COPY

CONTRACT FOR CONSTRUCTION MANAGEMENT BETWEEN LAKE COUNTY, FLORIDA AND EMMETT SAPP BUILDERS, INC. FOR CONSTRUCTION MANAGEMENT

(At-Risk Construction Management –Guaranteed Maximum Price)

RFP 15-0218

CHAPTER 1
CONSTRUCTION MANAGER'S AGREEMENT

This Contract For Construction Management is entered into between **Lake County, Florida, a political subdivision of the State of Florida**, by and through its Board of County Commissioners, hereinafter the "Owner", and Emmett Sapp Builders, Inc., a Florida corporation, its successors and assigns, hereinafter the "Construction Manager." This Agreement is executed under seal, and shall be effective on the date signed by the last party to do so.

The authorized representatives and addresses of the Owner, the Construction Manager and the Professional are:

OWNER:

Representative:	David C. Heath, County Manager
Address:	P.O. Box 7800, 315 West Main Street Suite 308
City, State, Zip:	Tavares, Florida 32778
Office:	(352) 343-9888
Fax:	(352) 343-9495
E-mail:	dheath@lakecountyfl.gov

CONSTRUCTION MANAGER:

Representative:	Emmett Sapp, Jr., President
Address:	4430 NE 83rd Road
City, State, Zip:	Wildwood, Florida 34785
Office:	(352) 748-1949
Fax:	(352) 748-1065
Email:	esapp@emmettsappbuilders.com
License No.:	CGC 1519566

PROFESSIONAL:

Representative:	Robert S. Day, Senior Project Manager KTH Architects, Inc.
Address:	827 North Thornton Avenue
City, State, Zip:	Orlando, Florida 3283
Office:	(407) 203-6707
E-mail:	RDay@ktharch.com

Cc

Whenever this Contract For Construction Management refers to "Professional" in the singular, such reference shall mean the Owner's designated representative.

OWNER'S PROJECT IDENTIFICATION INFORMATION:

Project Title:	Construction Manager for Fire Station 14
Project Location	18840 County Road 42, Altoona Florida 32702
Project ID Number:	RFP #15-0218

RECITALS

A. The Owner intends to construct the Project and is engaging the Construction Manager to furnish or cause to be furnished (i) all labor, equipment, goods and materials now or hereafter required by this Contract For Construction Management to successfully plan, construct and complete the Work; and (ii) all construction management and supervisory services required by this Contract For Construction Management to successfully plan, construct and complete the Project.

B. The Owner and Construction Manager each acknowledges that it will act in good faith in carrying out its duties and obligations.

C. The Owner's engagement of the Construction Manager is based upon the Construction Manager's representations to the Owner that Construction Manager (i) is experienced in providing construction management services for projects of similar size and complexity to the Project; (ii) is authorized and licensed to perform the type of labor and services for which it is being engaged in the State and locality in which the Project is located; (iii) is qualified, willing and able to perform construction management services for the Project; and (iv) has the expertise and ability to provide construction management services which will meet the Owner's objectives and requirements and which will comply with the requirements of all governmental, public and quasi-public authorities and agencies having or asserting jurisdiction over the Project, all as set forth herein.

D. The Owner and Construction Manager each acknowledges that it has reviewed and familiarized itself with this Contract For Construction Management, including the documents enumerated in Article 1, and agrees to be bound by the terms and conditions contained therein.

E. The Owner intends to engage, or has engaged, one or more Professionals to perform architectural and/or engineering services for the Project, including preparation of Site-specific Construction Documents.

NOW, THEREFORE, for good and valuable consideration, the parties agree as follows:

PROJECT DESCRIPTION

The Construction Manager is hereby tasked with providing services for the construction of Fire Station 14, located at 18840 County Road 42, Altoona, Florida. The design of the Project has been substantially completed. The estimated construction cost is $900,000.00.

The Construction Manager shall provide overall coordination, management, supervision and scheduling of the work of each contractor/subcontractor so as to complete the Project in

accordance with the Owner's objectives of safety, cost, time, and quality. The Construction Manager shall be responsible for the preparation of bid packages and shall serve under the at-risk model. The Construction Manager shall maintain accurate records to include direct and indirect costs of services and equipment, change orders, direct purchases, and both bidding and construction time lines. Other general duties shall include, but are not limited to, Preconstruction Services and Value Engineering, as defined herein.

ARTICLE 1
CONTRACT DOCUMENTS

1.1 The "Contract For Construction Management" is comprised of the following documents (these documents shall be collectively referred to herein as the "Agreement" or the "Agreement for Construction Management"):

This "Chapter 1 – Construction Manager's Agreement (At-Risk Construction Management Guaranteed Maximum Price Form)" (hereafter "Chapter 1"), including the foregoing recitals A. through E., and all attached documents, appendices and addenda, including the following;

Appendix "A" - Chapter 2 – Construction Manager's Required Services (At-Risk Construction Management Guaranteed Maximum Price Form) (hereafter "Chapter 2"),;

Appendix "B" - Chapter 3 – General Terms and Conditions of Construction Manager's Contract (hereafter "Chapter 3");

Appendix "C" – Pre-Construction Services Fees

Appendix "D" – Index of Preliminary Plans and Specifications for the Project;

Appendix "E" – Schedule for Performance of Pre-Construction Services;

Appendix "F" – Schedule of Required Insurance and Contractor's Certificate of Insurance for Pre-Construction Services;

Appendix "G" – Schedule of Required Insurance for Construction of the Work;

Appendix "H" – Construction Manager's Pre-Construction Services Team;

Appendix "I" – Owner's Consultant's Chart;

Appendix "J" – Required Form of Payment and Performance Bond;

Appendix "K" – Intentionally Deleted;

Appendix "L" – Intentionally Deleted;

Appendix "M" – Authorization for Construction

Exhibit 1 to Appendix "M" – Index of Final Plans and Specifications

Exhibit 2 to Appendix "M" – Construction Schedule

Exhibit 3 to Appendix "M" – Construction Manager's Project Team

Exhibit 4 to Appendix "M" – Schedule of Values

Exhibit 5 to Appendix "M" – Unit Prices

Exhibit 6 to Appendix "M" – Construction Manager's Subcontractors and Suppliers Chart

Exhibit 7 to Appendix "M" – Qualifications and Assumptions as required by Chapter 2, Paragraph. 2.7.5.6

The Construction Documents, now existing as set forth in RFP No. 15-0218 or issued hereafter;

Any amendments or addenda executed by the Owner and the Construction Manager hereafter; and

Approved Change Order(s) or field orders.

1.2 Documents not included or expressly contemplated in this Article 1 do not, and shall not, form part of this Contract For Construction Management.

1.3 The Owner shall: *[Select and complete as appropriate]*

□ furnish the Construction Manager with three (3) copies and one reproducible copy of the Construction Documents.

X furnish the Construction Manager electronically formatted Construction Documents.

□ not furnish the Construction Manager with a copy of the Construction Documents; provided, however, the Construction Manager may obtain copies of the plans and specifications from Professional, if any.

ARTICLE 2
NOTICES

2.1 Unless otherwise provided, all notices shall be in writing and considered duly given if the original is (i) hand delivered, including delivery by independent delivery service, including Federal Express, United Parcel Service or United States Postal Service; (ii) delivered by telex, facsimile, or telecopy; or (iii) sent by U.S. Mail, postage prepaid. All notices shall be given to the addresses set forth above. Notices hand delivered, delivered by independent delivery services or delivered by telex, facsimile, or telecopy shall be deemed given the on the date of delivery. Notices given by U.S. Mail shall be deemed given as of the second business day following the date of posting.

ARTICLE 3
SCOPE OF CONSTRUCTION MANAGER'S SERVICES

3.1 General Scope Of Services. Upon execution of this Contract for Construction Management and issuance of a Notice to Proceed, the Construction Manager shall commence performance of Pre-Construction Services, and upon execution of **Appendix "M"** and issuance of a Notice To Proceed by the Owner for said Project, the Construction Manager shall commence Construction and/or Renovation Services. The parties acknowledge that (i) the Owner may determine that it shall not proceed with Construction Services as provided in Chapter 2, Paragraphs 2.8.2 and 2.8.6 of Appendix A, (ii) performance of Pre-Construction Services may overlap performance of Construction Services, (iii) categories of Work performed during Construction Services may be performed in separate phases, and (iv) payment of the Construction Manager for Pre-Construction Services shall be separate from payment, if any, for Construction Services.

3.1.1 **Scope Of Pre-Construction Services.** The Construction Manager shall furnish and pay for out of the Pre-Construction Services Fee, all Pre-Construction Services required by:

(i) Chapter 1;
(ii) Chapter 2, Articles 1, 2 and 4; and
(iii) Chapter 3

All such services hereinafter referred to as the "Pre-Construction Services."

