THE DISTRICT BOARD OF TRUSTEES FLORIDA SOUTHWESTERN STATE COLLEGE

*AGREEMENT BETWEEN OWNER AND CONSTRUCTION MANAGER*

**Project Name and Location:**  Campus, Building and description of work

**Construction Manager:** Name and Address

**Architect-Engineer:** Name and Address

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**FORM OF AGREEMENT**

**BETWEEN OWNER AND CONSTRUCTION MANAGER**

THIS AGREEMENT made on Click here to enter a date. between The District Board Of Trustees, Florida SouthWestern State College, Florida, hereinafter called the Owner, and Name and Address**,** 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 the Construction Manager and the Owner by this Agreement. The Construction Manager covenants with the Owner to furnish the best skill and judgment and to cooperate with the Architect-Engineer in furthering the interests of the Owner. The Construction Manager agrees to furnish efficient business administration and superintendence and use his best efforts to complete the project in the best and soundest way and in the most expeditious and economical manner consistent with the interest of the Owner.

* 1. 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.
  2. Extent of Agreement – This Agreement for the project described on the cover page hereof 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 substantially complete, they shall be identified in the construction authorization issued by the Project Director. When drawings, specifications and other descriptive documents defining the work to be included in the guaranteed maximum price (GMP) are sufficiently 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 design 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 Project Director 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 Owner and Construction Manager.

* 1. Definitions:

Agreement – shall mean the following documents, which shall take precedence in the order listed:

* This Document and all of the documents and exhibits attached or referred to herein;
* The “Continuing Services Agreement for Construction Management At-Risk Services for Construction Projects” between the District Board of Trustees of Florida SouthWestern State College, Florida and Construction Manager, herein incorporated by reference;
* Florida SouthWestern State College RFQ Number Number and, herein incorporated by reference
* Firm’s response to RFQ.

In the event of a conflict between the documents the matter shall be resolved by giving preference to the document with the highest precedence.

Applicable Laws – Applicable Laws shall mean all federal, state, county and local statutes, codes, laws, rules, regulations, ordinances, orders and standards applicable to the Project, including but not limited to, the State of Florida Requirements for Educational Facilities and the Florida Building Code, effective

November 4, 2014, all as amended from time to time, their successor provisions and/or any other laws hereafter enacted having the same general purpose, as well as rules and regulations adopted pursuant thereto.

Architect-Engineer – **Architects Name, Address, and Phone Number**

Change Order – Change Order shall mean a written instrument prepared in accordance with paragraph 10.1 hereto by the Architect and executed by the Owner, the Construction Manager and the Architect, stating their agreement upon all of the following: (a) a change in the Work; (b) the amount of the adjustment in the GMP, if any; and (c) the extent of the adjustment in the Contract Time, if any. A Change Order shall constitute a final settlement of all items covered therein, including any compensation for impact on, or delay or acceleration in, performing the Work.

Change Proposal Request (CPR) – Change Proposal Request (or CPR) shall mean a written request by the Construction Manager for use of a portion of the Construction Contingency, or a written request by the Construction Manager for a Change Order.

Claim – Claim shall mean a demand, assertion, dispute, or such other claim by one of the parties hereto arising out of, or based upon, the terms and conditions of the Contract Documents.

Construction Authorization – Construction Authorization shall mean a written work order prepared by the Project Director and issued to the Construction Manager. Construction Authorizations shall be used prior to the date of the GMP Amendment. The Construction Manager’s costs for labor, materials, equipment, overhead and profit related to Work performed pursuant to the Construction Authorizations shall be included in the GMP.

Construction Change Directive (CCD) – Construction Change Directive (or CCD) shall mean a written order, prepared by the Architect-Engineer and executed by the Owner, directing a change in the Work and stating a proposed basis for adjustment, if any, in the GMP or Contract Time, or both. A CCD shall be used in the absence of total agreement on the terms of a Change Order.

Construction Phase – Construction Phase shall mean the entire portion of the Work that is not described in Section 2.3, or preparation of the GMP proposal.

Construction Schedule – Construction Schedule shall mean the critical path schedule for the construction of the Project, including a sequence of activities necessary for the orderly performance and completion of the Work and the phasing of construction, where required, all in accordance with the terms of the Contract Documents, and paragraph 2.1.3(b) hereto, and shall include all major elements for the Project, such as phasing of construction and times of commencement and completion required of each Subcontractor, all coordinated with the Work in progress for the remainder of the Project, if any, the Substantial Completion Date, and the Final Completion Date.

Construction Team – Construction Team shall mean the Owner, the Construction Manager and the Architect- Engineer.

Contract Documents – Contract Documents shall mean this Agreement, including the Exhibits attached hereto, Drawings, Specifications, and Addenda issued prior to execution of the Agreement, the GMP Amendment, Construction Authorizations, Construction Change Directives and Change Orders.

Contract Time – Contract Time shall mean the time period within which the Construction Manager shall achieve Substantial Completion of the Project.

Construction Manager – Construction Manager shall mean Construction Manager Name and Address The Construction Manager responsible for the Project shall be the single point of interface for all trade bidders and contractors for the duration of the Project. For the purposes hereunder, the Construction Manager (including its employees, contractors, subcontractors, etc.) is an independent contractor, and is not and shall not by its performance hereunder be deemed or construed under any circumstance, to be, an

employee, agent, representative, or servant of the Owner.

Construction Contingency – Construction Contingency shall mean a line item contingency amount contained in the Schedule of Values, which Construction Contingency amount, if accepted by the Owner, shall be included within the GMP pursuant to the GMP Amendment. The Construction Contingency shall be utilized in accordance with paragraph 7.3. The Construction Contingency amount shall be set forth in the GMP Amendment, on its face and within the Schedule of Values attached hereto, and may be reduced in accordance with paragraph 7.4.

Design Phase – Design Phase shall mean all of the services and Work described herein to be performed prior to commencement of the Construction Phase.

Direct Cost Items – Direct Cost Items shall mean, and is limited to, actual and direct expenditures reasonably and necessarily incurred by the Construction Manager for the items set forth in Article 9 for the proper performance of the Work, including amounts paid to Subcontractors and Sub-Subcontractors, or the Construction Manager’s own forces (if such persons or entities perform a portion of the Work with the consent of the Owner), in accordance with the terms of the Contract Documents , provided that such costs are not included in the Construction Manager’s Fee or excluded from the Direct Cost Items, less any reimbursement for scrap value and cash or trade discounts which shall be credited to the Owner. The Direct Cost Items shall be billed at the actual cost to the Construction Manager, without markup. The Direct Cost Items specifically exclude those costs and expenses included in the Construction Manager’s Fee.

Drawings – Drawings shall refer to the graphic and pictorial provisions of the Agreement showing the design, location and dimensions of the Work, identified as the Drawings in the GMP Amendment.

Estimate – Estimate shall mean the Construction Manager’s latest estimate of the Project Price.

Final Completion Date – Final Completion Date shall mean the date of Final Completion set forth in the GMP Amendment.

GMP – GMP shall mean the Guaranteed Maximum Price set forth in a GMP Amendment, and is defined in paragraph 7.1.

GMP Amendment – GMP Amendment shall mean that certain GMP Amendment which shall automatically become a part hereof upon Owner’s and Construction Manager’s execution of same, and shall establish, among other things, the GMP, the Contract Time for the Project, and shall incorporate the Drawings, Specifications, the Schedule of Values, and the Construction Manager’s qualifications, exclusions, and allowances, if any.

GMP Proposal – GMP Proposal shall mean a proposal for completing the Project, which Proposal shall include the proposed Guaranteed Maximum Price for the construction of the Project which is consistent with the Estimate and the Contract Documents.

Master Project Schedule – Master Project Schedule shall be a written schedule prepared by Construction Manager and approved by the Owner.

Notice of Termination – Notice of Termination shall mean a written notice, signed by Owner, and delivered to the Construction Manager, with copies to the Architect-Engineer and the Construction Manager’s surety.

Notice to Proceed – Notice to proceed shall mean a written notice to proceed with the Work, or a portion of the Work, signed by Owner.

Owner – Owner shall mean The District Board of Trustees, Florida SouthWestern State College, Florida, or those persons designated by the Owner to act on its behalf.

Owner’s Representatives – Owner’s Representatives shall mean the Project Director and designees.

Permitting Authority – For Construction on Florida SouthWestern State College’s campus, Permitting Authority means Florida SouthWestern State College unless the Construction Manager is otherwise instructed in writing by Florida SouthWestern State College. For all other construction, Permitting Authority

shall mean any and all governmental authorities with jurisdiction over any aspect of the Project in accordance with local, state and federal law.

Project – The Project is the total and sum of all work to be performed by Construction Manager and its subcontractors under this Agreement. Project consists of participation in the planning, design, permitting, construction and code inspection necessary to fully complete the Project described in this Agreement.

Project Director – Project Director shall mean the person designated by the Owner to provide direct interface with the Construction Manager. (See Exhibit A)

Project Price – Project Price shall mean the Construction Manager’s Fee, plus the Direct Cost Items.

Qualifications – Qualifications shall mean all permits, licenses, certificates, registrations, qualifications and other authorizations, whether obtained from federal, state, county or local authorities, which are reasonably necessary to perform the Work under the Contract Documents and Applicable Laws, along with the qualifications set forth in paragraph 5.3.

Qualified – Qualified shall mean possessing the Qualifications in the name of the Construction Manager, Subcontractor, or the Sub-Subcontractor, as applicable.

Record Drawings – Record Drawings shall mean a copy of the Drawings, which shall be marked by the Construction Manager to show the as-installed dimensions, locations and conditions of the Work, signed by the Construction Manager, certifying that such Record Drawings show complete and actual ‘as built’ conditions, and are more specifically described in paragraph 2.4.10(k).

Request for Change Order – Request for Change Order shall mean a written request by the Construction Manager, delivered to Owner and the Architect-Engineer pursuant to Article 10 for approval of a proposed Change Order.

Schedule of Values – Schedule of Values means the breakdown of the GMP, as set forth in the GMP Amendment. The Schedule of Values shall not be construed to mean a line item GMP.

Scope of the Work – Scope of the Work shall mean all services, labor, materials, equipment, operations and construction management services that are indicated in, or reasonably inferable from, the Contract Documents.

Specifications – Specifications shall refer to any and all written requirements for materials, equipment, construction systems, standards and workmanship for the Work, identified as the Specifications in the GMP Amendment.

Subcontractor – Subcontractor shall have the meaning set forth in paragraph 5.1.

Sub-subcontractor – Sub-subcontractor shall mean a person or entity which has a direct or indirect contract with a Subcontractor to perform or supply a portion of the Work, or any person or entity that performs any portion of the Work through any Subcontractor, and the term includes such Sub-subcontractor’s authorized representative.

Substantial Completion – Substantial Completion shall mean the stage in the progress of the Work when (a) all final inspections and certifications have been obtained by the Construction Manager pursuant to all Applicable Laws, including, without limitation, unconditional occupancy or use permits, to entitle the Owner to fully occupy and utilize the Project for its intended purpose; (b) evidence, reasonably acceptable to the Owner and the Architect-Engineer, or such inspections and certifications, has been delivered to the Owner

and the Architect-Engineer; (c) all Work, except those items of Work identified in the punch list, has been completed to the extent and in the manner required by the Contract Documents such that all of the improvements within the entire Scope of the Work are physically habitable, fully operational and usable for their intended purposes; (d) the work on the pre-substantial punch list has been accomplished; and (e) the Architect-Engineer, the Owner, and the Construction Manager have executed the Certificate of Substantial Completion attached hereto and made a part hereof as Exhibit C (or on such other form of certificate as may be approved by the Owner).

Substantial Completion Date – Substantial Completion Date shall mean the date of Substantial Completion as set forth in the GMP Amendment.

Work – Work shall mean all supervision, labor, materials, and equipment required by the Contract Documents to be provided by or through the Construction Manager for the entire Project and all other services necessary to fulfill the Construction Manager’s obligations hereunder to perform the entire Scope of the Work, including, as the context may require, any portion of the Work with respect to the Project. The capitalized term ‘work’ is used in its ordinary sense. The Construction Manager shall perform the Work in strict accordance with the Contract Documents and all Applicable Laws.

* 1. Owner’s Construction Budget - Owner’s funds budgeted and requested for construction of the Project. The Owner’s Construction Budget is identified in Exhibit B, including all Construction Manager Fees, costs of the Work, and the Construction Contingency. This acknowledgment 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. The Owner and Construction Manager acknowledge and agree that the Owner is contracting with the Construction Manager to perform or cause to be performed all work and services necessary to complete the Project.

