordability of coverage; or changes in the scope of work / specifications affecting the applicability of coverage. Additionally, the AUTHORITY reserves the right, but not the obligation, to review and reject any insurance policies failing to meet the criteria stated herein, or any insurer(s) providing coverage due of its poor financial condition or failure to operating legally in the State of Florida. In such events, AUTHORITY shall provide CONSTRUCTION MANAGER written notice of such revisions or rejections.
14. NO REPRESENTATION OF COVERAGE ADEQUACY - The coverage's, limits or endorsements required herein protect the primary interests of the AUTHORITY, and the CONSTRUCTION MANAGER agrees in no way should these coverage's, limits or endorsements required be relied upon when assessing the extent or determining appropriate types and limits of coverage to protect the CONSTRUCTION MANAGER against any loss exposures, whether as a result of the Project or otherwise.
15. CERTIFICATE OF INSURANCE - The CONSTRUCTION MANAGER agrees to provide AUTHORITY with Certificate(s) of Insurance that clearly evidence the CONSTRUCTION MANAGER's insurance contains the minimum coverage's, limits, and endorsements set forth herein. A minimum thirty (30) day endeavor to notify due to cancellation or non-renewal of coverage shall be identified on each Certificate(s) of Insurance. In the event the AUTHORITY is notified that a required insurance coverage will cancel or expire during the period of this Contract, the CONSTRUCTION MANAGER agrees to furnish AUTHORITY prior to the expiration of such insurance, a new Certificate of Insurance evidencing replacement coverage. When notified by AUTHORITY, the CONSTRUCTION MANAGER agrees not continue work pursuant to this Contract, unless all required insurance remains in effect.

The AUTHORITY shall have the right, but not the obligation, of prohibiting CONSTRUCTION MANAGER from entering the Project site until a new Certificate of Insurance is provided to the AUTHORITY evidencing the replacement coverage. The CONSTRUCTION MANAGER agrees the AUTHORITY reserves the right to withhold payment to CONSTRUCTION MANAGER until evidence of reinstated or replacement coverage is provided to



the AUTHORITY. If the CONSTRUCTION MANAGER fails to maintain the insurance as set forth herein, the CONSTRUCTION MANAGER agrees the AUTHORITY shall have the right, but not the obligation, to purchase replacement insurance, which the CONSTRUCTION MANAGER agrees to reimburse any premiums or expenses incurred by the AUTHORITY.

13.3 The AUTHORITY 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 AUTHORITY and CONSTRUCTION MANAGER as trustees. The CONSTRUCTION MANAGER shall require similar waivers from all subcontractors and their sub-subcontractors.

13.4 The AUTHORITY and the 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.

The CONSTRUCTION MANAGER agrees the Certificate(s) of Insurance shall:

1.	Clearly indicate the AUTHORITY has been endorsed on the Commercial General Liability with a CG 2010 Additional Insured – Owners, Lessees, or Contractors, or CG 2006 Additional Insured – Owners, Lessees, or Contractors – Scheduled Person Organization endorsement, or similar endorsement providing equal or greater Additional Insured Coverage
2.	Clearly indicate the AUTHORITY is endorsed as an Additional Insured, or Loss Payee, on the Builder’s Risk, and when applicable the CONTRACTOR’S Inland Marine Transit/Installation Insurance, and Additional Insured on the Contractor’s (Per-Project) Pollution Liability and Commercial (Per-Project) Umbrella/Excess Liability as required herein.
3.	Clearly indicate the Commercial General Liability includes either a Designated Projects or Premises endorsement, or a <u>CG 2501 Amendment of Limits Of Insurance (Designated Projects or Premises)</u> endorsement.
4.	Clearly indicate the <u>project name</u> and <u>project number</u> .
5.	Clearly identify the Commercial Umbrella/Excess Liability as “follow form” or “non-follow” form.
6.	Clearly identify each policy’s limits, flat & percentage deductibles, sub-limits, or self-insured retentions, which exceed the amounts or percentages set forth herein.
7.	Clearly identify the Discovery (tail) Periods and Retroactive Dates, when applicable.