3.1.2 **Scope Of Construction Services.** Upon execution of **Appendix "M"**, the Construction Manager shall furnish and pay for out of the Construction Price all Construction Services required by:

(i) Chapter 1;
(ii) Chapter 2, Articles 1, 3 and 4; and
(iii) Chapter 3.

All such services hereinafter referred to as the "Construction Services."

3.2 **Self-Performance By The Construction Manager.** *[Select as appropriate]:*

□ The Construction Manager shall not be allowed to self-perform any category of the Work without prior written approval of the Owner.

X The Construction Manager shall be allowed to bid for subcontract work, and, if it is the lowest acceptable bidder, perform those categories of Work which the Owner agrees, said categories to be incorporated into the Authorization for construction (**Appendix "M"**).

X The Construction Manager shall be allowed, with the prior written approval of the Owner, to perform categories of Work for which there is no acceptable bidder or if a subcontractor fails to execute an acceptable contract with Construction Manager.

3.3 **Term and Renewal.** This Contract for Construction Management shall commence on the day the last party hereto executes this Agreement and shall remain in effect for twelve (12) months thereafter. Construction Manager shall complete all Pre-Construction Services within this time. Prior to or upon completion of the initial term of this contract, the Owner shall have the option to renew this contract for an additional one (1) year period. Continuation of the contract beyond the initial period, and any renewal option subsequently exercised, is an Owner prerogative, and not a right of the Construction Manager . This prerogative will be exercised only when such continuation is clearly in the best interest of the Owner. The prices stated herein shall prevail for the full duration of the initial contract term and any optional term subsequently exercised.

ARTICLE 4
COMPENSATION OF CONSTRUCTION MANAGER

4.1 **Compensation For Pre-Construction Services.** The Owner shall pay, and the Construction Manager shall accept, as full and complete payment for the Construction Manager's timely and complete performance of Pre-Construction Services, the Pre-Construction Services Fee.

4.1.1 **Pre-Construction Services Fee – Amount.** The Pre-Construction Services Fee shall be: *[Select one of the following]*

X LUMP SUM FIXED FEE.

The Owner shall pay, and the Construction Manager shall accept as complete payment for performance of Pre-Construction Services, a negotiated fixed fee not to exceed **$10,000.00**, more particularly identified and set forth in **Appendix "C".** The scope, timing, number of deliverables and payment processes are set forth in Chapter 2, Article 2 of **Appendix "A"**, and shall be in accordance with a Project-specific **Appendix "E"** submitted with the Construction Manager's scope of services.

□ TIME AND MATERIAL NOT TO EXCEED

The Owner shall pay, and the Construction Manager shall accept as complete payment for performance of Pre-Construction Services, a fee based upon services rendered and materials provided; however, the Pre-Construction Services Fee shall not exceed _____ ($_____) Dollars.

4.1.2 **Pre-Construction Services Fee – Payment.** *[Select one of the following]*

X The lump sum fixed Pre-Construction Services Fee shall be paid in accordance with **Appendix "C"**.

□ The lump sum fixed Pre-Construction Services Fee shall be set and paid pursuant to the time schedule in **Appendix "E"** when executed by the parties.

□ The time and material not to exceed Pre-Construction Services Fee shall be paid in accordance with the labor and material rates set forth in **Appendix "E"**.

□ Other: _____

_____

4.2 **Guaranteed Maximum Price.** As more particularly described in Chapter 2, Article 2 of **Appendix "A"**, the Construction Manager shall prepare and deliver to the Owner, with a copy to the designated Professional, a Guaranteed Maximum Price ("GMP") proposal for which Construction Manager proposes to provide Construction Services [*Select one (1) and complete as appropriate]*

□ upon completion of ____ percent (____ %) of the Construction Documents.

X Forty-five (45) calendar days after 100% completion of the Construction Documents.

□ no later than _____, 20__.

□ [*Other*] _____

If the GMP proposal is accepted by the Owner, the Construction Manager shall execute **Appendix "M"**. The Owner shall thereafter issue a written notice to the Construction Manager ("Notice To Proceed") establishing the date construction is to commence (the "Commencement Date").

4.3 **Compensation For Construction Services.** The Owner shall pay, and the Construction Manager shall accept, as full and complete payment for Construction Services, the Construction Price as agreed to by the parties ("the Construction Price"). The Construction Price for which the Owner is responsible to pay the Construction Manager shall not exceed the Guaranteed Maximum Price (GMP). Costs which would cause the GMP to be exceeded shall be paid by the Construction Manager without liability for reimbursement by the Owner.

4.3.1 **Construction Price – Amount.** The Construction Price shall include, and is limited to, the total of:

(i) Costs of the Work. The Costs of the Work as defined in Paragraph 2.7.2.1, Chapter 2, Article 2 of **Appendix "A"** incorporated herein.

(ii) General Conditions. The Owner shall pay, and the Construction Manager

shall accept as complete payment for General Conditions, the following percentages of the Cost of the Work, as defined in Chapter 2, Paragraph 2.7.2.2 of **Appendix "A"**:

[to be determined]

The method of payment, however, shall be set forth in **Appendix "M"**.

(iii) Fixed Management Fee. The Owner shall pay, and the Construction Manager shall accept as complete payment for performance of Construction Management Services, a negotiated fixed fee in the amount of **ten percent (10%)** of the GMP for the Project.

4.3.2 **Construction Price – Payment And Retainage.** Payment requests shall be processed and paid in accordance with Part VII, Chapter 218, Florida Statutes, known as the Florida Prompt Payment Act, and the terms of this Agreement. Invoices shall be submitted to the Owner on the last day of each month, with each invoice detailing the RFP number and the services performed through and including the 25th of the month in which the invoice is submitted. The date on which payment is due shall be referred to as the "Payment Date".

4.3.2.1 For Projects with an estimated cost of less than $10 million, the Owner or its agent shall, pursuant to Section 218.735(7), Florida Statutes, prepare and deliver to the Construction Manager a single list of items to be rendered complete, satisfactory, and acceptable within thirty (30) calendar days after reaching substantial completion. For projects having an estimated cost of $10 million or more, within thirty (30) calendar days, or, if extended by change order, up to sixty (60) calendar days after reaching substantial completion.

4.3.2.2 For a multi-phased Project, the Owner or its agent must provide for the development of a list of items required to render complete, satisfactory, and acceptable for each building, structure, or phase of the Project within the time limitations stated in subsection 4.3.2.1 above.

4.3.2.3 The final completion date must be at least thirty (30) days after the delivery of the list to the Construction Manager. If the list is not provided to the Construction Manager timely, the time for completion must be extended by the number of days the Owner exceeded the delivery date. Damages may not be assessed against a contractor for failing to complete a project within the time required by the contract, unless the Construction Manager failed to complete the project within the contract period as extended hereunder.

4.3.2.4 Failure of the Construction Manager to include any corrective work or pending items not yet completed on the list developed pursuant to this section does not alter the responsibility of the Construction Manager to complete all construction services set forth herein. If a good-faith dispute exists as to whether one or more items have been completed pursuant to this Contract, the Owner may continue to withhold an amount not to exceed one hundred fifty percent (150%) of the total costs to complete

the remaining items. The Construction Manager's project representative shall be required to review these estimates with the Owner and sign the estimate in agreement.

4.3.2.5 Retainage shall be released as set forth in Section 218.735, Florida Statutes.

4.4 **Compensation For Change Orders.** Amounts owed by the Owner to the Construction Manager, and the amount of the GMP for Construction Services established in the executed **Appendix "M"**, shall be adjusted by duly authorized Change Orders.

4.4.1 **Change Order – Increase In Scope or Costs.** For change orders increasing the Construction Manager's scope of services or costs, the Construction Manager shall be compensated in the amount of the Cost of the Work added by the Change plus the Construction Manager's Management Fee in the amount as set forth above.

4.4.2 **Change Order – Decrease In Scope or Cost.** For change orders decreasing the Construction Manager's scope of services or costs, the Owner shall receive a credit in the amount of the Cost of the Work which is decreased by the Change plus a deduction of the Construction Manager's Management Fee in the amount as set forth above.

4.4.3 **Change Orders and General Conditions.** For the purposes of Changes to the Work, those items described in Paragraph 2.7.2.2, Chapter 2, Article 2 of **Appendix "A"** (General Conditions) shall not be included in the calculation of the increased or decreased Cost of the Work unless the Change directly increases or decreases the cost of a line item therein in a direct and documentable manner and, in that case, only the line item directly increased or decreased shall be included in the calculation. An increase or decrease in the scope of supervisory or staff personnel's responsibility shall not be considered to increase/decrease the cost of line items relating to supervisory or staff personnel.