* 1. PROJECT MANUAL [DELETED]
  2. DESIGN REVIEW, RECOMMENDATIONS AND WARRANTY
     1. Review and Recommendations - The Construction Manager shall be thoroughly familiar with the evolving architectural, civil, mechanical, plumbing, electrical and structural plans and specifications and shall follow the development of design from execution of this Agreement through working Drawings. The Construction Manager shall make recommendations with respect to the selection of systems and materials, and cost reducing alternatives including assistance to the Architect-Engineer, and 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. The Construction Manager shall furnish pertinent information as to the availability of materials and labor that will be required. The Construction Manager shall submit to the Owner, Permitting Authority (if necessary) and Architect-Engineer such comments as may be appropriate concerning construction feasibility and practicality. The Construction Manager shall call to the Project Director’s and the Architect-Engineer’s attention any apparent or perceived defects, errors, omissions, ambiguities and/or inconsistencies in the design, Drawings, Specifications and other Contract Documents. The Construction Manager shall also prepare an estimate of the construction cost utilizing the unit quantity survey method.
     2. Review, Reports and Warranty - Within twenty (20) days after receiving the Construction Documents for each phase of the Project, the Construction Manager shall perform a specific review thereof, focusing upon the factors described in paragraphs 2.3.1, 2.3.3, 2.3.4 and 2.3.5. Promptly after completion of the review, the Construction Manager shall submit to the Project Director and Permitting Authority (if necessary), with copies to the Architect-Engineer, a written report covering suggestions or recommendations previously submitted, additional suggestions or recommendations as the Construction Manager may deem appropriate, and all actions taken by the Architect-Engineer with respect to same, any comments the Construction Manager may deem to be appropriate with respect to separating the Work into separate contracts, alternative materials, and all other comments that may be appropriate in light of the review factors described in paragraphs 2.3.1, 2.3.3, 2.3.4 and 2.3.5.

WARRANTY - AT COMPLETION OF THE CONSTRUCTION MANAGER’S REVIEW OF THE PLANS AND SPECIFICATIONS, EXCEPT ONLY AS TO SUCH SPECIFIC MATTERS AS MAY BE IDENTIFIED BY THE CONSTRUCTION MANAGER IN THE GMP PROPOSAL, THE CONSTRUCTION MANAGER SHALL BE DEEMED TO HAVE WARRANTED TO THE OWNER, WITHOUT ASSUMING ANY ARCHITECTURAL OR ENGINEERING RESPONSIBILITY, THAT THE PLANS AND SPECIFICATIONS ARE CONSISTENT, PRACTICAL, FEASIBLE AND CONSTRUCTIBLE. THE CONSTRUCTION MANAGER SHALL FURTHER BE DEEMED TO HAVE WARRANTED THAT THE WORK DESCRIBED IN THE DRAWINGS AND SPECIFICATIONS FOR THE VARIOUS BIDDING PACKAGES IS CONSTRUCTIBLE WITHIN THE SCHEDULED CONSTRUCTION TIME.

DISCLAIMER OF WARRANTY – THE OWNER DISCLAIMS ANY WARRANTY, EXPRESS OR IMPLIED, THAT THE DRAWINGS AND SPECIFICATIONS FOR THE PROJECT ARE OR WILL BE CONSISTENT, PRACTICAL, ACCURATE, FEASIBLE, OR CONSTRUCTIBLE.

* + 1. 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 Director 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 sub-contracts. 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 and/or suppliers manufacturing or fabricating such items and advise the Project Director and the Architect-Engineer of any problems or prospective delays in delivery.
    2. 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 sub-contracts on the current schedule while the design is being completed. The Construction Manager shall take into consideration such factors as natural and practical lines of severability, sequencing effectiveness, access and availability constraints, total time for completion, construction market conditions, availability of labor and materials, community relations and any other factors pertinent to saving time and cost by overlapping design and construction that are authorized by the Owner.
    3. Interfacing
       1. Separate Subcontracts - 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 Construction Managers.
       2. Errors to be noted - Without assuming any Design responsibilities of the Architect-Engineer, the Construction Manager shall include in the reports required under paragraph 2.2.2 comments on overlap with any other separate subcontracts, omissions, lack of correlation between drawings, and any other deficiencies noted, in order that the Project Director and Architect-Engineer may arrange for necessary corrections.
    4. 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 in the management, inspection, and supervision of construction.

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 proposals for purchasing and then analyzing the 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 buy versus lease as discussed in the paragraph above. If leasing is found to be the least expensive approach, then the Construction Manager may lease such Job-Site Facilities from his own equipment pool at a price not greater than the lowest of the three (3) 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 paragraph 9.2.4 hereof.

* + 1. 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. The Construction Manager 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.
    2. Market Analysis and Stimulation of Bidder Interest [Deleted]
  1. 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.
     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 Subcontractor, 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 Subcontractors.
     3. Schedule and Project Manual Provisions – [Deleted]
     4. Competitive Bidding Procedures
        1. Invitations for Bids - Without assuming responsibilities of the Architect-Engineer, the Construction Manager shall be responsible for complying with the advertising and competitive bidding procedures applicable to College construction projects, including but not limited to, invitations

for bids, or requests for proposal when applicable, for all procurements of long lead items, materials and services, and for Subcontractors’ Contracts. Accordingly, such solicitations and invitations for bids shall be prepared in accordance with the following guidelines:

* + - * 1. For contracts up to $14,999.99, a Contract may be executed with the firm whose proposal the Construction Manager determines best meets the needs of the Project. For contracts not exceeding $1,000.00, the Construction Manager has the option to approve proposals for work without a confirming written proposal. For contracts exceeding $1,000.00, the accepted proposal shall be confirmed by a written proposal of the firm defining the scope and quality of work to be provided.
        2. For contracts exceeding or projected to equal or exceed $15,000 but not $65,000, the Construction Manager may execute a contract with the firm whose proposal, in the Construction Manager’s best judgment, best meets the needs of the Project. The Construction Manager shall first request at least three (3) firms to submit written quotations based on a written drawings and/or specification. A tabulation of the results shall be furnished to the Owner along with copies of each written proposal. The Construction Manager shall engage the firm who is qualified and submits the lowest responsive proposal.
        3. For contracts exceeding or projected to exceed $65,000, the Construction Manager shall advertise the work in a manner reasonably calculated to reach qualified contractors 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. If the location, date or time of the bid opening changes, written notice of the change must be given, as soon as practicable after the change is made, to all persons who are registered to receive any addenda to the plans and specifications. The Owner may, in its sole discretion, require that any bid openings by the Construction Manager be conducted publicly with not less than seven days’ public notice. College shall have the right to specify the place of the bid opening. The Construction Manager shall engage the firm who is pre-qualified and submits the lowest responsive proposal.
        4. In the event of a valid emergency (such as an immediate danger to the public, an immediate danger of loss of public or private property, or an interruption in the delivery of an essential government/educational service) the Construction Manager may request a waiver from these requirements from the Owner, who may approve or deny at its sole discretion.
        5. The Construction Manager shall not divide or separate a procurement in order to avoid the requirements set forth above.
        6. Site utilities may be acquired at market rates from the entity (or entities) providing such in the franchise area.
      1. Review of Specifications and Drawings - Subject to the provisions of paragraph 2.2.2 above, as part of such preparation, the Construction Manager shall review the Specifications and Drawings prepared by the Architect-Engineer. Errors, defects, ambiguities, inconsistencies, conflicts or lack of clarity of language, use of illegally restrictive requirements, and any other defects in the Specifications or in the Drawings noted by the Construction Manager shall be brought to the attention of the Project Director and Architect-Engineer in written form.
      2. Pre-Bid Conference - For each separate construction contract exceeding $25,000, the Construction Manager shall, if required by Owner in writing, conduct a pre-bid conference with prospective bidders, the Architect-Engineer and Project Director. In the event questions are raised which require an interpretation of the bidding documents or otherwise indicate a need for clarification or correction of the invitation, the Construction Manager shall transmit these to the

Architect-Engineer and upon receiving clarification or correction in writing shall prepare an addendum to the bidding document, and issue same to all of the prospective bidders.

* + - 1. Pre-Qualification Procedure - For all contracts exceeding $25,000, the Construction Manager shall establish a pre-qualification procedure for applicable subcontract trades.

2.3.5 Bonds - In accordance with Section 255.05, Florida Statutes, the Construction Manager shall provide to the Owner, on forms furnished by the Owner, a 100% unconditional Performance Bond and a 100% unconditional Labor and Material Payment Bond, each in an amount not less than the GMP. The unexecuted form of such Bonds shall be delivered by the Construction Manager to the Owner before commencing work, and the actual, executed Bonds shall be delivered to the Owner and a true and correct copy of the executed Bonds shall be recorded by the Construction Manager in the public records of the County in which the Work is to be performed before the Work is commenced.

To be acceptable to the Owner as Surety for Performance Bonds and Labor and Material Payment Bonds, a Surety Company shall comply with the following provisions:

* 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.
* The Surety Company shall have currently valid Certificate of Authority issued by the United State Department of Treasury under Section 9304 to 9308 of Title 31 of the United States Code.
* The Surety Company shall be in full compliance with the provisions of the Florida Insurance Code.
* The Surety Company shall have at least twice the minimum surplus and capital required by the Florida Insurance Code.
* 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 | 2,000,000 | | | A- | CLASS II | |
| 2,000,000 | TO | 5,000,000 | | | A- | CLASS III | |
| 5,000,000 | TO | 10,000,000 | | | A- | CLASS IV | |
| 10,000,000 | TO | 25,000,000 | | | A- | CLASS V | |
| 25,000,000 | TO | 50,000,000 | | | A- | CLASS VI | |
| 50,000,000 | TO | 100,000,000 | | | A- | CLASS VII | |

2.3.6 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. The Construction Manager shall supervise the Work of all Subcontractors providing instructions to each when their Work does not conform to the requirements of the Drawings 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 the Work and conformance with the requirements of the Specifications and Drawings, the Owner shall be the final judge of performance and acceptability. In addition, the Construction Manager shall supervise and direct the Work, using the Construction Manager’s best skill and attention. The Construction Manager shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instruction concerning these matters. The Construction Manager shall prepare and submit to the Architect, but only for the Architect’s information, coordination documentation for the structural, mechanical, electrical, plumbing, fire protection, lighting and other portions of the Work as may be applicable and appropriate, to facilitate the proper integration, coordination and timely construction of all portions of the Work. Such coordination drawings shall be submitted prior to performance of the Work represented therein and shall clearly indicate in detail the systems, materials and components of the Work required by the Contract Documents.

2.3.7 Subcontractor Interfacing and Submission of Shop Drawings - The Construction Manager shall be the single point of interface with all Subcontractors for the Owner and all of its agents and representatives including the Architect-Engineer. The Construction Manager shall enter into all subcontracts, and shall negotiate all Change Orders, field orders and request for proposals, with all Subcontractor’s 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. The Construction Manager shall also carefully review all shop drawings, product data, samples and similar submittals and then forward the same to the Architect-Engineer for review and actions. By submitting shop drawings, product data, samples and similar submittals to the Architect-Engineer, the Construction Manager shall be representing that the Construction Manager has reviewed and approved the same, and has coordinated such shop drawings, product data, samples and other submittals with the requirements of the Contract Documents and determined that the same will comply with such requirements. 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 Architect-Engineer's review and approval of the Construction Manager’s submittals such as shop drawings, product data, samples and other similar submittals shall only be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of any and all such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Construction Manager. The Architect-Engineer's review of all of the aforesaid Construction Manager’s submittals shall not relieve the Construction Manager of the Construction Manager’s obligations to perform all of the Work in accordance with the Contract Documents. The Architect- Engineer's approval of a specific item shall not indicate approval of an assembly of which the item is a component. The Construction Manager shall maintain a suspense control system to promote expeditious handling. The Construction Manager shall request the Architect-Engineer to make interpretations of the Drawings or Specifications requested of him by the Subcontractors and shall maintain a document control system to promote timely response. The Construction Manager shall advise the Project Director and Architect-Engineer when timely response is not occurring on any of the above.

2.3.8 Permits - The Construction Manager shall secure all necessary building and other applicable permits from the Permitting Authority and all necessary utility connection permits, the cost of which will be considered a Direct Cost Item.