8.	Clearly indicate a minimum thirty (30) day endeavor to notify requirement in the event of cancellation or non-renewal of coverage.	
9.	Clearly indicated Certificate Holder(s) as follows:	
	Original to:	Copt to:
	Jacksonville Aviation Authority Engineering Department 14201 Pecan Park Road Jacksonville, FL 32218	Jacksonville Aviation Authority Risk Management 14201 Pecan Park Road Jacksonville, FL 32218

**INSURANCE COVERAGE & TABLE** The CONSTRUCTION MANAGER agrees to maintain the coverage's, limits, and endorsements as set forth by the Insurance Coverage & Table below:

**(Note): The following insurance requirements are subject to change depending on the project scope and at the Authority's discretion.**

<b>INSURANCE COVERAGE &amp; LIMIT TABLE</b>	
<b>TYPE OF COVERAGE</b>	<b>LIMITS OF LIABILITY (NOT LESS THAN)</b>
<p><b><u>COMMERCIAL GENERAL LIABILITY:</u></b></p> <p>Per-Project Limits of Liability not less than:</p> <p>Additional Insured Endorsement:</p> <p>Policy Form:</p>	<p>Agg</p> <p>\$1,000,000 Each Occurrence \$1,000,000 Products-Comp/Op \$2,000,000 General Aggregate</p> <p>Yes</p> <p>Occurrence Form</p>
<p><b><u>BUSINESS AUTO LIABILITY:</u></b></p> <p>Limit of Liability not less than:</p> <p>Additional Insured Endorsement</p>	<p>\$1,000,000 Each Occurrence (non-AOA) \$5,000,000 Each Occurrence (on AOA)</p> <p>Yes</p>
<p><b><u>WORKERS COMPENSATION &amp; EMPLOYER'S LIABILITY:</u></b></p>	

Coverage not less than: Employers Liability Limits not less than:	Statutory per F.S. Chapter 440 \$1,000,000/\$1,000,000/\$1,000,000
<b><u>COMMERCIAL (PER-PROJECT) UMBRELLA/EXCESS LIABILITY:</u></b> Per-Project Limit of Liability not less than: Self-Insured Retention not greater than: Additional Insured Endorsement:	\$5,000,000 Each Occurrence \$5,000,000 Annual Aggregate \$50,000 Yes

<b>INSURANCE COVERAGE &amp; LIMIT TABLE</b>	
<b>TYPE OF COVERAGE</b>	<b>LIMITS OF LIABILITY (NOT LESS THAN)</b>
<b><u>CONTRACTORS (Per-Project) PROFESSIONAL LIABILITY:</u></b> Per-Project Limits of Liability not less than: Discovery (tail) Reporting Period not less than: Self-Insured Retention not greater than:	\$5,000,000 Each Occurrence \$5,000,000 Annual Aggregate Three (3) years \$25,000
<b><u>CONTRACTOR'S (PER-PROJECT) POLLUTION LEGAL LIABILITY</u></b> Per-project limit of liability not less than: Discovery (tail) Reporting Period not less than: Self-Insured Retention not greater than:	\$1,000,000 Each Occurrence \$2,000,000 Annual Aggregate Three (3) years \$25,000

Additional Insured Endorsement required:	Yes
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**INSURANCE COVERAGE & LIMIT TABLE**

TYPE OF COVERAGE	LIMITS OF LIABILITY (NOT LESS THAN)
<p><b><u>BUILDERS RISK:</u></b></p> <p>Limit not less than:</p> <p>Flood or Wind Sub-limits not less than:</p> <p>Wind Percentage Deductible not greater than:</p> <p>All Other Perils (AOP) deductible not greater than:</p> <p>Additional Insured, or Loss Payee Endorsement:</p>	<p>100% of the total projected construction value at completion of the project as well as subsequent modifications to that sum, unless other stated as follows: \$ _____</p> <p>25% of the total projected construction value at completion of the project as well as subsequent modifications to that sum, unless otherwise stated above.</p> <p align="right">5%</p> <p align="right">\$100,000</p> <p align="right">Yes</p>
<p><b><u>INLAND MARINE TRANSIT / INSTALLATION FLOATER:</u></b> (not required if coverage is provided by Builder's Risk)</p> <p>Limit not less than:</p> <p>Additional Insured, or Loss Payee Endorsement:</p>	<p>100% of the highest property value pending installation or in-transit during the construction project, unless otherwise stated as follows: \$ _____</p> <p align="right">Yes</p>

**ARTICLE 14**  
**TERMINATION OF THE AGREEMENT AND OWNER'S RIGHT TO**  
**PERFORM CONSTRUCTION MANAGER'S OBLIGATION**

- 14.1 TERMINATION BY THE CONSTRUCTION MANAGER - If all work on the project is suspended 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 Owner fails to make payment of an approved pay application for sixty (60) days, then the Construction Manager may, upon seven days written notice to the Owner, request payment for all work executed, the Construction Manager's fees earned to date, and for any proven loss sustained upon any materials, equipment, tools, construction equipment, subcontractor equipment, and machinery, and demobilization cost only.