4.4.4 **Change Order – Disputed.**

(i) If the Construction Manager disputes a change order decision pursuant to Chapter 3, Paragraph 9.7, it must give the Owner its written notice of dispute, including the reasons therefore, within seven (7) calendar days of the disputed decision.

(ii) For change orders directed by a Professional to be performed by the Construction Manager on a time-and-materials basis pursuant to Chapter 3, Subparagraph 9.5.1, the Owner shall pay the Construction Manager the actual reasonable incurred cost and expenses paid to those subcontractors and suppliers performing the Work.

4.5 **Liquidated Damages**. If liquidated damages are assessed pursuant to Chapter 3, Article 17, such damages shall be imposed where the delay to the Substantial or Final Completion date is due to the fault of Construction Manager. For failure to meet Substantial Completion, liquidated damages shall be calculated at the following daily rates:

Two Hundred Fifty Dollars ($250.00)

For failure to meet the Final Completion Date, liquidated damages shall be calculated at **$100.00/day**.

Liquidated damages are the sole remedy for delays caused by Construction Manager.

4.6 **Limitations on Owner's Designated Representative.** The Owner's Designated Representative shall only be permitted to bind the Owner for changes to the Scope of Services that do not exceed the Project specific authority designated to the Owner's Designated Representative during the approval of this Agreement, and/or that does not exceed the parameters set forth in the Owner's Procurement Policies and Procedures, a copy of which shall be made available to the Professional upon request.

ARTICLE 5
SPECIFIC INSURANCE REQUIREMENTS

☐ 5.1 **Owner-Provided Insurance Program.** The Owner shall provide insurance under an Owner-Provided Insurance Program and the Construction Manager is not required to provide insurance. The Construction Manager will communicate and cooperate with the Owner and the Owner's insurance broker, as required.

X 5.2 **Construction Manager-Provided Insurance Program.** The Construction Manager shall provide insurance and the Owner is not required to provide insurance. The Owner will communicate and cooperate with the Construction Manager and the Construction Manager's insurance broker, as required.

5.2.1 The Construction Manager shall purchase and maintain at all times that it is performing services under this Contract from a company or companies authorized to do business in the State of Florida, insurance policies containing the types of coverages and minimum limits of liability as set forth in **Appendix "F"** and **Appendix "G"**, protecting from claims which may arise out of or result from the performance or non-performance of services under this Contract.

ARTICLE 6
PERSONNEL, SUBCONTRACTOR, SUPPLIER AND CONSULTANT CHARTS

6.1 Attached hereto as **Appendix "H"** is the Construction Manager's Personnel Chart for Pre-Construction services, which lists by name, job category, and responsibility, the Construction Manager's primary employees who will perform those services. In addition, during the performance of Pre-Construction Services, the Construction Manager shall provide the Owner with the Construction Manager's Personnel Chart for Construction, as described in Paragraph 2.7.5.11, Chapter 2, Article 2 of **Appendix "A"**. With respect to both such lists, the Construction Manager shall promptly inform the Owner in writing of any proposed replacements, the reasons therefore, and the name(s) and qualification(s) of proposed replacement(s). The Owner shall have the right to reject any proposed replacement for good cause.

6.2 During the performance of Pre-Construction Services, the Construction Manager shall provide the Owner with the Construction Manager's Subcontractors and Suppliers Chart, as described in Paragraph 2.7.5.10, Chapter 2, Article 2 of **Appendix "A"**. The Construction Manager's Subcontractors and Suppliers Chart shall list by name and general Project responsibility each subcontractor and supplier who will be utilized by the Construction Manager to provide goods or services with respect to the Project. The Construction Manager shall promptly inform the Owner in writing of any proposed replacements, the reasons therefore, and the name(s) and qualification(s) of proposed replacement(s). The Owner shall have the right to reject any proposed replacement for good cause.

6.3 The Owner shall prepare and attach as **Appendix "I"** to this Contract the Owner's Consultants Chart which lists by name and general duties each consultant retained by the Owner to provide services with respect to the Project. The Owner reserves the right to engage any other consultants which it may deem necessary or desirable, or to replace any Consultant listed thereon.

ARTICLE 7
CONSTRUCTION SCHEDULE, SPECIFIC BOND REQUIREMENTS, PAYMENT SCHEDULE AND QUALITY CONTROL AND TESTING

7.1 **Time For Performance.**

7.1.1 **Delivery Of Pre-Construction Services.** The Construction Manager shall commence delivery of its Pre-Construction Services on an agreed-upon date reflected in the **Appendix "E"** submitted with the Project-specific scope of services and shall deliver such services in a prompt and expeditious manner so as not to delay the Owner or the Professional(s).

7.1.2 **Commencement Of Construction.** The Construction Manager shall commence construction services on the date set forth **Appendix "M"** and the Construction

Schedule incorporated therein, which date will be confirmed by written Notice to Proceed issued by the Owner (the "Commencement Date").

7.1.3 **Substantial Completion.** The Construction Manager shall accomplish Substantial Completion of the Work on or before a date to be agreed upon and set forth in **Appendix "M"** and shall prosecute the Work pursuant to the Construction Schedule incorporated therein.

7.1.4 **Final Completion.** The Construction Manager shall accomplish Final Completion of the Work on or before the date established in Chapter 1, Paragraph 4.3.2.1 (the "required date of Final Completion").

7.2 **Construction Schedule.** The Construction Manager shall prepare an estimate of construction time as part of Pre-Construction Services as described in Paragraph 2.6, Chapter 2, Article 2 of **Appendix "A"** the actual Construction Schedule shall be incorporated into the Authorization for Construction (**Appendix "M"**).

7.3 **Schedule Of Values.** The Construction Manager shall prepare a preliminary Schedule of Values for the Construction Work as part of Pre-Construction Services as described in Paragraph 2.7.5.5, Chapter 2, Article 2 of **Appendix "A",** with a Schedule of Values to be incorporated into the Authorization for Construction (**Appendix "M"**).

7.4 **Bond Requirements.**

7.4.1 The Construction Manager shall be required to provide payment and performance bonds, each having a penal sum equal to the GMP. The amount of the premiums for such bonds shall be included in the estimate of Owner's Costs provided to the Owner as described in Paragraph 2.7.3, Chapter 2, Article 2 of **Appendix "A"** and the same shall be incorporated into the Authorization for Construction (**Appendix "M"**).

Performance and Payment Bonds shall meet all requirements of Section 255.05, Florida Statutes, for public construction bonds. Additionally, upon execution of this Agreement, all original Performance and Payment bonds will be submitted to the Owner for recording of said bonds. The bonds will be acceptable to the Owner only if the following conditions are met:

(i) The Surety is licensed to do business in the State of Florida;

(ii) The Surety holds a Certificate of Authority authorizing it to write surety bonds in this State;

(iii) The Surety has twice the minimum surplus and capital requirements required by the Florida Insurance Code at the time the invitation to bid is issued;

(iv) The Surety is otherwise in compliance with the Florida Insurance Code;

(v) The Surety holds a currently valid Certificate of Authority issued by the United States Department of Treasury under 31 U.S.C. ss9304;

(vi) The Surety shall have the following minimum qualifications in accordance with the latest edition of A.M. Best's Insurance Guide: Financial Stability **A- to A+**. If the rating of the insurer or surety should fall below this standard, the Construction Manager shall cause the policy to be replaced promptly by an acceptable insurer or surety.

(vii) The Payment and Performance Bonds are in the same or substantially and materially identical form to **Appendix "J"**.

If the Surety for any bond furnished by the Construction Manager is declared bankrupt, becomes insolvent, its right to do business is terminated in the State of Florida, or it ceases to meet the requirements imposed by this Agreement, the Construction Manager shall, within thirty (30) calendar days thereafter, substitute another bond and surety, both of which shall be subject to the Owner's approval.

The Construction Manager shall use the Owner's bond forms attached hereto as Appendix J.

7.4.2 The Construction Manager (□ shall) (X shall not) be required to provide a maintenance bond. If so, the penal sum of the bond shall be _____ ($____, 000) Dollars.

7.4.3 Payment for bonds shall be as follows: *[Select one (1) as appropriate]*

X The cost of required bonds shall be identified in the Schedule of Values as set forth in Paragraph 2.7.5.2, Chapter 2, Article 2 of **Appendix "A"** and the same shall be incorporated into the Authorization for Construction (**Appendix "M"**).

□ Other_____

7.5 **Quality Control And Testing.** *[Select one as appropriate]:*

X The Owner shall select the quality control and testing agencies.