2.3.9 Job Site Requirements

* + - 1. Construction Manager’s Responsibilities - The Construction Manager shall provide for each of the following activities as a part of the Construction Phase fee:
         1. Maintain a log of daily activities, including manpower records, weather, delays, major decisions, etc.
         2. Maintain a roster of companies on the Project with names and telephone numbers of key personnel.
         3. Establish and enforce job rules governing parking, clean-up, use of facilities and worker discipline.
         4. Provide labor relations management for a harmonious, productive project.
         5. Provide a safety program for the Project to meet OSHA requirements. Monitor for Subcontractor’s Compliance without relieving them of responsibilities to perform work in accordance with the best acceptable practice.
         6. Provide a quality control program as developed under paragraph 2.3.6 hereinabove.
         7. Miscellaneous office supplies that support the construction efforts, which are consumed by his own forces.
         8. Travel to and from his home office to the Project site as the Project requires.
      2. Additional Construction Manager Responsibilities - 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:
         1. Schedule the services of independent testing laboratories and provide the necessary testing of materials to ensure conformance to contract requirements.
         2. The printing and distribution of all required bidding documents and shop drawings, including the sets required by the Permitting Authority’s inspectors.

2.3.10 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:

* + - 1. Job Meetings - Hold progress and coordination meetings (potentially as often as weekly) 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 appropriate revisions to the Schedule. Monitor and promote safety requirements. In addition, regular project status meetings will be held between the Architect-Engineer, Owner and Construction Manager either bi-weekly or monthly, whichever is designated by the Project Director.

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

Identify the party or parties responsible for follow up on any problems, delay items or questions and 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.

* + - 1. Shop Drawing Submittals/Approvals - Provide staff to check shop drawings and to implement procedures for submittal and transmittal to the Architect-Engineer of shop drawings for action, and closely monitor their submittal and approval process.
      2. 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.
      3. Payments to Subcontractors - Develop and implement a procedure for review, processing, and payment of applications by Subcontractors for progress and final payments; advise the Architect-Engineer and Project Director of all details of the same.
      4. Document Interpretation - Subject to the provisions of paragraph 2.2.2 above, refer all questions for interpretation of the documents prepared by the Architect-Engineer to the Architect-Engineer. In addition, the Construction Manager may submit requests for information to the Architect- Engineer to help facilitate the Construction Manager’s performance of the Contract. Prior to submittal of each request for information, the Construction Manager shall first carefully study and compare the Contract Documents, field conditions, other Owner provided information, Construction Manager prepared coordination documentation and prior Project correspondence and documentation to determine that the information to be requested is not reasonably obtainable from such sources.

Each request for information shall be submitted to the Architect-Engineer, in writing, on such form and with such accompanying information as the Architect-Engineer may require for such purpose. Each request for information shall identify the specific sources which were reviewed by the

Construction Manager in its effort to determine the information requested, and a statement to the effect that the information being requested could not be determined from such sources.

The Construction Manager shall submit each request for information sufficiently in advance of the date by which such information is required in order to allow the Architect-Engineer sufficient time, in the Architect-Engineer’s professional judgment, to permit adequate review and response and to permit Construction Manager Compliance with the latest construction schedule.

The Construction Manager shall maintain a log at the Project site that sequentially numbers and lists each request for information. This log shall also contain the Drawing reference or Specification section to which the request pertains, the date of the request, to whom the request was made, by whom the request was made, the nature of the request, and the Architect- Engineer’s resolution thereof. This log shall be reviewed at each Project meeting and the resolution of requests for information shall be made part of the minutes of such meetings.

The Construction Manager shall reimburse the Owner amounts charged to the Owner by the Architect-Engineer for responding to Construction Manager requests for information where such information is available to the Construction Manager from a careful study and comparison of the Contract Documents, field conditions, other Owner provided information, Construction Manager prepared coordination documents, or prior Project correspondence or documentation.

* + - 1. 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.
      2. Subcontractor’s Progress - Prepare periodic punch lists for Subcontractor’s Work including unsatisfactory or incomplete items and schedules for their completion.
      3. Substantial Completion - Ascertain when the Work or designated portions thereof are ready for the Architect-Engineer’s substantial completion inspection. The Construction Manager shall prepare and deliver to the Architect-Engineer and the Project Director a pre-substantial completion list of incomplete or unsatisfactory items (i.e., a pre-substantial completion punch list). The Architect-Engineer will issue a certificate of substantial completion when the Work on the Construction Manager’s pre-substantial punch list has been accomplished and the Architect-Engineer and the Owner are otherwise satisfied that the Work is substantially complete. The Construction Manager will then schedule with the Project Director, the Permitting Authority (if necessary) and the Architect-Engineer a walk-through inspection to be conducted over such period of time as is necessary in order to develop the substantial completion punch list. The development of the substantial completion punch list shall commence as described in the preceding sentence, and shall continue through final payment. The provisions of paragraphs 2.4.13 and 6.2 to the contrary notwithstanding, any item of Work that is incomplete or not in conformance with the Contract Documents, whether identified before or after the date of Substantial Completion, shall be subject to the provisions of paragraph 12.2 below.
      4. Final Completion - Monitor the Subcontractor’s performance on the completion of the Project and provide notice to the Owner and the 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 shown in Exhibit D.
      5. 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 of the Subcontractors.
      6. Record Drawings - During the progress of the Work, the Construction Manager shall require the mechanical, air conditioning, heating, ventilation, elevators, electrical and plumbing Subcontractors to record on a set of Drawings (dedicated for this purpose, and not a working set that may be used for other purposes) the actual locations, as installed, of all conduit, pipe and duct lines, whether concealed or exposed, which were not installed exactly as shown on the Drawings. During the course of the Work, the Construction Manager shall also record on the Record Drawings the actual locations, as installed, of all other aspects of the Work not installed exactly as shown on the Drawings, including, but not necessarily limited to, wall or partition locations, door and window locations and other template changes. The Construction Manager shall review the MEP as-built no less often than monthly to ensure their accuracy and sufficiency. The MEP as-built and the Record Drawings shall be available for review by the Architect-Engineer monthly (or more often, if requested by the Architect-Engineer) prior to issuance of each monthly progress payment.

Upon substantial completion being achieved, and prior to issuance of final payment, the Construction Manager shall insert the MEP as-built into the Record Drawings and deliver the same to the Architect-Engineer. The Construction Manager shall be responsible for converting the Record Drawings (i.e., the redline Record Drawings, including the MEP as-built) into computer generated (i.e. CAD) Record Drawings. The cost of such conversion shall be passed through to the Owner as a Direct Cost Item pursuant to paragraph 9.2 below. The CAD Record Drawings shall be prepared from the Owner approved AutoCAD construction document Drawings produced by the Architect-Engineer. The AutoCAD construction document Drawings will be provided by the Owner to the Construction Manager for this purpose at no cost to the Construction Manager. The CAD Record Drawings shall be delivered by the Construction Manager to the Owner in both a CAD and a PDF format.

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

Contracts or Purchase Orders (including all subcontracts and supplier’s proposals); 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;

MEP as-built;

Record Drawings;

Operating and Maintenance Instruction; Daily Progress Reports; Correspondence Files;

Transmittal Records; Inspection Reports; Bid/Award Information;

Bid Analysis and Negotiations; Punch Lists;

Suspense (Tickler) Files of Outstanding Requirements; Submittal Logs;

Payment Records (relating to payments to all Subcontractors and suppliers);

The Project records shall be available at all times to the Owner and the Architect-Engineer for reference or review, even in the event of a dispute between the parties, and even in the event that litigation is then pending between the Owner and Construction Manager.

2.3.12 Owner Occupancy - The Construction Manager shall provide services during the Design and Construction Phases, which will provide continued occupancy of Buildings if required by the Owner during the Project. The Construction Manager shall provide consultation and project management to facilitate Owner occupancy and provide transitional services to get the Work, as completed, “on line” in such condition as will satisfy the Owner's operational requirements.

The Construction Manager shall conduct the Construction Manager’s preliminary punch list inspection and coordinate the completion of all punch list work to be done with Owner occupancy requirements in mind. The Construction Manager shall catalog operational and maintenance requirements of equipment to be operated by maintenance personnel and convey these to the Owner in such a manner as to promote their usability. The Construction Manager shall provide operational training in equipment use for building operators.

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

The Construction Manager shall continuously review the Record Drawings and mark up progress prints to provide as much accuracy is possible.

The Owner may occupy the project during the renovation/remodeling of the building consistent with the construction activities. The Construction Manager will be responsible for coordinating occupancy with construction activities to ensure that Owner’s occupancy is consistent with the construction activities and doesn’t interfere with Owner’s ability to furnish its staff with a safe working environment.

2.3.13 Warranty - As to all of the Work, the Construction Manager warrants that all materials and equipment included in such Work will be new except where expressly indicated otherwise in the 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. The Construction Manager further agrees to correct all Work found by the Owner to be defective in material or workmanship, or otherwise not in conformance with the Drawings and Specifications, for a period of one year from the date of Substantial Completion, at which time the Construction

Manager’s liability for defective Work shall expire (except for latent defects). Notwithstanding the foregoing, Construction Manager shall use its best efforts, when requested by Owner, to aid Owner in the enforcement of the specific warranties contained in the trade sections of the Specifications, including, but not limited to, flooring, roofs and machinery. 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 eleven (11) months after the Date of Substantial Completion for the purpose of determining whether any warranty claims may exist at that time (regardless of whether they were discovered before or not). Such eleven (11) month inspection shall not, however, shorten the one (1) year warranty described above.

# ARTICLE 3 - OWNER'S RESPONSIBILITIES

3.1 Owner’s Information - The Owner shall provide full information regarding his requirements for the Project.

* 1. 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 changes in the Project. The representative shall render decisions promptly and furnish information expeditiously.
  2. Architect-Engineer’s Agreement - The Owner shall retain an Architect-Engineer for design and to prepare construction documents for the Project. The Architect-Engineer’s services, duties and responsibilities are described in the Agreement between the Owner and the Architect-Engineer, a copy of which will be furnished to the Construction Manager upon request. The Agreement between the Owner and the Architect-Engineer shall not be modified without written notification to the Construction Manager.
  3. Site Survey and Reports - 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.
  4. Approvals and Easements - The Owner shall pay for necessary approvals, easements and assessments required for the construction, use or occupancy of permanent structures or for permanent changes in existing facilities.
  5. Legal Services - The Owner shall furnish such legal services as may be necessary for providing the items set forth in paragraph 3.5 and such auditing services as the Owner may require.
  6. Drawings and Specifications - The Construction Manager will be furnished with a reproducible set of all copies of Drawings and Specifications reasonably necessary and ready for printing.
  7. Cost of Surveys and Reports - The services, information, surveys and reports required by paragraphs 3.4, 3.5 and 3.6 above, shall be furnished with reasonable promptness in accordance with the approved schedule at the Owner’s expense, and the Construction Manager shall be entitled to rely upon the accuracy and completeness thereof.
  8. Project Fault Defects - Subject to the provisions of paragraph 2.2.2 above, if the Owner becomes aware of any fault or defect in the Project or non-conformance with the Drawings and Specifications, the Owner shall give prompt written notice thereof to the Construction Manager and Architect-Engineer.
  9. Funding - The Construction Manager may request that the Owner furnish in accordance with the established schedule evidence reasonably 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.
  10. Lines of Communication - The Owner and the 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; provided, however, that the Owner (either the Owner itself, or through the Architect-Engineer) may communicate directly with Subcontractors and suppliers to the extent that the Owner wishes to verify the amounts claimed by and paid to the Subcontractors and suppliers.
  11. Lines of Authority - The Owner shall establish and maintain lines of authority for the Owner's personnel and shall provide this definition to the Construction Manager and all other affected parties.
  12. Permitting and Code Inspections - The Construction Manager recognizes and fully cooperates and coordinates with the Permitting Authority.

# ARTICLE 4 - PERMITTING AND INSPECTION

Before Work can begin, the Architect-Engineer shall identify to the Construction Manager all permits necessary for the Project. In addition, the Construction will be inspected for code compliance,

compliance with the Drawings and Specifications, and quality by the Permitting Authority, together with the Construction Team. The building permitting and inspection requirements shall be as described in paragraphs 4.1 and 4.2 below.

* 1. Building Permits - The Architect-Engineer shall provide the following information to the Owner and obtain approval from the Owner prior to beginning construction:

4.1.1 Drawings and Specifications - Three (3) sets of Drawings and Specifications, - signed, sealed and dated by the Architect-Engineer, with all addenda enclosed with each set.

* 1. 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 Owner. Names, addresses and phone numbers of the inspectors will be provided to the Construction Manager by the Owner.

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 Laws, compliance with the Drawings, Specifications and other Contract Documents, and prevailing standards of good workmanship.