The Construction Manager shall include termination damage limitation in all subcontracts.

- 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 his obligations under this Agreement including any obligation he assumes to perform work with his own forces, the Owner may, after seven (7) days written notice during which period the Construction Manager fails to perform such obligation, make good such deficiencies or satisfy the Owner of the appropriateness of its response, the GMP, or the actual cost of the Project, whichever is less, shall be reduced by the cost to the Owner of 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. If the contract balance is insufficient the Owner may seek recovery against the Construction Manager and/or its surety.
2. If the Construction Manager is adjudged 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 workers 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 30 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 materially breaches any 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 terminal expenses incurred by the Owner may be deducted from any payments left owing the Construction Manager or have an action against the Construction Manager or its surety.

3. If the Construction Manager refuses to allow Owner access to all documents, papers, letters, or other material made or received by the Construction Manager in conjunction with this 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 still fails to allow access, 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 terminal 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 WITHOUT CAUSE

1. If the Owner terminates this Agreement other than pursuant to Article 14.2(2) or Article 14.2(3), 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, and reasonable field overhead and profit on work performed. In case of such termination of Agreement the Owner may further assume and become liable for obligations, and commitments that the Construction Manager has previously undertaken or incurred in good faith in connection with said Project. The Construction Manager shall, as a condition of receiving the payments referred to in this Article 14, execute and deliver all such papers and take all such steps including the legal assignment of his contractual rights, as the Owner may require for the purpose of fully vesting in him the rights and benefits of the Construction Manager under such obligations or commitments. The Owner does not assume any responsibility for legal expenses relating to issues of termination.
2. After the establishment of the Guaranteed Maximum Price or at the completion of the Preconstruction 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.

### **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 and the Jacksonville Aviation Authority.

#### **ARTICLE 16**

#### **NOTICE OF CLAIM: WAIVER OF REMEDIES; NO DAMAGES FOR DELAY**

- 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:
1. All claims must be submitted as a Request for Change Order in the manner as provided herein;
  2. The Construction Manager must submit a Notice of Claim to Owner and to the Architect-Engineer within 10 days of when the Construction Manager was or should have been aware of the occurrence of the event giving rise to the claim; and
  3. Within 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.

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 paragraph.

- 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 matters subject to the determination by final agency action (not actions for breach of contract or tort) the Owner's written decision shall be final agency action.

The venue for all civil and administrative actions shall be in Duval County, Florida.

- 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 or disruptions in performance of the construction caused by events beyond its control, and responsibility including delays claimed to be caused by or attributable to the Owner or the Architect-Engineer, except active interference including claims based on breach of contract or negligence, shall solely be a claim submitted in compliance with 16.1 above, for an extension of the scheduled construction time. In the event of a change in such work, the Construction Manager's claim for adjustments in the contract sum are limited exclusively to its actual costs for such changes directly related to work on site plus 5% for overhead and profit. 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.

## **ARTICLE 17 DISADVANTAGED BUSINESS ENTERPRISES**

- 17.1 POLICY - Consistent with the Jacksonville Aviation Authority's (JAA) Disadvantaged Business Enterprises Program, which is made part hereof by reference, it is the policy of JAA and the Department of Transportation (DOT) that disadvantaged business enterprises as defined in 49 CFR Part 26 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this agreement. Consequently, the DBE requirements of 49 CFR Part 26 apply to this agreement.
- 17.2 DISADVANTAGED BUSINESS ENTERPRISES - Contract Assurance (§ 26.13) - The consultant or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The consultant shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the consultant to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the recipient deems appropriate.

A fifteen percent (15%) DBE goal has been established for this project.

## **ARTICLE 18 COMPLIANCE WITH FEDERAL LAW**

- 18.1 COMPLIANCE WITH REGULATIONS - The Consultant shall comply with the regulations of the U. S. Department of Transportation relative to nondiscrimination in federally-assisted programs of the U. S. Department of Transportation (Title 49, Code of Federal Regulations, Part 21), hereinafter referred to as the Regulations, which are herein incorporated by reference and made a part of this agreement.
- 18.2 GENERAL CIVIL RIGHTS PROVISIONS - The consultant agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance.