□ The Construction Manager shall select the quality control and testing agencies.

[Select as appropriate]:

X The cost of specified measures and tests required by the Construction Documents shall not be included in the Guaranteed Maximum Price and shall be paid by the Owner to the testing company as Owner's Costs pursuant to Chapter 2, Paragraph 2.7.3 of **Appendix "A".** Construction Manager will not provide threshold inspections.

□ Other _____

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the respective dates under each signature: Owner, through its Board of County Commissioners, signing by and through its Chair, authorized to execute same by Board Action, and by Construction Manager, through its duly authorized representative.

CONSTRUCTION MANAGER

Name: Emmett Sapp Jr
Title: President

This 21st day of August, 2015.

COUNTY

LAKE COUNTY, through its
BOARD OF COUNTY COMMISSIONERS

ATTEST:

Neil Kelly, Clerk of the Board
of County Commissioners
of Lake County, Florida

Jimmy Conner, Chair

This 15th day of Sept, 2015.

Approved as to form and legality:

Sanford A. Minkoff, County Attorney

APPENDIX A

CHAPTER 2
CONSTRUCTION MANAGER'S REQUIRED SERVICES

ARTICLE 1
GENERAL PROJECT SERVICES

1.1 **Essential Services.** The Construction Manager agrees to provide all services required to professionally complete the Work in accordance with the Construction Documents and in an expeditious and economical manner consistent with this Contract for Construction Management and the best interests of the Owner.

1.2 **Compliance With Contractual Requirements.** At all times the Construction Manager is performing services, it shall comply with the requirements set forth in Chapter 1, Chapter 2 and Chapter 3 of this Contract for Construction Management.

1.3 **Cooperative Effort.** The Construction Manager shall, in consultation with the Owner, Professional(s), and the subcontractors, endeavor to develop, implement and maintain a spirit of cooperation, collegiality, and open communication among the parties so that the goals and objectives of each are clearly understood, potential problems are resolved promptly, and, upon completion, the Project is deemed a success by all parties.

1.4 **Additional Or Modified Required Services.** Additional or modified required services, if any, included in General Project Services are listed in Appendix 1 and incorporated herein by reference.

ARTICLE 2
PRE-CONSTRUCTION SERVICES AND DELIVERABLES

2.1. **Project and Program Review and Knowledge.**

2.1.1 Construction Manager shall review the Project documents, including plans and specifications periodically developed and issued by the Professional from time to time and shall possess the knowledge relating thereto necessary for the performance of its services.

2.1.2 Construction Manager shall review the Project Site, including any features or aspects of the Site which may affect the constructability of the Project as designed and shall possess the knowledge relating thereto necessary for the performance of its services.

2.1.3 Construction Manager shall review Owner's program for the intended use of the Project, including, without limitation, the intended purposes and uses of the facility and each element and the scope and extent of use of the Project and shall possess the knowledge relating thereto necessary for the performance of its services.

2.1.4 Construction Manager shall review Owner's Project budget, including, without limitation, the "per square foot" construction cost and shall possess the knowledge relating thereto necessary for the performance of its services.

2.2 **Project Meetings and Consultation.**

2.2.1 Construction Manager shall attend any and all such meetings with representatives of the Owner, the Professional or others as are reasonably requested by Owner throughout Construction Manager's performance of this Contract. At a minimum, Construction Manager shall attend one meeting per week, at such date, time and place as scheduled by Owner during the construction, upon reasonable notice. Other meetings may be scheduled by upon request of the Owner.

2.2.2 Construction Manager shall regularly consult with Owner and the Professional when requested regarding issues relating to the Project and the Project program, including, without limitation:

(i) Site use and improvements;

(ii) The selection of materials, equipment, finishes and color schedules;

(iii) Construction feasibility and issues relating to the constructability of various designs and alternatives;

(iv) Opinion and recommendations regarding the constructability of the Project documents with regard to life safety requirements, Fair Housing Act requirements and requirements of the Americans with Disabilities Act (ADA), including, without limitation, Construction Manager's recommendations for the means and methods required to construct the Project in accordance with these requirements of the Project documents;

(v) Analysis and recommendations for the Project services and systems, including, without limitation, mechanical, electrical, plumbing, and computer, phone and cabling systems;

(vi) Time requirements for procurement, installation and construction completion, with a special emphasis on long-lead time items;

(vii) Strategies for managing competitive bidding for the Project, including generating subcontract and vendor interest in the Project;

(viii) Factors related to construction cost, including estimates of alternative designs or materials; and

(ix) General consultation and advice regarding issues relating to the Project and Project program are included in the Consideration described in Paragraph 4.1.1, Chapter 1. In the event that Owner requests a written analysis or a substantial and detailed analysis in relation to the requested consultation, Construction Manager shall request that a change order be issued prior to incurring any time or costs in excess of the Compensation described herein.

2.3 **Preliminary Design Review.**

2.3.1 The Construction Manager shall actively and jointly participate with the Owner and the Professional(s) in formation of the final Project design.

2.3.2 The Professional is required, in accordance with the schedule requirements, to provide preliminary design drawings. The Construction Manager shall promptly and in accordance with the schedule requirements:

(i) Familiarize itself with the preliminary design drawings;

(ii) Analyze and evaluate the constructability of the preliminary design drawings;

(iii) Analyze and evaluate the preliminary design drawings in regard to the completeness of intended bid categories, conflicts or overlaps in the divisions of the Work, design details affecting construction, value engineering, identification of long-lead materials affecting the Construction Schedule, availability of labor and other factors affecting construction; and

(iv) Estimate total project cost using the sixteen (16) division schedule of values.

2.3.3 The Construction Manager and the Professional(s) shall jointly schedule and attend regular meetings with the Owner to review and evaluate the preliminary design drawings.

2.3.4 The Construction Manager shall, in accordance with schedule requirements, notify the designated Professional in writing and assist the Professional(s) with the resolution of all problems, conflicts, defects or deficiencies identified during the review and evaluation of the preliminary design drawings.

2.3.5 Upon completion of the preliminary design drawings, the Professional is required, in accordance with the schedule requirements, to prepare and submit a preliminary estimate of Total Project Construction Cost broken down by line item into major construction disciplines and systems and prepare a Critical Path Method (CPM) Schedule from Notice to Proceed to Final Completion.

2.3.6 The Construction Manager shall, in accordance with schedule requirements, review the preliminary estimate of Total Project Construction Cost and promptly inform the Owner and Professional of recommended adjustments, if any.

2.4 **Construction Documents Review.**

2.4.1 The Professional is required, in accordance with the schedule requirements, to provide Construction Documents and other information.

2.4.2 The Construction Manager shall, in accordance with schedule requirements, review applicable Construction Schedule(s), the estimate of Total Project Construction Cost, the cost of local utilities, fees for permits and licenses, any

modifications necessitated by local conditions, other information necessary for a full understanding of the Project, and the Construction Documents. The Construction Manager shall:

(i) Examine the Construction Documents for clarity, adequacy of detail, consistency, accuracy and completeness;

(ii) Identify all discovered conflicts, omissions or overlaps in the proposed divisions of the Work, evaluate the completeness of intended bid categories, and identify unusual design details affecting construction cost and schedules;

(iii) Apply established value engineering principles and practices to reduce the cost of the Project;

(iv) Identify factors with the potential to impact the Construction Schedule such as materials with long lead time, the unavailability of required labor, and other factors and make suggestions for acceptable alternatives;

(v) Evaluate and make suggestions to optimize Site utilization;

(vi) Recommend proposed modifications or alternatives to the Construction Documents based on evaluation and review;

(vii) Notify the Owner and the Professional(s) in writing of any variances between the Construction Documents and applicable laws, statutes, building codes, rules and regulations of which it is aware; and

(viii) Notify the Owner and the Professional(s) in writing of all problems, conflicts, defects or deficiencies in the Construction Documents of which it is aware.

2.4.3 The Construction Manager shall, in accordance with schedule requirements, assist the Professional with the resolution of all problems, conflicts, defects or deficiencies identified during the review and evaluation of the Construction Documents.

2.4.4 Upon completion of the review and examination of the Construction Documents, the Professional is required, in accordance with schedule requirements, to prepare and submit a final estimate of Total Project Construction Cost.

2.4.5 Upon completion of the examination of the review Construction Documents, the Construction Manager, in accordance with schedule requirements, shall prepare and submit a final estimate of Total Project Construction Cost.

2.4.6 If the final estimates of Total Project Construction Cost by the Construction Manager and the Professional differ materially, the Construction Manager and Professional shall meet promptly to reconcile the discrepancies between their estimates so as to permit submission to the Owner of a final estimate of Total Project Construction Cost on which both the Professional and the Construction

Manager agree, or where the parties cannot agree, identify to the Owner the specific portions that differ.