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

# ARTICLE 5- SUBCONTRACTS

* 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 Documents shall create any contractual relation between the Owner or Architect-Engineer and any Subcontractor. Prior to commencing the work on any assigned project, the Construction Manager shall furnish a written list of all subcontractors and suppliers to College along with evidence of licensure when required by law.
  2. Proposals - Subject to Article 9 and, in accordance with paragraph 2.3.4, the Construction Manager shall request and receive proposals from Subcontractors and suppliers and will award those contracts to qualified low bidders after the Construction Manager has reviewed each proposal and is satisfied that the Subcontractor is qualified to perform the Work.
  3. Required Subcontractor’s Qualifications and Subcontract Conditions
     1. Sub contractual 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 the Contract 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 Subcontractor thereof will not prejudice such rights. Where appropriate, the Construction Manager shall require such Subcontractor to enter into similar agreements with his Sub- subcontractors.

Construction Manager must provide proof to the College of a valid State of Florida General Contractor License and proof of a valid State of Florida Subcontractor’s licenses for all subcontractors performing work on the site.

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 paragraph 5.3 and identify to the Subcontractor any terms and conditions of the proposed Subcontract which may be at variance with the Contract Documents. Each

Subcontractor shall similarly make copies of such Documents available to his Sub-subcontractors.

* + 1. Subcontract Requirements
       1. Subcontractor Bonds - In the absence of the Owner’s prior express written approval, the cost to the Construction Manager of performance and/or payment bonds furnished by and on behalf of Subcontractors and/or Sub-Subcontractors shall not be a Cost of the Project or a Direct Cost Item due or payable by the Owner to the Construction Manager.
       2. Subcontract exceeding $200,000.00 - On all subcontracts where the bid exceeds $200,000.00, each Subcontractor must submit a completed experience questionnaire and financial statement to the Construction Manager. The Subcontractor’s financial condition must demonstrate that adequate fixed and liquid assets and equipment are available to properly perform the subcontract.
       3. Work Force - The Subcontractor must agree to perform no less than 15% of the Project construction Work described in such subcontract utilizing its own employees.
       4. Subcontractor Experience - The Subcontractor must have successfully completed no less than two (2) projects of similar size and complexity within the last five (5) years.
       5. Supervision - The Subcontractor must agree to provide field (on-site) supervision through a named superintendent for each trade (e.g., 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 of 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 (2) years within the last five (5) years. The Subcontractor shall include a resume of experience for each employee identified by him to supervise and schedule his Work.
       6. Required Subcontract Provisions - All subcontracts shall provide:

LIMITATION OF REMEDY – NO DAMAGES FOR DELAY

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

In the event of a change in the Work, the Subcontractor’s claim for adjustments in the contract sum are limited exclusively to its actual costs for such changes, plus no more than ten (10%) percent for overhead and profit.

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.

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

* 1. Responsibilities for Acts and Omissions - The Construction Manager shall be responsible to the Owner for the acts and omissions of his employees and agents and his Subcontractors, their agents and employees, and all other persons performing any of the Work or supplying materials, directly or indirectly, under a contract to the Construction Manager.
  2. Subcontracts To Be Provided – The Construction Manager shall provide Owner with a copy of each subcontract, including the general and supplementary conditions. The Construction Manager shall also provide Owner with a copy of each contract or purchase order with each supplier.

# ARTICLE 6 - SCHEDULE, TIME OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

* 1. Contract Time - At the time the Guaranteed Maximum Price (GMP) is established, as provided for in Article 7, a Project substantial completion date (i.e., the Contract Time), a Project final completion date, and an Owner Occupancy date for completion of the Project in accordance with the Master Project Schedule, shall also be established by the Construction Team. The Construction Manager agrees to complete the construction in accordance with the agreed-upon substantial completion date, final completion date, and Owner Occupancy date. Time is of the essence as to all obligations in the Contract Documents. The Construction Manager acknowledges that failure to complete the Project within the Contract Time set forth in the approved schedule will result in substantial damages to the Owner. If the Construction Manager fails to substantially complete the work within thirty (30) calendar days after the agreed upon Date of Substantial Completion set forth in the GMP Amendment (including any extension granted by the Owner in writing), then the Construction Manager agrees to pay the Owner, as liquidated damages, a sum of money equal to the (Contract Sum \* 10%)/365 per calendar day until Substantial Completion of the Work is actually achieved. Such amount is agreed upon as a reasonable measure of the damages that the Owner will sustain from the Construction Manager’s failure to timely complete the Work. Owner and the Construction Manager recognize the delays, expense, and difficulties involved in providing in an arbitration or judicial proceeding the actual loss suffered by the Owner if the Work is not completed on time and accordingly, instead of requiring such proofs, they agree upon the above-stated amount as liquidated damages for delay (but not as a penalty). The foregoing liquidated damages shall be in lieu of all other monetary remedies that the Owner shall have in the event of the Construction Manager’s delay in completing the Project.
  2. Owner Occupancy; Warranty Commencement - The date of Owner Occupancy shall occur as described in paragraph 2.3.12 above. Subject to the provisions of paragraph 2.3.10(h) above, all warranties called for by the Contract Documents shall commence on the date the entire Project is substantially complete (as the term “substantial completion” is defined in paragraph 1.3 above).

# ARTICLE 7- GUARANTEED MAXIMUM PRICE FOR CONSTRUCTION

* 1. Preparation of GMP - When the Drawings and Specifications are sufficiently complete to establish the scope of work for the Project or any portion thereof (which, in the absence of the Owner’s express, written consent, shall be when the Drawings and Specifications are 100% complete), 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 and the Construction Manager's fees. Such Guaranteed Maximum Price will be subject to modification for changes in the Project as provided in Article 10. However, any and all other provisions of this Contract (or any of the other Contract Documents) to the contrary notwithstanding, 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 costs as defined under Article 9, plus the Construction Manager’s fees, or the GMP, whichever is less when the Work is finally complete.
  2. Taxes Included in the GMP - The GMP will only include those taxes in the cost of the Project which are legally enacted at the time the GMP is established.
  3. Construction Contingency - At the time of submission of the Guaranteed Maximum Price, the Construction Manager will verify the time schedule for activities and Work which were adopted by the Construction Team and used to determine the Construction Manager’s cost of the Work. In addition to the cost of the Work, the GMP will include a separately stated agreed upon sum as the Construction Contingency which is included for the purpose of defraying the expenses due to unforeseen circumstances relating to construction, or for such other purposes as the Owner may choose. No

Construction Manager Fee shall be charge against the construction contingency. This contingency shall reflect the estimated costs associated with unknown conditions that are common in remodeling projects. The use of the contingency is subject to the College’s prior written approval through the execution of Construction Change Directives. All contingency balances shall revert back to the College at the end of the project. The Construction Manager will be required to furnish documentation evidencing expenditures charged to the Construction Contingency prior to the release of funds by the Owner. Documentation necessary for use of the Construction Contingency by the Construction Manager shall be determined by the Construction Team. The Architect-Engineer shall verify the actual costs.

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 caused 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.

* 1. Adjustment of Construction Contingency - When the GMP Amendment is executed, the Construction Contingency within the GMP may, at the Owner’s sole discretion, 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 Construction Contingency be adjusted, then 10% of the Construction Contingency will be removed from the GMP by Change Order, and the GMP will be reduced by that amount. The Construction Manager agrees that no additional Fees or Overhead and Profit charges of any kind shall be requested, or due and owing in relation to any changes (whether initiated by Owner or otherwise) which utilize any portion of the Construction Contingency. Moreover, if the Owner exercises its rights under this paragraph to reduce the Construction Contingency (and correspondingly, the GMP) and subsequently a change is requested or necessary (whether Owner initiated or otherwise) which requires the use of all or some of such Construction Contingency funds for the Work, the Construction Manager shall neither request, nor be owed, any additional Fees or Overhead and Profit charges to the extent of the use of such Construction Contingency funds and, subject to the provisions of paragraph 8.1.2(a)(iii) below, shall not be entitled to any additional Fees or Overhead and Profit charges so long as the GMP agreed upon in the GMP Amendment (i.e. the originally agreed upon GMP) is not exceeded.

# ARTICLE 8 - CONSTRUCTION MANAGER’S FEES

* 1. Construction Manager’s Fees - 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 paragraphs 8.1.1, 8.1.2, and 8.1.3.
     1. Design Phase Fee – If Owner specifies that the Construction Manager engage in extensive participation in Design Phase Services as set forth herein and for profit and overhead related to these services, a total fee of **Fee Amount** The Design Phase Fee shall be paid in two (2) equal monthly payments of **Fee Amount** each. If the Design Phase is completed in less than two (2) months, the unpaid balance of the aforesaid Design Phase Fee shall be paid thirty (30) days after completion of all Design Phase Services. The first monthly payment shall become due thirty (30) days following the issuance of Notice to Proceed with the Design 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 as agreed to in writing by the parties.

* + 1. Construction Phase Fee - Prior to commencement of the Construction Phase, the Owner will direct the Construction Manager in writing to proceed into the Construction Phase. The Construction Manager ’s compensation for all Work and services performed during the

Construction Phase shall be determined in the GMP Amendment (however, the Owner retains the right to review the need and effectiveness of any employee or employees, and the Construction Phase Fee shall be reduced accordingly, if fewer hours and/or employees are utilized). The Construction Phase Fee shall be paid proportionally to the ratio of the cost of the Work in place, excluding stored materials and less retainage (see paragraph 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 least. The first monthly payment shall become due thirty (30) days following the issuance of the first Construction Authorization by the Project Director and the final monthly payment shall be paid thirty (30) days after construction of the

Project is finally completed and occupancy of the Project is accepted by the Owner. If construction is authorized only for a part of the Project, the fee paid shall be proportionate to the amount of Work authorized by the Owner.

* + - 1. Adjustments in Fee - For changes in the Project as provided in Article 10, the Construction Phase Fee shall be adjusted as follows:
         1. 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 by any act or omission of the Construction Manager or by anyone for whom the Construction Manager is responsible (i.e. subcontractors, sub-subcontractors, etc.).
         2. Any and all provisions of the Contract Documents to the contrary notwithstanding, in the event that the Construction Manager is at any time delayed, hindered or impeded in the performance of the Work by any cause whatsoever, including, but not necessarily limited to, any conflict or inconsistency between or amongst any of the Contract Documents; any act of God; any work performed by others which may affect or impact upon the Work; any act or failure to act on the part of any governmental agency or authority having jurisdiction, or purported jurisdiction, over any part of the Project; any act or omission on the part of the Owner or any of the Owner’s employees, agents, servants, representatives or consultants, including, but not limited to, the Architect-Engineer; and/or any other natural or man-made act, omission or force majeure (including, but not limited to, by any cause beyond the control or legal responsibility of the Construction Manager ), and, in any and all such events (excepting only active, intentional interference with the Work by the Owner), the Construction Manager acknowledges and agrees that the Construction Manager shall not be entitled to any adjustment in the Construction Phase Fee, to any increase in the Guaranteed Maximum Price, to any increase in the Overhead and Profit for the Construction Phase described in paragraph 8.1.3 below, or otherwise entitled to any additional compensation, reimbursement or damages of any kind whatsoever, as a result or consequence thereof; provided, however, that if any such delay, hindrance or impedance of the Work is occasioned by any cause not the fault of the Construction Manager (or any person or entity for whom the Construction Manager is responsible), in whole or in part, and not otherwise within the Construction Manager’s control or legal responsibility, such delay, hindrance or impedance may entitle the Construction Manager to, as the Construction Manager’s sole and exclusive remedy in relation thereto, an extension of the Contract Time, provided that the Construction Manager applies for the same in the manner provide in the Contract Documents. Under such circumstances, before the Construction Manager may seek such an extension in the Contract Time, the Construction Manager must have first provided documentation to the other members of the Construction Team that the Construction Manager has been delayed by causes beyond the control or responsibility of the Construction Manager and/or any person or entity providing any labor, services and/or materials by, through or under the Construction Manager , directly or indirectly, for a total of ten (10) days, which ten (10) days caused a ten (10) day delay in the critical path of the Work. Such documentation shall be provided by the Construction

Manager to the other members of the Construction Team within two (2) days of each event giving rise to a claim for each day’s delay in the critical path of the Work, or the Construction Manager shall be deemed to have waived the claim as to each day for which such documentation is not timely delivered. Subject to the provisions of this Agreement, the

determination of the Construction Manager’s entitlement to delay days (both the initial ten (10) days and any days of delay beyond the initial ten (10), if applicable) shall then be determined in writing by the Owner.