This provision binds the consultant and sub-tier consultants from the bid solicitation period through the completion of the contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

18.3 COMPLIANCE WITH NONDISCRIMINATION REQUIREMENTS - During the performance of this contract, the consultant, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees as follows:

1. **Compliance with Regulations:** The consultant (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The consultant, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subconsultants, including procurements of materials and leases of equipment. The consultant will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the consultant for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subconsultant or supplier will be notified by the consultant of the consultant’s obligations under this contract and the Nondiscrimination Acts And Authorities on the grounds of race, color, or national origin.
4. **Information and Reports:** The consultant will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a consultant is in the exclusive possession of another who fails or refuses to furnish the information, the consultant will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

5. Sanctions for Noncompliance: In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
  - (a) Withholding payments to the consultant under the contract until the consultant complies; and/or
  - (b) Cancelling, terminating, or suspending a contract, in whole or in part.
6. Incorporation of Provisions: The consultant will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The consultant will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the consultant becomes involved in, or is threatened with litigation by a subconsultant, or supplier because of such direction, the consultant may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the consultant may request the United States to enter into the litigation to protect the interests of the United States.

18.4 TITLE VI LIST OF PERTINENT NONDISCRIMINATION ACTS AND AUTHORITIES - During the performance of this contract, the consultant, for itself, its assignees, and successors in interest (hereinafter referred to as the "consultant") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

1. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
2. 49 CFR part 21 (Non-discrimination in Federally-Assisted Programs of The Department of Transportation – Effectuation of Title VI of The Civil Rights Act of 1964);
3. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
4. Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part

27;

5. The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
6. Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
7. The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
8. Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
9. The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
10. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
11. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
12. Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 *et seq.*).

18.5 INFORMATION REPORTS - Consultant shall provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and shall permit access to the Consultant's books, records, accounts, or other sources of information, and its facilities as may be determined by the Jacksonville Aviation Authority or U. S. Department of Transportation, to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of the Consultant is in the exclusive possession of another who fails or refuses to furnish this information, the Consultant shall certify to the Jacksonville Aviation Authority as appropriate and shall set forth what efforts he has made to obtain the information.

18.6 SANCTIONS FOR NONCOMPLIANCE - In the event of the Consultant's noncompliance with the nondiscrimination provisions of this contract, Jacksonville Aviation Authority shall impose such contract sanctions as it or the U. S. Department of Transportation may determine to be appropriate, including, but not limited to:

1. Withholding of payments to the Consultant under contract until Consultant complies, and/or
2. Cancellation, termination or suspension of the contract, in whole or in part.

18.7 INCORPORATION OF PROVISIONS - Consultant shall include the provisions of Articles 18.1 through 18.7 in every subcontract, including procurement of materials and leases of equipment, unless exempt by the regulations, orders, or instruction issued pursuant thereto. Consultant shall take such action with respect to any subcontract or procurement as the Jacksonville Aviation Authority or the U. S. Department of Transportation may direct as a means of enforcing such provisions including actions for noncompliance, provided however, that in the event the Consultant becomes involved in or is threatened with, litigation with a subcontractor or a supplier as a result of such direction, the Consultant may request the Jacksonville Aviation Authority to enter into such litigation to protect the interest of the State of Florida. In addition, the Consultant may request the United States to enter into such litigation to protect the interests of the United States.