2.4.7 In performing the Preconstruction Services, Construction Manager is not assuming responsibilities of the Professional(s) for design of the Project. The standard of care for Construction Manager in performing these services is that of an experienced and skilled General Contractor or Construction Manager, not that of a licensed engineer or other professional.

2.5 Value Engineering

2.5.1 Throughout the development of the Project documents and contemporaneously with the development of the estimates of Total Project Construction Cost, Construction Manager shall identify elements in the Project documents that are outside of the parameters established by Owner's Project budget. All elements of the Project shall be considered including, without limitation, structural, mechanical, electrical, plumbing, finish and exterior elements.

2.5.2 If Construction Manager identifies an element that exceeds the budget for that element or which results in a Total Project Construction Cost in excess of Owner's Project budget, Construction Manager shall report each such element to Owner. Construction Manager shall thereafter research and identify alternative materials and systems to reduce the cost of each such subject element. If the alternative materials and systems are unacceptable to Owner, Construction Manager shall research and identify other elements in the Project that can be reduced or modified in order to offset the over-budget elements.

2.5.3 Construction Manager shall otherwise participate in the "value engineering" of the Project, as that term is commonly understood in the construction industry, including, without limitation, reviewing the Project documents to identify opportunities to reduce the cost of Project elements and to otherwise satisfy Owner's Project budget without materially modifying Owner's program for the Project.

2.5.4 Construction Manager shall distribute periodic reports of the value engineering process to Owner, including, without limitation, an updated Project estimate which incorporates accepted value engineering revisions.

2.5.5 The described process shall be complete upon Owner's consideration of all alternative recommended elements arising out of Construction Manager's review of the 90% construction documents.

2.6 Planning and Scheduling.

2.6.1 **Construction Schedule.** The Construction Manager understands and acknowledges the Owner's intent that the Project will be complete by the Date of Substantial Completion. The Construction Manager shall timely prepare and submit the Construction Schedule for the Work for the Owner's review and approval. The Construction Schedule shall complement, and shall not conflict with, the Design Schedule.

2.6.2 The Construction Manager shall establish and timely submit for Owner review:

(i) Project cost control procedures;

(ii) Project reporting procedures;

(iii) Project Manual;

(iv) Quality Management Program;

(v) MBE/WBE participation plan, if required by the Owner; and

(vi) Staffing Plan for the Construction period.

2.6.3 The Construction Schedule shall strictly conform in all respects to the requirements for the Project Schedule set forth in Article 16, Chapter 3 of **Appendix "B"**. The start date of the Project Schedule shall be consistent with the date upon which Construction Manager anticipates that a Notice to Proceed may reasonably be issued, given the conditions and progress of the development of the Project documents at the time of the issuance of the schedule. Construction Manager shall provide the schedule in hard copy format and in the form of an electronic data file in a format requested by the Owner.

2.6.4 Forty-five (45) days after the delivery of 100% Construction Documents, the Construction Manager shall deliver to the Owner the Project Schedule. This Project Schedule shall be considered the Construction Manager's proposed Project Schedule to construct the Project pursuant to the 100% Project documents and shall be attached to and incorporated as **Exhibit "2" to Appendix "M"**.

2.6.5 With the Project Schedule, the Construction Manager shall provide a list of the primary executive, management, supervisory and scheduling personnel which it will assign to the Work in order to complete the Work pursuant to the schedule. The Construction Manager shall attach to the list each such person's job description, the length of time that they have worked for the Construction Manager, the title(s) which they have held during their employment with the Construction Manager and other information pertinent to the Owner's evaluation of the team members including, without limitation, their education, experience, certifications and training. The list of the personnel described shall be attached to and incorporated as **Exhibit "3" to Appendix "M"**.

2.7 **Guaranteed Maximum Price Proposal.**

2.7.1 The Construction Manager shall develop the Construction Price for the work ("Construction Price"). In making this determination, Costs shall be allocated consistent with GMP. All other costs shall be allocated as provided herein.

2.7.2 The Construction Price shall be equal to the sum of:

2.7.2.1 The Cost of the Work. The Cost of the Work shall be the allowable costs incurred by the Construction Manager in performing the Work.

(i) Allowable Costs. Allowable Costs are comprised of:

(a) Subcontractor Costs - Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts.

(b) Costs of Materials and Equipment incorporated into the Completed Construction - Costs, including transportation, of materials and equipment incorporated or to be incorporated in the completed construction.

(c) Costs of General Conditions as defined by Paragraph 2.7.2.2

(ii) Disallowed Costs. Costs which shall not be the Cost of the Work shall be:

(a) Any Costs not particularly described in Paragraph 2.7.2.1(i), above;

(b) Costs for which the Construction Manager is compensated by the Management Fee as described in Paragraph 2.7.2.3 below;

(d) Overhead and general expenses, including, without limitation, home office overhead and expenses (included within Management Fee);

(e) The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work (included within Management Fee);

(f) Rental costs of machinery and equipment (included within General Conditions);

(g) Costs due to the negligence of the Construction Manager or to the failure of the Construction Manager to fulfill a specific responsibility to the Owner set forth in this Agreement (included within General Conditions);

(h) Costs incurred in the performance of Preconstruction Services;

(i) Costs which would cause the Guaranteed Maximum Price to be exceeded;

(j) Costs associated with all insurance and bonds, including without limitation, performance and payment bonds

(included within Owner's costs, General Conditions or Management Fee);

(k) Costs associated with permits, insurance and testing (included within Owner's costs or General Conditions); and

(l) Costs associated with licenses (included within subcontractors costs).

2.7.2.2 The General Conditions. General Conditions shall be limited to the following: security costs, temporary facilities (temporary office, water, heat, power, sanitary facilities, telephones), trash and debris control and removal costs, insurance, bonds, specialty equipment rental, storage fees, and permits. The Owner shall have the right to audit the General Conditions, for the limited purpose of establishing that the fee includes the items listed herein.

2.7.2.3 The Management Fee. The Construction Manager agrees that the fee which the Owner must pay the Construction Manager for the following described items shall not exceed the percentage of the Cost of the Work as set forth in **Appendix "A"**. However, the Owner shall, at Owner's sole discretion, have the ability to convert this Cost to a fixed sum at the time the Guaranteed Maximum Price Proposal is accepted by the Owner, which conversion shall be documented on Exhibit "M". Further, the Owner shall have the right to audit the Management Fee. Management Fee shall include the Preconstruction Services Fee and all costs, including overhead and profit, associated with the construction of the project excluding General Conditions which will be itemized and documented in the GMP. The items which are included in this provision are as follows but not limited to:

(i) The Construction Manager's provision of management services for the Project pursuant to Articles 1, 3 and 4, Chapter 2 of **Appendix "A"**;

(ii) Direct costs incurred with the exception of those specifically enumerated compensable as General Conditions Cost, Cost of the Work, cost of self-performed Work, or a Subcontractor or Supplier Cost;

(iii) The cost of Construction Manager's home or branch office employees or consultants not at the Project Site (except as set forth in the GMP Proposal);

(iv) Non-field office (home and branch office) operational expenses such as telegrams, telephone service and long-distance and zone telephone charges, postage, office supplies, expressage, and other similar expenses;

(v) Data-processing costs indirectly related to the Work, including hardware, software, and CAD costs;

(vi) Cost of all non-project specific insurance (i.e. any insurances for which the GMP Proposal does not provide for payment to Construction Manager for insurance);

(vii) All general operating expenses;

(viii) All capital expenses, including any interest;

(ix) Any costs which would cause the Construction Price to exceed the GMP;

(x) Intentionally deleted;

(xi) Any costs or expenses incurred by the Construction Manager, not included in the General Conditions Cost, or Cost of the Work, incurred by the Construction Manager to provide management services necessary to complete the Project in an expeditious and economical manner consistent with this Contract for Construction Management and the best interests of the Owner;

(xxii) Related taxes and fees on the above items;

(xxiii) That portion of the reasonable expenses of the Construction Manager's personnel incurred while traveling in discharge of duties directly connected with the Work;

(xxiv) Expenses incurred in accordance with the Construction Manager's standard personnel policy for relocation and temporary living allowances of personnel required for the Work;

(xxv) Wages, salaries, bonuses and incentive compensation, of the Construction Manager's supervisory, technical, administrative and clerical personnel engaged in supervision and management of the Work on or off the Project Site, including all company overhead and expenses;

(xvi) Cost of fringe benefits, contributions, assessments and taxes, including for example such items as Unemployment Compensation and Social Security, to the extent that such cost is required by law and is based on the compensation paid to the Construction Manager's employees referred to above; and

(xvii) Construction staff, staffing and all related costs.