* + - * 1. To the extent that the Owner initiates Change Orders, or otherwise agrees to Change Orders involving extensions of the Contract Time for which the Owner also expressly agrees in writing in such Change Orders to compensate the Construction Manager for such extensions of the Contract Time (or portions thereof), and also including any additional compensation for time extensions due to any active, intentional interference with the Work by the Owner, if the same is found to have occurred, the Owner and Construction Manager hereby agree that the Construction Manager ’s Additional Construction Phase Fee will be no more than $800.00 per working day, for each day (or portion thereof on a prorate, proportioned basis). It is anticipated that the Construction Manager’s staff during such time extensions will be reduced as otherwise agreed to in writing between the parties. The Construction Manager’s Additional Construction Phase Fee of up to $800.00 per day shall be a maximum, not to exceed amount, with the actual charge to the Owner for such additional days as are allowable being the actual cost to the Construction Manager of the on-site personnel required to finally complete the Project (up to the maximum, not to exceed amount of $800.00 per day). The Owner retains the right to review the need and effectiveness of any employee or employees assigned by the Construction Manager during any such time extension, should the Project Director question the need for the employee or employees, and the Construction Manager’s Additional Construction Phase Fee (in the maximum, not to exceed amount of $800.00 per day) shall be reduced accordingly, if fewer hours and/or employees are utilized.
        2. The Construction Manager will not be due any additional Overhead and Profit on increases in the Guaranteed Maximum Price (GMP) established in the GMP Amendment (i.e., the original GMP) that does not exceed $200,000.00. Should the GMP established in the GMP Amendment (i.e., the original GMP) be increased by more than $200,000.00 under the terms of Article 10 below due to no fault of the Construction Manager, the Construction Manager’s additional Overhead and Profit for the Construction Phase will be five (5%) percent of that portion of the cumulative increases in the GMP established in the GMP

Amendment (i.e., the original GMP) that exceed such original GMP by more than

$200,000.00.

* + - 1. Costs and Expenses Included in Fee - The following are included in the Construction Manager’s fee for services during the Construction Phase:
         1. 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 to be shown on the Constructions Managers GMP].
         2. General operating expenses related to this Project of the Construction Manager’s principal and branch offices.
         3. The costs of all data processing staff.
         4. Those services set forth in paragraph 2.3.9(a).
         5. Relocation expenses for Construction Manager’s personnel.
         6. Direct tax saving purchase program.
    1. Payment of Overhead and Profit for Construction Phase – For overhead, profit and general expenses of any kind, except as specifically and expressly included in Article 9, for services provided during and related to the Construction Phase, the fee shall be determined in the GMP Amendment and shall be paid proportionally to the ratio of the cost of the Work in place, excluding stored materials and less retainage (see paragraph 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 least. The balance of the fee shall be paid thirty (30) days after construction of the Project is finally completed and occupancy of the Project is accepted by the Owner. If construction is authorized only for a part of the Project, the fee paid shall be proportionate to the amount of Work authorized by the Owner. The Construction Manager’s exclusive remedy for any adjustments in the Overhead and Profit for construction phase fee is provided in paragraph 8.1.2(a).

# ARTICLE 9 - COST OF THE PROJECT

* 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 the Construction Phase Fee. 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 described in Article 8.

* 1. Direct Cost Items
     1. Wages - Wages include
        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 1.35 to cover fringe benefits; and,
        2. Wages paid to management or supervisory personnel in the employ of the Construction Manager at the job site, times a multiple of 1.50 to cover fringe benefits. The Construction Manager’s personnel to be assigned to the site during the Construction Phase, their duties and responsibilities, and the duration of their assignments as otherwise agreed to in writing by the parties.
     2. Supplies - Cost of all materials, supplies and equipment incorporated in the Project, including costs of transportation and storage thereof, but excluding interest, penalties and late charges due to the failure of the Construction Manager to make timely payments for all labor, services, equipment and materials purchased in connection with the Project.
     3. Subcontractors - 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. Materials Not Fully Consumed - 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, paragraph 2.3.6 shall apply.
     5. Rental Charges - 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 Subcontractor or the Construction Manager ’s own forces in the performance of the Work, at rental charges consistent with those prevailing in the area.
     6. Insurance Premiums - Cost of the premiums for insurance in excess of the amounts required under the College’s “Continuing Services Agreement for Construction Management At-Risk

Services for Construction Projects” and, subject to the provisions of paragraphs 2.3.5 and 5.3.2(a) above, the cost of premiums for all bonds which the Construction Manager is required to procure by this Agreement specifically for the Project. Insurance Premiums for the insurance required under the College’s “Continuing Services Agreement for Construction Management At-Risk Services for Construction Projects” are not a Direct Cost item for the purposes of this Agreement.

* + 1. Taxes - Sales, use, gross receipts or similar taxes related to allowable Direct Costs of the Project imposed by any governmental authority, and for which the Construction Manager is liable.
    2. Corrective Work - Subject to not exceeding the GMP, the cost of corrective work, but excluding any costs or expenses made necessary to correct defective workmanship or to correct any deficiency, damage to, or nonconformity with, the Drawings, Specifications and/or other Contract Documents, to the extent the same arise out of or result from the fault or neglect of the Construction Manager or the Construction Manager’s personnel to adequately supervise and direct the Work.
    3. Minor Expenses - Minor expenses at the site, such telephone service, expressage, postage, and similar petty cash items in connection with the Project to be billed at cost.
    4. Trash Removal - Costs for trash and debris control and removal from the site.
    5. Emergency Expenses - Cost incurred due to an emergency affecting the safety of persons and property.
    6. Other Costs - All costs directly incurred in the performance of the Project for the benefit of the Project and not included in the Construction Manager’s fees as set forth in Article 8 this includes, without limitation, Job office supplies such as paper, pencils, paper clips, file folders, staples, etc. and janitorial supplies (photocopy or blueprint paper not included).
    7. General Conditions Work - If requested by the Owner in writing, the Construction Manager will perform all or a portion of the General Conditions Work for the cost of that Work.
    8. Construction Manager’s Direct Performance - If approved in writing 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 benefits to the Project, for which the amount paid to the Construction Manager, shall be the direct cost of such Work.
    9. Transportation - Transportation outside of the county in which the Project is located, for those personnel employed directly for the Project, not including relocation expenses (e.g., to attend meetings outside of the County with administrative agencies related to the Project). Such transportation must be approved in advance in writing by the Owner, and may be in accordance with the Construction Manager’s standard personnel policy, but not exceeding the limits established by Florida Statutes Section 112.061.
    10. Reproductions - Costs of all reproductions used for bidding or information purposes required by the Project to directly benefit the Project.
    11. Security - Costs for security services for the Project.
    12. Logistical Control - 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.
    13. Temporary Facilities - Costs for temporary facilities during construction, including temporary water, heat, power, sanitary facilities, telephones, radios and computers with software. Costs for any other temporary facilities will only be payable if approved by the Owner in writing in advance of the cost being incurred.
    14. Other Necessary Costs - Costs for any job site items necessary for the Work not referenced herein, not normally provided by the Subcontractors, which will be provided by the Construction Manager as required to complete the Work.

# ARTICLE 10 - CHANGES IN THE PROJECT

* 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 Contract Time, being adjusted accordingly. All changes in the Project not covered by an authorized contingency shall be authorized by Change Order, which must be signed by the Owner before the change is implemented.
     1. Change Order Definition - The term "Change Order" is defined in paragraph 1.3 above.
     2. Changes in GMP - 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:
        1. Mutual Acceptance - By mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation by the Architect-Engineer and Owner;
        2. Unit Prices - By unit prices stated in the Agreement or subsequently agreed upon;
        3. Cost Plus - By cost as defined in Article 9 and a mutually acceptable fixed or percentage fee; or
        4. Default - By the method provided in paragraph 10.1.3.
     3. Default Method - If none of the methods set forth in paragraph 10.1.2 is agreed upon, the Construction Manager, provided he receives a Construction Change Directive 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 the labor, services and materials involved in the change, plus, subject to the provisions of paragraph 8.1.2(a) above, a reasonable amount for overhead and profit, which shall not exceed five percent (5%) of the net increase in the cost of the Work as a result of 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 paragraph 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. Unit Prices - Change in Quantities - Adjustments in unit prices and GMP Due to Inequitable Quantity Changes. 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. Concealed and Unknown Conditions - 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, 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 Contract Time shall be adjusted by Change Order upon a request for Change Order in accordance with paragraph 10.2. In such event, the Construction Manager shall only be entitled to seek reimbursement of the Direct Cost of such work (without any increase or adjustment in the Construction Manager’s Fee, except as described in paragraph 8.1.2(a) (iii) above).
  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 this Agreement.

Subject to the provisions of paragraph 8.1.2(a)(ii) above, if the Construction Manager is delayed at any time in the progress of the Work by any act or neglect of the Owner or the Architect or of any employee of either or by any separate Construction Manager employed by the Owner or by any changes ordered

in the Work by labor disputes, fire, or unusual delay in transportation, unavoidable casualties or any causes beyond the Construction Manager ’s control, or by delay authorized by the Owner pending resolution of disputes, and such delay extends the Contract Time, the Contract Time shall be extended

by Change Order for such reasonable time as the Construction Team may determine.

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

* 1. 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 Contract Time and not inconsistent with the intent of the Drawings and Specifications. Such changes shall be effected by written order. Documentation of changes shall be determined by the Construction Team. Changes shall be approved by the Project Director and Architect- Engineer.
  2. 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 Discounts and Penalties - 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 payment. 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 interest, penalties and late charges incurred due to the failure of the Construction Manager to make timely payments will be paid by the Construction Manager without right of reimbursement by the Owner. The Construction Manager shall cooperate with the Owner so as to allow the Owner to purchase such equipment and materials directly as the Owner may choose.

# ARTICLE 12 - PAYMENTS TO THE CONSTRUCTION MANAGER

* 1. Monthly Statements - The Construction Manager shall submit to the Owner a statement, sworn to, showing in detail all monies paid out, costs 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 form shown in Exhibit E or equivalent. Five percent (5%) retainage shall be held on all payments for all items described in paragraph 8.1.3 and on all payments for Subcontractors and suppliers described in Article 9 (but not for the other items described in Article 9). When the Work is fifty percent (50%) complete, the Owner, in consultation with the Architect-Engineer and the Construction Manager, but in the Owner’s sole and absolute discretion, may agree to thereafter waive or reduce the further withholding of retainage in relation to amounts to thereafter be paid pursuant to Article 9 for Subcontractors and suppliers (on a Subcontractor by Subcontractor, and supplier by supplier basis). Even if the Owner so agrees, the

Owner may nonetheless thereafter require that such retainage (as to any one or more Subcontractors or suppliers) again continue to be withheld.

The Construction Manager shall submit the Construction Manager’s application for payment monthly on the 25th of each month. The originals or an electronic copy of such applications for payment shall be submitted to the Architect-Engineer, and exact copies thereof shall simultaneously be delivered to the Owner. Payment of amounts certified by the Architect-Engineer and agreed to by the Owner shall be made to the Construction Manager within thirty (30) days after submission of a complete application for payment and all supporting documents and material. If the Owner does not agree with the amount requested (whether certified by the Architect-Engineer, or not), the Construction Manager shall modify the application to satisfy the Owner and resubmit the same, provided that the Owner will make payment of the undisputed amount.

* 1. 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 within thirty (30) days 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 on the attached Exhibit F, has delivered to the Owner all materials, items, equipment, documents, manuals and warranties required by the Contract Documents to be delivered by the Construction Manager to the Owner, and that this Agreement has been finally performed and upon receipt of a Construction Manager's Final Affidavit together with the final release of lien from all subcontractors and suppliers that have served a Notice to Owner as set forth in Section 713.06, Florida Statues. However, if there should remain Work to be completed or which has been identified as not being in conformity with the Contract Documents, the Construction Manager and the Architect-Engineer shall create a list of those items prior to the issuance of final payment, and the Owner may retain a sum equal to 150% of the estimated cost of completing any Work and a proportionate amount of the Construction

Manager’s retainage, provided that said incomplete and/or nonconforming items are listed separately and the estimated cost of completing them are likewise listed separately. Thereafter, Owner shall pay to Construction Manager, monthly, the amount retained for each incomplete/nonconforming item after each of said items is completed or corrected. If all such items are not completed or corrected within two (2) months of the date of Substantial Completion, the Owner may give notice to the Construction Manager that the Owner will complete or correct such items itself. If the cost to the Owner to complete or correct such items exceeds the balance withheld, the Construction Manager shall pay the Owner the difference within thirty (30) days of the Construction Manager’s receipt of written notice demanding the same. If, after allowing the Owner a reasonable time to complete or correct such items or to accept the items less the reasonable cost to complete or correct them, the cost to the Owner to complete or correct such items is less than the balance remaining, the Owner shall thereafter pay such difference to the Construction Manager.