## ARTICLE 19 MISCELLANEOUS

19.1 LEFT BLANK INTENTIONALLY

19.2 HARMONY - Construction Manager is advised and hereby agrees that he will 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 on this 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 I, 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 provisions of Chapter 446, Florida Statutes, and by applicable standards and policies governing apprentice programs and agreements established by the Division of Labor of the State of Florida Department of Labor and Employment Security. The Construction Manager will include a provision similar to the foregoing sentence in each subcontract.
- 19.4 INVOICES - Invoices shall be submitted in detail sufficient for a proper pre-audit and post-audit thereof. Invoices for any travel expenses shall be submitted in accordance with procedures specified in Section 112.061 of the Florida Statutes governing payments by the State for travel expenses.
- 19.5 CONSTRUCTION MANAGER'S PROJECT RECORDS - The Construction Manager's Project Records shall be maintained as prescribed hereinabove in accordance with the State of Florida General Records Schedule for State Agencies A-1 and shall be made available to the Owner or his authorized representative at mutually convenient times.
- 19.6 SEVERABILITY - Should any provision of this agreement be deemed or determined to be unenforceable by a court of competent jurisdiction, the remaining contract provisions shall remain in full force and effect.
- 19.7 SALES TAX EXEMPTION - The Construction Manager may serve as the Owner's agent in the limited capacity to obtain quotes for materials and otherwise insist in the procurement of materials that will be purchased directly by the Owner in compliance section 212 Florida Statutes. As part of the Construction Manager's responsibility he shall administer this procurement process consistent with the following procedures and requirements;
1. A Purchase Order Requisition Form in a form acceptable to the Owner and Construction Manager shall be prepared by subcontractors and submitted to the Owner prior to ordering Owner purchased materials. The requisition form will provide the name, address, telephone number and contact person for the materials supplier; a list of required items, the quantity needed, the price and sales tax associated with the materials, and delivery dates established by the subcontractor.
  2. The Owner will prepare and issue standard Owner purchase order forms to the vendors. In conjunction with the execution of the Owner's Purchase Orders by the suppliers, the Subcontractor shall execute and deliver to the Owner, through the Construction Manager, deductive change orders reflecting the full value of all materials directly purchased by the Owner, plus all sales tax savings associated with the materials.
  3. Subcontractors will be responsible for all matters relating to the receipt of materials purchased by the Owner including verifying correct quantities, inspection and acceptance of the goods at the time of delivery. The

Subcontractor will forward the invoice to the Owner through the Construction Manager for payment.

4. Title to the Owner purchased materials will vest in the Owner at the time the materials are delivered to the Owner owned construction site (F .O.B. job site).
5. Owner is billed directly by the selling vendor for purchases of building materials.
6. Payment for the building materials is made directly to the selling vendor by the Owner.
7. The Owner will bear the costs of all Payment and Performance Bonds and Owner's Insurance including Builder's Risk Insurance as a reimbursable expense to the Construction Manager.
8. The Owner is an additional named insured on the Construction Manager's Builder's Risk insurance and, in the event of damage or destruction to Owner purchased materials, the Owner will receive all proceeds derived from all claims against insurers or others to pay for repair or reconstruction as a result of damage or destruction.

Construction Manager shall be responsible for coordinating the delivery, storage and incorporation of material purchases made by the Owner pursuant to this section. Once the materials are incorporated in the project they become the responsibility of the Construction Manager. Failure by the Construction Manager to comply with the tax exemption procedures which results in taxes, fines, or damages to the Owner shall be the sole responsibility and liability of the Construction Manager.

- 19.8 PUBLIC ENTITY CRIME INFORMATION STATEMENT - "A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a Construction Manager, 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."
- 19.9 UNAUTHORIZED ALIENS - The Department shall consider the employment by any Construction Manager of unauthorized aliens a violation of section 274A(e) of the Immigration and Nationalization Act. Such violation shall be cause for unilateral cancellation of this contract.
- 19.10 ELECTRONIC MAIL CAPABILITIES - The Construction Manager must have electronic mail capabilities through the World Wide Web. The Construction Manager shall provide their electronic mail address and the name of a contact person responsible for their electronic communications.
- 19.11 **THIS SECTION LEFT BLANK INTENTIONALLY.**

- 19.12 DBE COMPLIANCE - The Jacksonville Aviation Authority DBE goals shall be set forth in an attachment to this agreement.
- 19.13 CONTRACT COMPLETION - Time is of the essence in the performance of the Work under the Contract Documents. The Owner and the Construction Manager agree that the losses suffered by the Owner, if substantial completion of the Work is not achieved within the Contract Time, as said Contract Time may be adjusted pursuant to the terms of the Contract Documents, are not ascertainable at this time. Should the Construction Manager fail to achieve Substantial Completion of the Work within the Contract Time, Owner shall be entitled to assess, as liquidated damages, but not as a penalty, an amount to be established in each GMP Amendment for each individual project, for each calendar day thereafter until Substantial Completion is achieved. Construction Manager hereby expressly waives and relinquishes any right which it may have to seek to characterize the liquidated damages as a penalty. After the date of Substantial Completion and the allowed time for contract completion, the Owner shall be entitled to all actual damages incurred as a result of late completion.
- 19.14 The terms of this agreement have been negotiated by the parties and they hereby agree that there shall be no prejudice to the preparer of this document arising from any later discovered ambiguity or conflict.

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