2.7.3 Owners Costs. The Construction Manager shall prepare an itemized estimate of the costs to be incurred by the Owner, if any, which will be required to be paid by the Owner for the Substantial Completion of the Work (hereinafter, the "Owner's Costs"). These costs shall be identified in the GMP as Owners Costs and may be paid directly by Owner, or be paid by Construction Manager and billed to

Owner with no markup. The Construction Manager shall itemize each of these categories of costs for the Owner's review.

2.7.4 Forty-five (45) days after the delivery of 100% Construction Documents, the Construction Manager shall deliver to the Owner a Guaranteed Maximum Price (hereinafter "GMP"). The GMP shall be a bound document comprised of an itemized Construction Price (which by definition shall not include the Owner's Costs). This Construction Price shall be the Construction Manager's proposal to construct the Project pursuant to the 100% Project documents for a Guaranteed Maximum Price (herein the "GMP"). The Construction Manager shall not withdraw this Guaranteed Maximum Price Proposal for ninety (90) days following submission to the Owner.

2.7.5 Construction Manager shall include with the GMP the following items:

2.7.5.1 Cover Sheet including project title and County project number.

2.7.5.2 Summary sheet of GMP Proposal. The sheet shall include subcontractor bids, allowances, contingencies, bonds, insurance, conditions, and exclusions. This sheet shall also contain contract time, construction start date, date of substantial completion, date of final completion, critical path schedule, and proposed work hours.

2.7.5.3 Detailed summary of general conditions.

2.7.5.4 A list of allowances and data to support that its basis is reasonable and consistent with Owner's program.

2.7.5.5 A detail and itemization of the GMP, including a Schedule of Values and a Schedule of Unit Prices for each structure incorporated into the GMP.

2.7.5.6 A description of any qualifications or assumptions incorporated into the development of the GMP.

2.7.5.7 A statement of the date of Substantial Completion, which statement shall be consistent with the date of Substantial Completion provided in Construction Manager's Final Project Schedule as described elsewhere herein.

2.7.5.8 List of all solicited contractors.

2.7.5.9 Subcontractor bid sheets with proposed selected contractors highlighted.

2.7.5.10 A Construction Manager's Subcontractors and Suppliers Chart. The Construction Manager's Subcontractors and Suppliers Chart shall list by name and general Project responsibility each subcontractor and supplier who will be utilized by the Construction Manager to provide goods or services with respect to the Project.

Prior to the execution of **Appendix "M"**, the Owner shall have the right to reject any proposed Subcontractor or Supplier. In that event, the Construction Manager may adjust the GMP for any resulting impact to the Cost of the Work. During the course of the Work, the Construction Manager; shall promptly inform the Owner in writing of any proposed replacements, the reasons therefore, and the name(s) and qualification(s) of proposed replacement(s). The Owner shall have the right to reject any proposed replacement for good cause.

2.7.5.11 A Construction Manager's Personnel Chart for Construction. The Construction Manager's Personnel Chart for Construction lists by name, job category, and responsibility, the Construction Manager's primary employees who will perform those services. Prior to the execution of **Appendix "M"**, the Owner shall have the right to reject any proposed employee. In that event, the Construction Manager may adjust the GMP for any resulting impact to the Cost of the Work. During the course of the Work, the Construction Manager; shall promptly inform the Owner in writing of any proposed replacements, the reasons therefore, and the name(s) and qualification(s) of proposed replacement(s). The Owner shall have the right to reject any proposed replacement for good cause.

2.7.5.12 Plans, drawings, and specifications specific to the GMP.

2.7.5.13 Any supporting documentation referenced in the GMP.

2.8. **Execution of Appendix "M".**

2.8.1 If the GMP proposal is not accepted by the Owner, the Owner shall promptly notify the Construction Manager in writing. Within fourteen (14) calendar days of such notification, the Owner, Professional(s) and Construction Manager shall meet to discuss and resolve any differences, inconsistencies, or misunderstandings and to negotiate recommended adjustments to the Work and/or to the GMP. If the parties are unable or unwilling to agree on a negotiated variant, the Owner shall hire an independent cost estimator to verify the GMP amount. If the independent estimate displays that the GMP should be within five percent (5%) of the project budget, the County may terminate this Contract at no cost; with the exception of paying the General Contractor the required Preconstruction Services Fee, to the County. If the independent estimate displays that the GMP appropriately exceeds the project budget by more than five percent (5%), then the Professional shall revise the plans to allow the GMP to be within project budget.

2.8.2 The Owner may, at its sole discretion and based upon its sole judgment: (i) indicate its acceptance of a GMP proposal; (ii) reject a GMP proposal; (iii) terminate the Project; or (iv) proceed to construct the Project using a party or parties other than the Construction Manager.

2.8.3 If the Owner rejects a GMP proposal within budget, neither party shall have any

further obligation pursuant to this Contract for Construction Management, except the duty to pay for preconstruction services.

2.8.4 If the Owner accepts the GMP the GMP provided by the Construction Manager pursuant to Paragraph 2.7.4 above shall be inserted into **Appendix "M"**. The deliverables described in this Article 2 shall be incorporated into **Appendix "M"** as follows.

(i) **Exhibit "1" to Appendix "M"** shall consist of the Drawings, Specifications and addenda provided by the Professional upon which the Construction Manager based the GMP.

(ii) **Exhibit "2" to Appendix "M"** shall consist of the Construction Schedule provided by the Construction Manager pursuant to Paragraph 2.6 above.

(iii) **Exhibit "3" to Appendix "M"** shall consist of the Construction Manager's Construction Project Team provided by the Construction Manager pursuant to Paragraph 2.7.5.11 above.

(iv) **Exhibit "4" to Appendix "M"** shall consist of the Schedule of Values provided by the Construction Manager pursuant to Paragraph 2.7.5.5 above.

(v) **Exhibit "5" to Appendix "M"** shall consist of the Schedule of Unit Prices provided by the Construction Manager pursuant to Paragraph 2.7.5.5 above.

(vi) **Exhibit "6" to Appendix "M"** shall consist of the Construction Manager's Subcontractors and Suppliers Chart provided by the Construction Manager pursuant to Paragraph 2.7.5.10 above.

(vii) **Exhibit 7 to Appendix "M"** shall consist of the Qualifications and Assumptions as required by Paragraph 2.7.5.6 above.

2.8.5 If the Owner accepts the GMP, the Construction Manager shall execute **Appendix "M"** inclusive of the incorporation of the deliverables as described above. The Construction Manager agrees that there is sufficient consideration in the Agreement for the Construction Manager's obligation to execute **Appendix "M"** as provided herein.

2.8.6 The Owner's determination of whether or not to accept the Construction Manager's deliverables hereunder and whether or not to execute **Appendix "M"** is in the sole, absolute and exclusive discretion of the Owner. In determining whether or not to accept the Construction Manager's Guaranteed Maximum Price or other terms of **Appendix "M"**, and whether or not to execute **Appendix "M"**, the Owner may consider any and all criteria, which, in its sole, absolute and exclusive discretion, it undertakes to consider. The deliverables produced pursuant to Article 2 hereof are the property of the Owner and can be used by the Owner for any purpose, including, without limitation, the incorporation of the same into future bidding or proposal documents for the Project. Nothing herein shall be construed to create any obligation upon Owner with respect to the future

of the Project or the use of any documents or plans developed for the Project. Any such decisions, including, without limitation, any decision to construct or not construct the proposed Project, to bid or negotiate the Project in any particular manner, to engage or not engage the Construction Manager in any capacity with respect to the construction of the Project shall be in Owner's sole, absolute and exclusive discretion.

2.8.7 The Owner shall thereafter issue a written notice to the Construction Manager ("Notice To Proceed") establishing the date construction is to commence (the "Commencement Date"). The Construction Manager shall not expend any monies for construction prior to receipt of such Notice to Proceed without the written approval of the Owner.

2.9 **Price Guarantees.**

2.9.1. Upon execution of **Appendix "M"**, the Construction Manager guarantees that the Construction Price shall not exceed the GMP, as adjusted hereunder for changes. All costs or expenses that would cause the Construction Price to exceed the GMP shall be borne by the Construction Manager unless adjusted by change order. Actual cost of the work shall be documented by the Construction Manager as compared to the Guaranteed Maximum Price agreement. This information shall be reported quarterly to the Owner. Upon completion of the work, if the total cost of the work is less than the final GMP (taking into account any adjustments made during the term of the Agreement), the Owner shall be entitled to 100% of savings.

2.9.2 Upon execution of **Appendix "M"**, the Construction Manager guarantees that the General Conditions Cost shall not exceed the General Conditions and that all costs or expenses that would cause the General Conditions Cost to exceed such amount shall be borne by the Construction Manager unless adjusted by change order.