* 1. Payments to Subcontractors and Suppliers - In relation to all payments received by the Construction Manager from the Owner, the Construction Manager shall promptly, within fifteen (15) days after receipt of payment from the Owner, pay all the amounts due Subcontractors and suppliers and shall secure from all such subcontractors and suppliers partial lien releases as provided by Florida construction lien law, Section 713.20, Florida Statutes. Copies of all of the partial lien releases and claim waivers from all Subcontractors and Suppliers that have served a Notice to Owner as set forth in Section 713.06, Florida Statutes shall be promptly provided to the Owner before or with the Construction Manager’s next application for payment to the Owner. If at the time of final payment 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 150% of the estimated cost of completing or correcting any unfinished or nonconforming items, provided that said unfinished or nonconforming items are listed separately and the estimated cost of completing or correcting any unfinished or nonconforming items is likewise listed

separately. Thereafter, the Construction Manager shall pay to the Subcontractors monthly, the amount retained for each incomplete or nonconforming item after each of said items is completed or corrected. Before issuance of final payment without any retainage, the Subcontractor shall submit to the Construction Manager satisfactory evidence that all payrolls, material bills and other indebtedness connected with the Project have been paid or otherwise satisfied, warranty information is complete, MEP as-built have been submitted and instruction for the Owner’s operating and maintenance personnel is complete. Final payment may be made to certain select Subcontractors and suppliers whose Work is satisfactorily completed prior to the total completion of the Project, but only upon written approval of the Owner in the Owner's sole and absolute discretion.

* 1. Delayed Payments by Owner - The Owner shall have to right to withhold payment from the Construction Manager in such amounts as may be reasonably necessary to protect the Owner’s rights, including, but not limited to, the right to liquidated damages for delay, the right to be indemnified against third party claims, as protection against the cost of correcting nonconforming Work, and otherwise pursuant to this Agreement. Subject to the preceding sentence, if the Owner should fail to pay the Construction Manager within thirty (30) days after the receipt of an Architect-Engineer approved payment request from the Construction Manager, then the Construction Manager may, upon seven (7) additional days written notice to the Owner and the Architect- Engineer stop the Project until payment of the amount owing has been received.
  2. 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 written approval and acceptance by the Owner on each occasion (and subject to such conditions as the Owner may, in the Owner’s sole and absolute discretion, impose, including, but not limited to, insurance and storage at a bonded warehouse).
  3. Withholding Payments to Subcontractors - The Construction Manager shall not withhold payments to Subcontractors if such payments have been made to the Construction Manager. Should this occur for any reason, the Construction Manager shall immediately return such monies to the Owner, adjusting pay requests and Project bookkeeping as required.
  4. Cooperation with Owner’s Fiscal Year End - The Construction Manager shall provide to owner to the Owner a written statement detailing: (a) the balance of retainage held by Owner as of 30th day of June for each year following initiation of construction and prior to substantial completion; and, (b) for the same period stating the percentage amount of the project completed as of the Fiscal Year end.

# ARTICLE 13 - INSURANCE, INDEMNITY AND WAIVER OF SUBROGATION

* 1. Indemnification - To the fullest extent permitted by law, the Construction Manager shall indemnify and hold harmless the Owner and its agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys’ fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent or intentional acts or omissions of the Construction Manager , a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section. The foregoing provisions of this paragraph to the contrary notwithstanding, the Construction Manager ’s liability to indemnify the Owner for the Owner’s own negligence as set forth herein shall: 1.) be limited to $1 million dollars per occurrence, which the Owner and Construction Manager agree is reasonable given the size of this Project and the amount of general liability coverage maintained by the Construction Manager , including umbrella coverage; 2.) be limited to the acts, omissions or defaults of the Construction Manager , any of the Construction Manager ’s subcontractors, sub- subcontractors, material men, or agent of any tier or their respective employees, or of the Owner, or the Owner’s officers, directors, agents or employees: provided, however, that such indemnification shall not include claims of, or damages resulting from gross negligence, or willful, wanton or intentional misconduct of the Owner, or the Owner’s officers, directors, agents or employees, or for statutory violation or punitive damages, except and to the extent the statutory violation or punitive damages are caused by or result from the acts or omissions of the Construction Manager or any of the Construction Manager ’s subcontractors, sub-subcontractors, material men, or agents of any tier or their respective employees. The preceding provisions have been added specifically to memorialize the Owner and the Construction Manager’s intent that the provisions of this section shall be fully enforceable in accordance with the provisions of Section 725.06, Florida Statutes.

In claims against any person or entity indemnified under this Agreement by an employee of the Construction Manager, a Subcontractor, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Agreement shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Construction Manager or a Subcontractor under workers’ compensation acts, disability benefit acts or other employee benefit acts.

* + 1. Indemnity Not Limited by Workers' Compensation - In any and all claims against the Owner or any of the Owner’s employees by an employee of the Construction Manager , any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligations under this paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Construction Manager or any Subcontractor under workers’ or workmen’s compensation acts, disability benefit acts or other employee benefit acts.
  1. Construction Manager’s Insurance
     1. Requirement of Insurance Coverage - The Construction Manager shall not commence any construction Work in connection with this Agreement until the Construction Manager has obtained all of the insurance coverage’s specified in the “Continuing Services Agreement for Construction Management At-Risk Services for Construction Projects” and any additional contracts made and entered into between the College and the Firm on a project specific basis and provided College with current certificates of insurance for such coverage’s. No part of the cost of coverage required to meet the coverage’s specified in the “Continuing Services Agreement for Construction Management At-Risk Services for Construction Projects” shall be included in a GMP. All insurance policies shall be with insurers qualified and doing business in Florida.
     2. Subcontractor’s Public Liability and Property Damage Insurance - The Construction Manager shall require each of these Subcontractors to procure and maintain during the life of this Agreement, insurance of the type specified above, or insure the activities of his Subcontractors in his policy, as specified above.
     3. Owner’s and Construction Manager’s Protective Liability Insurance - The Construction Manager shall procure as a cost of the Project and furnish an Owner’s and Construction Manager’s Protective Liability Insurance Policy with the following minimum limits:

|  |  |  |  |
| --- | --- | --- | --- |
| **Bodily Injury Liability and Property Damage Liability** | **$1,000,000 Each Occurrence** |  |  |
|  | **$2,000,000 Aggregate** |  |  |

* + 1. “XCU” (Explosion, Collapse, Underground Damage) - The Construction Manager’s Liability Policy shall provide “XCU” coverage for those classifications in which they are excluded.
    2. Broad Form Property Damage Coverage, Products and Completed Operations Coverage - The Construction Manager’s Liability Policy shall include Broad Form Property Damage Coverage, Products and Completed Operations Coverage.
    3. Contractual Liability Work Contracts - The Construction Manager’s Liability Policy shall include Contractual Liability Coverage designed to protect the Construction Manager for contractual liabilities assumed by the Construction Manager in the performance of this Agreement.
    4. Builder’s Risk Coverage [See the “Continuing Services Agreement for Construction Management At-Risk Services for Construction Projects”] If requested by the College to provide Builders Risk Insurance Coverage, such coverage shall be written on an all risk, replacement cost basis with no coinsurance penalty provisions, and coverage is to include off-site storage, transit and installation risk.
    5. Certificate of Insurance - The Construction Manager shall continuously maintain on file with the

Owner Certificate(s) of Insurance in form satisfactory to the Owner evidencing the existence of all required insurance coverage’s.

# ARTICLE 14 - PROCEDURES FOR DIRECT MATERIALS PURCHASED BY OWNER

* 1. Owner Direct Purchased Materials. The Construction Manager shall include Florida State Tax and other applicable Sales Taxes for all material, supplies and equipment included in the price. The Owner reserves the right to make direct purchases of various construction equipment, materials or supplies included in the contract price. Any materials purchased by the Owner shall be referred to as "Owner-Direct Purchased Materials" and the responsibilities of both the Owner and the Construction Manager relating to such Owner-Purchased Materials shall be governed by this agreement.
  2. Duties of Construction Manager. If Owner elects to purchase any Direct Purchase Materials, the Construction Manager will provide all the necessary information for preparation of the purchase orders including acceptable evidence that the Construction Manager competitively bid the Contracts in accordance with Article 2 of this Agreement. Owner and will coordinate the purchase of the materials in a timely manner so as not to negatively impact on the performance of the construction activity of the Project.
  3. Administration. The Contract amount shall be reduced by the net, undiscounted amount of purchase orders made by the Owner, plus all sales taxes and will be administered on a deductive Change Order. In the event there is an increase in the Contract amount due relative to direct costs associated with the Owner’s direct purchase, a change order will be issued to address the net change in the Contract amount. Issuance of the purchase orders by the Owner shall not relieve the Construction Manager of any of their responsibilities regarding material purchases, or installation, with the exception of the payments for the material so purchased. The Construction Manager shall remain, with respect to materials, supplies and equipment, fully responsible for coordination, correct quantities ordered, submittals, protection, storage, scheduling, shipping, security, expediting, receiving, installation, cleaning, and the management of all applicable warranties.
  4. Inspection. As Owner-Direct Purchased Materials are delivered to the jobsite, the Construction Manager, as Owner's Representative, shall visually inspect all shipments from the suppliers, and approve the vendor's invoice for material delivered. The Construction Manager shall assure that each delivery of Owner-Direct Purchased Material is accompanied by documentation adequate to identify the Purchase Order against which the purchase is made. This documentation may consist of a delivery ticket and an invoice from the supplier conforming to the Owner's purchase order, together with such additional information as the Owner or Construction Manager may require. The Construction Manager, as Owner's Representative, shall verify in writing to the Owner the accuracy of the delivery ticket. The Construction Manager will then forward the invoice to the Owner for payment. The invoice shall be thereupon furnished to the Owner for processing and payment in the manner as all other Owner invoices are processed.

The Owner shall have the right to assign Owner personnel to verify and audit the accuracy of all direct purchase documents.

* 1. Title. Notwithstanding the transfer of Owner-Direct Purchased Materials by the Owner to the Construction Manager’s possession, the Owner shall retain title to any and all Owner-Direct Purchased Materials.
  2. Insurance. The Construction Manager shall purchase and maintain insurance pursuant to the requirements set forth in this Agreement which shall be sufficient to protect against loss of or damage to Owner-Purchased Materials. Such insurance shall cover the full value of any Owner-Purchased Materials not yet incorporated into the Project from the time the Owner first takes title. Owner is responsible for deductibles under this policy.
  3. Bailment. The transfer of possession of Owner-Purchased Materials from the Owner to the Construction Manager shall constitute a bailment for mutual benefit of the Owner and the subcontractor. The Owner shall be considered the bailor and the Construction Manager the bailee of the Owner-Purchased Materials. Owner-Purchased Materials shall be considered returned to the Owner for purposes of its bailment at such time as they are incorporated into the Project or consumed in the process of completing the Project. The bailee shall have the duty to use commercially reasonable efforts to safeguard, store and protect all Owner-Purchased Materials.
  4. Surplus Materials. At the end of the Project, any refund for surplus materials returned to suppliers, plus applicable sales tax savings amount, shall be credited as a deduction for any payment owed to the Construction Manager. Salvage materials shall be the property of the Owner and stored or removed from the site by the subcontractor at the Owner's direction.
  5. Disclaimer. The Owner shall in no way be liable for interruption or delay in the Project, for any defects or other problems with the Project, or for any extra costs or time resulting from delay in the delivery of, or defects in, Owner-Purchased Materials, unless Owner, by virtue of nonpayment or late payment for the Owner- Purchased Materials, causes said problems. There shall be no additional charge to the Owner for services provided pursuant to this section.