2.10 **Other Provisions relating to Pre-Construction Services**

2.10.1 Construction Manager will exercise its best skill and judgment in discharging its responsibilities as a pre-construction consultant throughout the performance of its obligations under this Agreement.

2.10.2 Construction Manager agrees that its scope hereunder includes generating subcontract and vendor interest in the Project, including, without limitation, interest in providing prices for the Project and performing the work.

2.10.3 Construction Manager represents to Owner that it has the experience and skill to perform the Work required to be performed under this Agreement; that it will perform the Work in accordance with the terms of this Agreement and pursuant to all applicable federal, state, county and city laws, statutes, regulations, codes, ordinances and orders and with those of any other governing bodies having jurisdiction over the Project and pursuant to applicable industry standards.

2.10.4 If during the term of this Agreement, Owner directs any portion or all of Construction Manager's Work, or if Owner requests that Construction Manager

perform a Scope Change, that Construction Manager, in its opinion, believes is improper or made in error, it will notify Owner promptly in writing of its position.

2.10.5 Each of the activities above shall be performed only when authorized by Owner and at Owner's request. Construction Manager shall not undertake to direct or instruct the Professional or other consultants to Owner without the express written authorization from Owner for any such direction or instruction.

2.10.6 Construction Manager shall not contract with any subconsultants or other independent Construction Managers to perform any of the services under this Agreement without the prior written approval of Owner. Owner reserves the right to review and approve/reject any and all personnel who will perform work under this Agreement.

2.10.7 Owner may from time to time request that Construction Manager arrange for the services of subconsultants or third parties to assist Construction Manager in its Work. In that event, Construction Manager shall request, and Owner shall provide, written authorization for the retention of the services of others. All costs to Construction Manager for those requested services will be paid by Owner, without markup. In no event shall Construction Manager employ subconsultants or third parties pursuant to this provision without the prior written authorization of Owner.

2.10.8 The deliverables described in this Article, shall be incorporated into the **Appendix "M"**, as described in Paragraph 2.8.4 hereof. Without limitation, the determination of whether or not to accept the Construction Manager's deliverables hereunder, which, if any, of those deliverables to incorporate into **Appendix "M"** and whether or not to execute **Appendix "M"** is in the sole, absolute and exclusive discretion of the Owner. In determining whether or not to accept the Construction Manager's Guaranteed Maximum Price or other terms of **Appendix "M"** and whether or not to execute **Appendix "M"** the Owner may consider any and all criteria, which, in its sole, absolute and exclusive discretion, it undertakes to consider.

2.10.9 Compensation for the Services and Work described in this Article 2, shall be paid for as set forth in Paragraph 4.1.1, Chapter 1, which such Compensation is acknowledged by Construction Manager as sufficient consideration for the services, obligations and liabilities described herein. Prior to the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal and issuance of a Notice to Proceed, the Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work, except as the Owner may specifically authorize in writing.

ARTICLE 3
CONSTRUCTION SERVICES

3.1 **Bidding and Negotiation.**

3.1.1 With the Professional's assistance, the Construction Manager shall prepare and assemble document packets for use in bidding or negotiating the Subcontracts Cost. Any and all costs for plans, specifications, or other items needed to obtain such bids/proposals shall be the responsibility of the Construction Manager. These costs shall be considered part of the Management Fee.

3.1.2 The Construction Manager shall develop subcontractor and supplier interest for each division of the Work and shall pre-qualify proposed subcontractors using a pre-qualification form approved by the Owner and Professional.

3.1.3 The Construction Manager shall:

(i) Submit to the Professional the proposed list of subcontractors and review and evaluate information received from the Professional regarding proposed subcontractors; and

(ii) Evaluate the technical competence of all pre-qualified subcontractors.

3.1.4 The Construction Manager shall negotiate or competitively bid each trade category only by invitation to a minimum of five (5) pre-qualified subcontractors. In the event a subcontractor does not meet a pre-qualification requirement, the Construction Manager in its best judgment may, with the Owner's prior approval, still allow the subcontractor to bid. The solicitation of the five (5) trade subcontractors shall be demonstrated to the Owner in writing displaying that three (3) of the formal solicitations are to Lake County based subcontractors. Lake County based subcontractor is defined as a subcontractor licensed to do business in Lake County with a business headquarters that has a physical address residing in Lake County. Should an item or trade not have the availability to provide five (5) solicitations, in which three (3) of the five (5) are local solicitations, the Construction Manager shall provide the Owner an exclusion letter stating the lack of competition. This letter shall be provided to the Lake County Department of Fiscal & Administrative Services Procurement Services Division at least five (5) business days prior to the close of bidding.

3.1.5 This section intentionally deleted.

3.1.6 The Construction Manager shall notify the County in writing in advance of the all bid related meetings to include pre-bid meetings and bid/proposal openings. The Construction Manager shall conduct private bid openings in the presence of the Owner's Representative. The Construction Manager shall communicate bid results to the Owner and Professional, and to no other persons or entities.

3.1.7 The Construction Manager shall, for each subcontract, trade or bid division:

(i) Determine the final bid amounts,

(ii) Develop with the participation of the Lake County Department of Fiscal & Administrative Services Procurement Services Division the selection criteria for determining the bid/proposal that provides the best value to the Owner by the Construction Manager

(iii) Prepare and furnish to the Owner a bid tabulation which includes by subcontract, trade and/or bid division, the applicable final GMP estimate and the related final bid amount;

(iv) Identify to the Owner in writing the subcontractors to which the Construction Manager recommends award of subcontracts; and

(v) Award and enter into a subcontract between itself and each subcontractor which it has recommended pursuant to Paragraph 3.1.7 (iv) unless otherwise notified by the Owner. If the GMP has been set before bidding, then Construction Manager will receive an equitable adjustment to the GMP and schedule if the Owner for good cause rejects a proposed subcontractor or supplier and Construction Manager must therefore contract with a more costly subcontractor or supplier.

3.2 **Construction Supervision.**

3.2.1 Commencing with the award of the first subcontract and terminating on the Date of Final Completion, the Construction Manager shall provide the services described in Paragraphs 3.2.1 through 3.2.7.

3.2.2 The Construction Manager shall, as the Owner's construction representative during construction, advise and consult with the Owner and the Professional(s), and provide administration of the Construction Documents. The Construction Manager shall hold weekly progress meetings with the Owner, Professional(s) and trade contractors to provide such advisement, coordination, and consultation.

3.2.3 The Construction Manager shall supervise and direct the Work at the Site. The Construction Manager shall, at a minimum, staff the Project Site with personnel who shall:

(i) Supervise and coordinate the Construction Manager's personnel and act as its primary liaison with the Owner and the Owner's Consultant(s);

(ii) Coordinate trade contractors and suppliers, and supervise Site construction management services;

(iii) Be familiar with all trade divisions and trade contractors' scopes of Work, all applicable building codes, the Construction Documents, and this Contract for Construction Management;

(iv) Check and review shop drawings and materials delivered to the Site, regularly review the Work to determine its compliance with the Construction Documents and this Contract for Construction Management,

and forward those documents to, and periodically confer with, the appropriate Owner's consultant(s) to assure acceptable levels of quality; and

(v) Prepare and maintain Project records, process documents, and staff the Site field office.

3.2.4 The Construction Manager shall promptly reject any Work which does not conform to the Construction Documents or which it observes and understands does not to comply with any applicable law, statute, building code, rule or regulation of any public authority or agency of which it is aware. The Construction Manager shall immediately notify the Professional(s) and the Owner in writing when it has rejected any Work.

3.2.5 The Construction Manager shall comply with and cause its subcontractors and suppliers to comply with the Project Construction Schedule and applicable sub-schedules. The Construction Manager shall obtain and review schedules from subcontractors and suppliers, coordinate sub-schedules with the Construction Schedule, and enforce compliance with the all applicable schedules to insure timely completion of the Work. If at any time a Project is delayed, the Construction Manager shall immediately notify the Owner of the probable cause(s) and possible alternatives, and make recommendations to minimize expense to the Owner.

3.2.6 The Professional will visit the Project Site at intervals appropriate to the stage of construction and with sufficient frequency to familiarize itself with the progress and quality of the Work and to inspect the Work. The Construction Manager shall request that the Professional visit the Site at additional times as the Construction Manager deems necessary to attend meetings, inspect the Work, and render interpretations regarding the Work necessary for the proper execution of the Work. The Professional's interpretations and decisions shall be final regarding the Construction Documents and the Work.