# ARTICLE 15 - TERMINATION OF THE AGREEMENT AND OWNER’S RIGHT TO PERFORM CONSTRUCTION MANAGER’S OBLIGATIONS

* 1. Termination by the Construction Manager - If the Project is stopped for a period of sixty (60) days under an order of any court or other public authority having jurisdiction or as a result of an act of government, such as a declaration of a national emergency making materials unavailable, through no act or fault of the Construction Manager , or if the Project should be stopped for a period of sixty (60) days by the Construction Manager for the Owner’s failure to make payments thereon, then the Construction Manager may, upon seven (7) 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, and machinery, including reasonable profit, damages and termination expenses incurred by the Construction Manager .
  2. Owner’s Right to Perform Construction Manager’s Obligations and Termination by Owner for Cause
     1. Owner's Right to Correct - If the Construction Manager fails to perform any of his obligations under this Agreement, the Owner may after seven (7) days written notice during which period the Construction Manager fails to perform such obligation, make good such deficiencies. The GMP, or the actual cost of the Project, whichever is less, shall be reduced by the cost to the Owner 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.
     2. Termination for Cause. If the Construction Manager is adjudged bankrupt, or if the Construction Manager makes a general assignment for the benefit of his creditors, or if a receiver is appointed on account of his insolvency, or if the Construction Manager persistently or repeatedly refuses or fails, except in a case for which an extension of time is provided, to supply enough properly skilled workmen or proper materials, or fails to maintain an established schedule (failure to maintain schedule shall be defined as any activity on the critical path that falls 45 days or more behind schedule) which has been adopted by the Construction Team, or if the Construction Manager fails to make prompt payment to Subcontractors for materials or labor, or persistently or repeatedly disregards laws, rules, ordinances, regulations, or orders of any public authority having jurisdiction over the Project, or otherwise is guilty of a material breach of any provision or provisions 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 the 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 relieved from his obligations assumed under Article 7, and the Owner shall have all rights and remedies otherwise available to the Owner by law.

15.2.3 Public Record. In the event Construction Manager acts on behalf of the Owner in the performance of any services to be provided under this agreement as provided under Section 119.011(2), Florida Statutes, then Construction Manager agrees to comply with Florida Public Record Law and specifically to comply with the requirements of Section 119.0701(2), Florida Statutes.

1. Construction Manager, while acting on behalf of the Owner, shall keep and maintain public records required by the public agency to perform the service
2. Upon request from the Owner’s custodian of public records, Construction Manager shall provide the College with a copy of the requested records or allow the access to public records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in under Chapter 119, Florida Statutes or as otherwise provided by law
3. In the event of a public records request pertaining to records in Construction Manager’s possession or control:
4. The Construction Manager shall promptly provide the public agency copies of all records created or maintained in the course of performance under this contract or all such records to be inspected and copied within a reasonable amount of time
5. If the Construction Manager fails to supply such records or make the records available within a reasonable amount of time than the College may apply to a state court of competent jurisdiction for an order compelling the production of such records. In the event the Owner seeks mandatory injunctive relief, vendor waives the requirement that the Owner must first prove: (a) its lack of an adequate remedy at law (b) the irreparable harm absent entry of the injunction, or (c) that injunctive relief will serve the public interest
6. Upon the completion of the contract, the Construction Manager shall:
7. Transfer, at no cost, to the Owner all public records in possession of the vendor and shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements; or,
8. Keep and maintain public records required by the public agency to perform the service and shall meet all applicable requirements for retaining public records
9. All records stored electronically must be provided to the public agency, upon request from the public agency’s custodian of public records, in a format that is compatible with the information technology systems of the public agency
10. Construction Manager shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed for the duration of the contract term and following completion of the contract if the vendor does not transfer the records to the public agency
11. **IF THE CONSTRUCTION MANAGER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSTRUCTION MANAGER’S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 239-489-9010,** [**Joe.Coleman@fsw.edu**](mailto:Joe.Coleman@fsw.edu)**, FLORIDA SOUTHWESTERN STATE COLLEGE, 8099 COLLEGE PARKWAY, FORT MYERS, FLORIDA 33919-5566**
    1. Termination by Owner without Cause
       1. Compensation Due - If the Owner terminates this Agreement other than pursuant to paragraph 15.2, he shall reimburse the Construction Manager for any unpaid Cost of the Project due him under Article 9, plus that part of the unpaid balance of the Construction Phase Fee in an amount as will increase the payment on account of his fee to a sum which bears the same ratio to the Construction Phase Fee as the Cost of the Project at the time of termination bears to the Guaranteed Maximum Price, if established, otherwise to the Owner’s Construction Budget, whichever is less. The Owner shall also pay to the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment retained. In case of such termination of Agreement the Owner may further assume and become liable for obligations, commitments and unsettled contractual claims 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 15, 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. In the case of such a termination, the Construction Manager’s right to receive the amounts described in this paragraph shall be the Construction Manager’s sole and exclusive rights, remedies and recourse available to the Construction Manager in lieu of any and all other claims for compensation and damages, and the Owner shall have no further or other liability to the Construction Manager.
       2. Lack of Funding - After the establishment of the Guaranteed Maximum Price or at the completion of the Design 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 paragraph 8.1, plus any costs incurred pursuant to Articles 9 and 10, in which event the Owner shall have no further liability to the Construction Manager whatsoever. In the event of such a termination, the Construction Manager ’s right to recover the amounts set forth in this paragraph shall constitute the sole and exclusive rights, remedies and recourse available to the Construction Manager in lieu of any and all other claims for compensation and damages.
       3. If the Construction Manager refuses to allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and 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 its 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 theron, owned by the Construction Manager and may finish the Project by whatever method may be deemed expedient. In such case, the Construction Manager shall not be entitled to receive any further payment until the Project is finished nor shall they be relieved from their 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 owned the Construction Manager for subcontract work).

# ARTICLE 16 - ASSIGNMENTS AND GOVERNING LAW

* 1. Non-Assignment - Neither the Owner nor the Construction Manager shall assign their respective interests in this Agreement without the prior written consent of the other.
  2. Governing Law - This Agreement shall be governed by the Laws of the State of Florida.

# ARTICLE 17 - NOTICE OF CLAIMS: WAIVER OF CONSEQUENTIAL DAMAGE CLAIMS; VENUE; MEDIATION

* 1. Claim Requirements - 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, tort, by statute or otherwise, including, but not limited to, claims for extensions of Contract Time, for payment by the Owner of the costs, damages or losses because of changed conditions under which the Work is to be performed, for additional Work, or otherwise, shall be governed by the following provisions:
     1. Required Documentation - All claims must be submitted as a Request for Change Order in the manner as provided herein;
     2. Notice of Claim - Subject to any shorter time frames as may be set forth herein the Construction Manager must submit a Notice of Claim to Owner and to the Architect-Engineer within twenty (20) days of when the Construction Manager was or should have been aware of the occurrence of the event giving rise to the claim; and
     3. Requests for Change Orders - Within ten (10) days of submitting its Notice of Claim, the Construction Manager shall submit to the Owner its Request for Change Order, which shall include a written statement of all details of the claim, including a description of the Work affected, the time extension requested (if any), and the amount sought for the claim.
     4. Waiver - The Construction Manager agrees that the Owner shall not be liable for any claim that the Construction Manager fails to submit as a Notice of Claim and Request for Change Order as provided in this paragraph. Any claim not so submitted shall be deemed waived.
     5. Waiver of Claims for Consequential Damages – Except for the liquidated damages described in paragraph 6.1 above, and as may otherwise be expressly and specifically set forth in this Agreement, the Owner and Construction Manager hereby waive against each other any and all claims for consequential damages of any types or kinds whatsoever that arise out of or relate to this Agreement, the Contract Documents, the Work and/or the Project. This mutual waiver includes, but is not necessarily limited to: (a) damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management and employee productivity or of the services of such persons; and (b) damages incurred by the Construction Manager for principal office expenses, including the compensation of the personnel stationed there, for losses of financing, bonding, business and reputation, and for loss of profit. This mutual waiver is applicable, without limitation, to the consequential damages due to either party’s termination in accordance with Article 14 above.
  2. Written Determination of Claim; Venue; Mediation
     1. Determination of Claims – 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 unless the Construction Manager requests an administrative proceeding pursuant to Section 120.57, Florida Statutes, by filing a petition in compliance with Rule Chapter 60- 4, F.A.C. within thirty (30) days of the Construction Manager’s receipt of the Owner’s determination.
     2. Exclusive Venue – The venue for all civil actions between the Owner and the Construction Manager shall be, and shall only be (i.e., exclusively), in a state court of competent jurisdiction in the county in which the Project is located. The venue for all administrative actions shall also be, and only be (i.e., exclusively), in the county in which the Project is located.
     3. Mandatory Pre-Suit Mediation – Prior to the filing of any litigation by the Owner or Construction Manager against the other (and, except as described below, as a precondition to any such filing), the Owner and the Construction Manager shall engage in pre-suit mediation. Such mediation may be requested by either party, at any time, and shall be conducted the same as if such mediation were ordered by a Florida Circuit Court (i.e., in accordance with, and subject to, all of the laws and rules applicable to court ordered mediation). Such mediation shall be conducted within a reasonable period of time after the same is requested in writing by either party. If the parties are unable to agree upon the selection of a mediator, either party may petition or request that the Circuit Court of the county in which the Project is located (or the Mediation Coordinator for the Courts of such county) appoint a mediator. A mediator who is so appointed may only be challenged for cause, and not peremptorily. While the request for and the conducting of such a mediation shall be a precondition to the filing of a civil action, in the event that either party is in jeopardy of losing its right to sue (e.g., the statute of limitations is about to expire), then a suit may be filed before mediation is conducted, provided that mediation is requested before, or simultaneously with the filing of such suit, and is conducted before the named defendant in the suit is required to respond to the Complaint. If the scheduling of the mediation requires, the plaintiff in the suit shall therefore grant the defendant an appropriate extension of time to respond to the Complaint so as to permit the mediation to be conducted before the defendant must so respond.

# ARTICLE 18 - MISCELLANEOUS

* 1. Interest - Any monies not paid when due to either party under this Contract shall not bear interest except as may be required by Section 215.422(3) (b), Florida Statutes.
  2. Harmony - Construction Manager is advised and hereby agrees that the Construction Manager 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 by building and construction managers now or hereafter on the site of the project.

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

* 1. 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.
  2. Invoices Submitted Under Article 12 - Invoices submitted under Article 12 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 payment by the State for travel expenses.
  3. Construction Manager’s Project Records - The Construction Manager’s Project Records shall be maintained for no less than ten (10) years or as required by Federal Law, whichever is longer, and shall be made available to the Owner or the Owner's authorized representative(s) as described herein.
  4. 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 [Florida Statutes], for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.”

* 1. Unauthorized Aliens Checks Through E-Verify – Pursuant to the State of Florida, Office of the Governor, Executive Order number 11-116, Construction Manager will utilize the US Department of Homeland Security’s E-Verify system to verify the employment eligibility of 1.) all person employed during the term of the Contract by Construction Manager to perform employment duties under this contract within 3 business days after the date of hire; and 2.) all persons including subcontractors assigned by Construction Manager to perform work pursuant to the Contract.
  2. Unauthorized Aliens - The Owner shall consider the employment by the Construction Manager of unauthorized aliens a violation of the United States Immigration and Naturalization Act. Such violation shall be cause for unilateral cancellation of this Contract.
  3. Severability and Headings - All of the provisions of this Contract are intended to be reasonable and enforceable. It is the intent of both the Owner and the Construction Manager that all of the provisions of this Contract shall be enforced to the fullest extent permitted by law and, only if a provision is finally adjudged to be invalid or unenforceable shall it not be given effect. In the event that any provision of this Contract is finally adjudged to be invalid or unenforceable, whether on its face or as applied, it shall be deemed excised and such excision shall have no effect upon the remaining provisions hereof. The headings of the paragraphs herein have been included for convenience only and shall have no effect upon, and not be considered in connection with, any interpretations of this Contract.
  4. Rule Regarding Ambiguity - This Contract is the result of negotiations between the Owner and Construction Manager, and accordingly, the rule of contract construction of construing ambiguous provisions against the drafter shall not apply, and no ambiguity or lack of clarity shall be construed against the Owner or Construction Manager.
  5. No Third-Party Beneficiaries - There are no third-party beneficiaries of this Agreement. This Agreement does not create or confer any legal claim or cause of action in favor of any person or entity not a signatory to this Agreement, and the obligations and legal duties imposed on the parties to this Agreement are owed exclusively by the parties to one another, and not to any person or entity not a signatory to this Agreement.
  6. Electronic Mail Capabilities – The construction Manager must have e-mail capabilities through the Internet. It is the intention of the Owner to use e-mail communication for all projects whenever possible. The Construction Manager shall provide and update their e-mail address and the name of a contact person responsible for their electronic communications.
  7. Confidentially of Building Plans – Pursuant to Section 119.071(3)(b), Florida Statutes, all building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the internal layout and structural elements of a building, arena, stadium, water treatment facility, or other structure owned or operated by an agency are exempt from inspection or disclosure under Florida’s Sunshine laws. The Construction Manager agrees to protect and ensure the confidentiality of such documents under its custody or control in conformance with the requirements of Section 119.071(3), Florida Statutes and all applicable laws. Any knowing violation of Chapter 119, Florida Statutes, may be sufficient grounds for immediate termination of the Contract by the Owner.

[Balance of Page Intentionally Left Blank]

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

# The District Board of Trustees

**Florida SouthWestern State College, Florida:**

By: Dated:

Dr. Jeffery Allbritten

As its President

By: Dated:

Dr. Gina B. Doeble, CPA

As its: Senior Vice President/

Chief Operating Officer

Approved as to Form:

General Counsel

**Name of Construction Manager Company** By: Title: Dated:

**Name**

**Title**

**EXHIBIT A**

**CONSTRUCTION TEAM ASSIGNED REPRESENTATIVES**

Owner – District Board of Trustees, Florida SouthWestern State College

(Personnel)

Architect-Engineer – (Company Name)

(Personnel)

Construction Manager – (Company Name)

(Personnel)

**EXHIBIT B**

**OWNER'S CONSTRUCTION BUDGET**

|  |  |
| --- | --- |
| ITEM DESCRIPTION | CONSTRUCTION BUDGET |
| Construction Manager 's Design Phase Fee | |
| Construction Manager 's Construction Phase Fee | TBD or negotiated now (*cost of Construction Manager personnel*) |
| Construction Manager ’s Overhead and Profit | $ TBD or negotiated now |
| Construction Budget Balance (which includes Construction Contingency) | $ TBD or negotiated now |
| **Owner’s Total Construction Budget** | **$TBD or negotiated now** |

**ARCHITECT – ENGINEER’S CERTIFICATE OF SUBSTANTIAL COMPLETION**

|  |  |
| --- | --- |
| PROJECT NUMBER: |  |
| ARCHITECT-ENGINEER PROJECT: | |
| OWNER: | CONSTRUCTION MANAGER: |
| ATTN: | CONTRACT FOR: |
| CONTRACT DATE: |  |
| DATE OF ISSUANCE: |  |
| PROJECT OR DESIGNATED PORTION SHALL INCLUDE: | |
| The work performed under this Contract has been reviewed and found to be substantially complete. The Date of Substantial Completion of the Project or portion thereof designated above is hereby established as: | |
| Which is also the date of commencement of applicable warranties required by the Contract Documents, except as stated herein: | |
| DEFINITION DATE OF SUBSTANTIAL COMPLETION | |
| The Date of Substantial Completion of the Work or designated portion thereof is the Date certified by the Architect-Engineer when construction is sufficiently complete, in accordance with the Contract Documents, so the Owner can occupy or utilize the Work or designated portion thereof for the use for which it is intended as expressed in the Contract Documents. | |
| A list of items to be completed or corrected is attached hereto. The failure to include any items on such list does not alter the responsibility of the Construction Manager to complete all Work in accordance with the Contract Documents. The date of commencement of warranties for items on the attached list will be the date of final payment, unless otherwise agreed to in writing. | |
| ARCHITECT-ENGINEER: | By: Date: |
| The Owner accepts the Work or designated portion thereof as substantially complete. | |
| OWNER: | By: Date: |
| The Construction Manager will complete or correct the Work on the list of items attached hereto within the time prescribed in the Contract from the above Date of Substantial Completion. | |
| CONSTRUCTION MANAGER: | By: Date: |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **AGENCY** | : |  | | |
| **PROJECT** | : |  | | |
| **CONSTRUCTION MANAGER** |  |  | | |
| **CONTACT FOR** | : |  | | |
| **CONTRACT DATE** | : |  | **CONTRACT AMOUNT:** |  |

**CONSTRUCTION MANAGER ’S AFFIDAVIT**

I solemnly swear and affirm: That the Work under the above named Contract and all amendments thereto have been completed in accordance with the requirements of said Contract; that all costs incurred for equipment, materials, labor, and services against the Project have been paid; that no liens have been attached against the Project; that no suits are pending by reason of Work on the Project under the Contract; that all Workmen’s Compensation claims are covered by Workmen’s Compensation Insurance as required by law; that all public liability claims are adequately covered by insurance, and that the Construction Manager shall save, protect, defend, indemnify, and hold the Owner and the Owner's officers and employees harmless from and against any and all liabilities, damages, losses and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the Construction Manager and persons employed or utilized by the Construction Manager in the performance of the Work.

CONSTRUCTION MANAGER: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Must sign in the presence of a Notary)

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

STATE OF:

COUNTY OF:

THE FOREGOING INSTRUMENT was acknowledged before me on this \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ by

­­­­­­ ­­­­\_\_\_\_\_\_\_ , a \_\_\_\_\_\_\_\_\_corporation, on behalf of the corporation. He/She is personally known to me or who has produced \_ \_\_\_\_ as identification and who  did  did not take an oath, acknowledging that the above and foregoing is true and correct and that it was executed freely and voluntarily for the purposes expressed therein.

Signature of Person Taking Acknowledgment

Typed/Stamped Name

Title or Vendor

My Commission Expires: Notary Public

Print/Type Name of Notary Commission

**EXHIBIT D (CONTINUED) CERTIFICATE OF CONTRACT COMPLETION**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| AGENCY | : | \_ \_ \_ | | |
| PROJECT TITLE | : | \_ \_ \_ | | |
| CONSTRUCTION MANAGER | : | \_ \_ \_ | | |
| CONTRACT DATE | : | \_ | DATE OF FINAL COMPLETION: | \_ |

**CERTIFICATE OF ARCHITECT-ENGINEER**

**I CERTIFY:** That the Work under the above Contract has been satisfactorily completed on the date set forth in accordance with the terms of the Contract; that the Construction Manager has submitted his sworn affidavit as evidence that he has paid all labor, materials and other charges against the Project in accordance with the terms of the Contract.

|  |  |
| --- | --- |
| A/E FIRM NAME: | DATE: |
| By: | |

TO BE COMPLETED BY ARCHITECT-ENGINEER THROUGH THE SUBSTANTIAL COMPLETION PHASE DATE DAYS

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

THROUGH THE FINAL COMPLETION PHASE

|  |  |
| --- | --- |
| 1. | Time Specified in Contract, Between Substantial and Final Completion |
| 2.  3.  4. | Extensions Granted by Change Orders (Days between S.C. and Final Completion)  Total Days Allowable Between Substantial and Final Completion (Add Lines 1 and 2)  Date Actually Completed and Total Days Between Actual S.C. and Date Certified by A/E as Actually Being Finally Completed |

5. Final Completion Overrun (Subtract Line 3 and 4 and at $ Per Day = $ Enter Overrun)

TOTAL LIQUIDATED DAMAGES: $

Date: Project Director

Date: Project Development Manager

**EXHIBIT E**

**OWNER'S CERTIFICATE OF PARTIAL PAYMENT**

Construction Manager (Name and Address) Request No.

\_

\_ Architect-Engineer Job No.

For Period Ending \_ Project Name

\_

Contract Time (Calendar Days) \_ State Project

Time Elapsed To Date

Federal ID No. \_ \_

ADDITION

S$

DEDUCTIO

N$

Original Contract Sum: $

Change Orders Approved In Previous Months By

Change Orders (Net): $

Contract Sum To Date: $

Balance to Finish: $

Owner - TOTAL

Completed to Date: $

Subsequent Change Orders

Materials Stored: $

Total Completed & Stored: $

Number Approved Less Range: \_% $

(Date) Add Back Retained Amount

Covered By Securities: $

TOTAL: $

TOTALS:

Less Previous Certificates: $ Less Materials Purchased

Directly by Owner: $

Net Change by Change Orders

$

THIS CERTIFICATE: $

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**EXHIBIT E Continues**

CERTIFICATION BY THE CONSTRUCTION MANAGER : According to the best of my knowledge and belief, I certify that all items and amounts shown on the fact of this Application are correct, that all work has been performed and materials supplied in full accordance with the terms and conditions of the Contract, and that all material men, laborers and subcontractors, as defined in Chapter 713.01, Florida Statutes, have been paid the amounts due them out of any previous payments made to the Construction Manager by the Owner. Further, I agree to promptly pay each material men, laborer and subcontractor, as defined in Chapter 713.01, Florida Statutes, upon receipt of payment from the Owner, out of the amount paid to me on account of such material man’s, laborer’s or subcontractor’s work, the amount to which said material man, laborer and subcontractor is entitled, reflecting the percentage actually retained, if any, from payments to myself on account of such material man’s, laborer’s and subcontractor’s work.

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| --- | --- |
| CONSTRUCTION MANAGER :  \_ | By: |

STATE OF FLORIDA COUNTY OF

THE FOREGOING INSTRUMENT was acknowledged before me this \_ \_ day of , 20\_\_\_, by

\_ \_, (name of officer or agent, title of officer or agent) of \_ (name of corporation), a \_\_ \_ corporation, on behalf of the corporation. He/She is personally known to me or who has produced \_ as identification and who did did not take an oath, acknowledging that the above and foregoing is true and correct and that it was executed freely and voluntarily for the purposes expressed therein.

|  |  |
| --- | --- |
| \_ | |
| Signature of Person Taking Acknowledgment | |
| \_ | |
| Typed/Stamped Name | |
| \_ | |
| Title or Vendor | |
| \_ | |
| Serial Number, if any | |
| My Commission Expires: | \_ |
| Notary Public | |
| \_ | |
| Print/Type Name of Notary | |
| Commission No. \_ | |

|  |  |
| --- | --- |
| REVIEW AND RECOMMEND FOR PAYMENT | |
| \_ \_ | Date: |
| Architect-Engineer | |

|  |  |
| --- | --- |
| APPROVED FOR SERVICES, PERFORMED AS STATED BY: | |
| \_ \_ | Date: |
| Owner's Project Director | |

Chapter 713.01, Florida Statutes, defines Laborers, Material men and Subcontractors, as follows:

1. “Laborers” means any person other than an architect, landscape architect, engineer, surveyor and mapper, and the like, who under properly authorized contract, personally performs on the site of the improvement labor of services for improving real property and does not furnish materials or labor service of others.
2. “Material man” means any person who furnishes materials under contract to the owner, Construction Manager , subcontractor, or sub-subcontractor on the site of the improvement or direct delivery to the site of the improvement or, for specifically fabricated materials, off of the site of the improvement for the particular improvement, and who performs no labor in the installation thereof.
3. “Subcontractor” means a person other than a material man or laborer who enters into a contract with a Construction Manager for the performance of any part of such Construction Manager’s contract, including the removal of solid waste from the real property. The term includes a temporary help firm as defined in Section 443.101, Florida Statutes.

**EXHIBIT F**

**ITEMS TO BE SUBMITTED WITH GENERAL CONSTRUCTION MANAGER'S REQUEST FOR FINAL PAYMENT**

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|  | 1. | Pay Request (2 hard copies or an electronic copy with original signatures, noted as Final) |
|  | 2. | Final Schedule of Contract Values |
|  | 3. | Consent of Surety to make Final Payment (Signed and Sealed) |
|  | 4. | Power of Attorney from Surety for Release of Final Payment (Signed and Sealed and dated same as Consent of Surety) |
|  | 5. | Certificate of Contract Completion   1. Page One completed by the General Construction Manager (original plus three copies) 2. Page Two completed by Architect-Engineer (original plus three copies) |
|  | 6. | Satisfactory Conclusion or Release of Lien from all subcontractors or laborers who have filed Notices to Owner, Intent to Liens or have indicated non-payment from the General Construction Manager |
|  | 7. | Construction Manager’s Warranty for one year from the date of Substantial Completion. |
|  | 8. | Copy of the approval by the Architect-Engineer and the transmittal to the using agency of manuals, shop drawings, as-built (CAD and PDF) brochures, warranties, and List of Subcontractors, with telephone numbers and addresses |
|  | 9. | Verification that Using Agency personnel have been trained in the operation of their new equipment (per system: HVAC, controls, fire alarm, etc.), attendance lists and preferred |
|  | 10. | Fully executed Roof Warranty (if applicable) in the name of the Using Agency |
|  | 11. | Other special warranties as required by specifications of Asbestos Containing Materials |
|  | 12. | Construction Manager 's Certificate of Asbestos Use |
|  | 13. | Copy of Certificate of Occupancy |

NOTE: The Project Director shall verify the math of all Pay Requests prior to signing Final Pay Request to assure correct payment.

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| Project Number: | \_ |
| Project Name and Location: | \_ |
| Project Director Signature: | \_ |