3.3 **Construction Manager's On-Site Facilities.** Commencing at the Date of Commencement and terminating on the Date of Final Completion, the Construction Manager shall provide a Site field office and toilet facilities at the Project Site.

3.3.1 The field office facilities shall be large enough to accommodate required meetings and shall include office furnishings and equipment such as desks, telephones, computers, copiers and other similar office equipment.

3.3.2 The Construction Manager shall maintain in the Site field office, on a current basis, all necessary Construction Documents, schedules, shop drawings, product data, samples, purchase orders, maintenance manuals and instructions, daily logs, correspondence, memoranda, and all other Project-related documents.

3.3.3 The Construction Manager shall provide temporary toilets at the Site for all workers for the duration of the construction period.

3.4 **Additional Or Modified Required Services.** Additional or modified required services, if any, included in Construction Service are listed in **Appendix "M"** and incorporated herein by reference.

ARTICLE 4
EXTRA SERVICES

4.1 **Initiation Of Extra Services.** The Construction Manager shall provide such Extra Services as are initiated and authorized in writing by the Owner prior to performance. The services described in this Article 4 are not included in Required Services unless identified as an "Additional Required Service or Modified Required Service".

4.2 **Definition Of Extra Services.** Extra services include, but are not limited to:

4.2.1 Services performed after the Date of Final Completion, except when required as Basic Services.

4.2.2 Services for preparation for and attendance at deposition, discovery or court or other dispute resolution proceedings on behalf of the Owner, except when such proceedings involve issues of fault, neglect or alleged liability of the Construction Manager, or its agents, employees, or consultants.

4.2.3 Other services not included in Required Services mutually agreed to by the Owner and the Construction Manager in writing.

4.3 **Payment For Extra Services.** Payment of the Construction Manager for Extra Services shall be in accordance with the agreement of the parties when such services are requested.

APPENDIX B

CHAPTER 3
GENERAL TERMS AND CONDITIONS

ARTICLE 1
CONTRACT DOCUMENTS

1.1 **Additional Sets Of Documents.** Any additional copies of the Construction Documents required by the Construction Manager for execution of the Work shall be made by the Construction Manager from the reproducible set(s) furnished by the Owner at no cost to the Owner

1.2 **Intentionally Deleted.**

1.3 **Electronic Media.** Unless otherwise specified in this Contract For Construction Management, the Construction Manager may request that the Construction Documents required by the Construction Manager for the Work be furnished to it on electronic media. To the extent that such documents are available on electronic media, the Construction Manager will be furnished one set of the requested information on electronic media. Any additional electronic copies of Construction Documents required by the Construction Manager for execution of the Work shall be made by the Construction Manager

1.4 **Minimum Requirements.** In every case, requirements established by the Construction Documents shall be considered as the standard which will be accepted.

1.5 **Owner Disclaimer Of Warranty.** The Owner has requested that its Professional(s) prepare documents for the Project, including the plans and specifications for the Project, which are to be complete, accurate, coordinated, and adequate for bidding, negotiating and constructing the Work. The Construction Manager will use its best skill and provide Preconstruction Services as noted in this and other Chapters, however, the Construction Manager makes no representation or warranty of any nature whatsoever to the Owner regarding the completed Construction Documents. The Construction Manager hereby acknowledges and represents that it has not relied, and does not and will not rely, upon any other representations or warranties by the Owner concerning such documents, and no such representations or warranties have been or are hereby made. Construction Manager will review the Construction Documents and identify in writing all errors or omissions that it discovers, before establishing the GMP. The GMP Proposal will identify the assumptions or provide exclusions or clarifications on all identified errors or omissions. Notwithstanding the foregoing in this Paragraph 1.5, Owner agrees that Construction Manager's GMP otherwise does not include costs for errors or omissions in the Construction Documents provided by Owner, and that, subject to the limitations in Paragraph 2.1 of this Chapter 3, Construction Manager will be entitled to a change order for additional costs and/or time incurred as a result of any such errors or omissions.

1.6 **Conflicts In Documents.** In the event of any conflict, discrepancy, or inconsistency among any of the documents which make up this Agreement, the following shall control:

1.6.1 As between figures given on plans and scaled measurements, the figures shall govern;

1.6.2 As between large-scale plans and small-scale plans, the large-scale plans shall govern;

1.6.3 As between plans and specifications, the requirements of the specifications shall govern;

1.6.4 As among or between **Appendix "M"**, this document and the plans, specifications, general conditions or general requirements, **Appendix "M"** governs, then this Agreement with its attachments shall govern.

1.6.5 Provided, however, that among the plans and specifications provided by the Owner, the more stringent requirement, as determined by the Owner, shall take precedence over less stringent requirements regardless of which document the more stringent requirement resides.

1.7 **Shop Drawings and Submittals.** Shop drawings and other submittals from the Construction Manager or its subcontractors and suppliers do not constitute a part of this Contract for Construction Management, but are Construction Documents after approval by the Owner or Professional.

1.8 **Contract Changes.** The Construction Manager understands and agrees that this Contract for Construction Management cannot be changed except as provided herein. No act, omission or course of dealing by the parties shall alter the requirement that modifications of this Contract for Construction Management can be accomplished only by written documents signed by the parties.

ARTICLE 2
CONSTRUCTION MANAGER'S REVIEWS AND EVALUATIONS

2.1 **Sufficiency Of Construction Documents And Drawings.** The Construction Manager acknowledges its continuing duty to review and evaluate the Construction Documents during the performance of its services and shall immediately notify the Owner and the Professional(s) about any (i) problems, conflicts, defects, deficiencies, inconsistencies or omissions it discovers in or between the Construction Documents; and (ii) variances it discovers between the Construction Documents and applicable laws, statutes, building codes, rules and regulations.

2.1.1 If the Construction Manager performs any Work which it knows or reasonably should have known involves (i) a recognized problem, conflict, defect, deficiency, inconsistency or omission in the Construction Documents; or (ii) a variance between the Construction Documents and requirements of applicable laws, statutes, building codes, rules and regulations (but only if Construction Manager knew of such variance) without notifying the Professional(s) and prior to receiving written authorization from the appropriate Professional(s) to proceed, the Construction Manager shall be responsible for the consequences of such performance.

2.1.2 Drawings are generally drawn to scale; however, the figured dimensions or notes thereon shall govern. Before ordering any materials or doing any Work, the Construction Manager and subcontractors shall make reasonable efforts, consistent with the schedule, to verify all measurements at the Site and shall be

responsible for the correctness of same. Discrepancies discovered shall be reported in writing to the Professional prior to proceeding with the Work. No extra charge or compensation will be entertained due to differences between actual measurements and dimensions indicated on drawings, if such differences do not result in a change in the scope of Work or if the Professional failed to receive written notice from Construction Manager, despite knowledge of the discrepancy, before the Work was performed.

2.1.3 If the Construction Manager believes that additional time or cost is involved because of clarifications or instructions issued by the Professional as a result of the Construction Manager's discovery of a conflict in the Construction Documents, the Construction Manager shall make claims as provided for in Section 25.8, Chapter 3. If the Construction Manager fails to comply with Paragraph 2.1.1 or 2.1.2, Chapter 3, the Construction Manager shall pay such costs and damages to the Owner as would have been avoided if the Construction Manager had complied. The Construction Manager shall not be liable to the Owner or Professional for damages resulting from errors, inconsistencies or omissions in the Construction Documents or for differences between field measurements or conditions and the Construction Documents unless the Construction Manager recognized such error, inconsistency, omission or difference and knowingly failed to report it to the Professional.

2.2 **Sufficiency of Site.** Prior to signing this Contract for Construction Management, the Construction Manager has:

2.2.1 Visited the Site and become familiar with observable local conditions under which the Project is to be constructed and operated;

2.2.2 Reviewed and familiarized itself with the Site survey and any existing structures on the Site, and reviewed all other information provided by Owner and necessary for a full understanding of the Work. Owner will provide all hazmat and subsurface reports and test results, and all as-builts for existing facilities, utilities and infrastructure;

2.2.3 Without limitation, the Construction Manager shall ascertain the location of all existing utilities prior to beginning new and alteration work shall verify locations of utility lines shown on drawings, and shall locate and mark each utility prior to start of construction. Any damage caused to any utility as a result of work on this Project shall be promptly repaired or replaced at the sole expense of the Contractor and no additional money will be paid by the Owner; and

2.2.4 In addition, if the Work involves modifications to or remodeling of an existing structure(s) or other man-made feature(s) on the Site, the Construction Manager has also:

(i) Reviewed available as-built and record drawings, plans and specifications; and

(II) Observed structure(s) and man-made feature(s) to be modified or remodeled to the best of Construction Manager's ability, prior to submission of the GMP Proposal.

Claims resulting from the Construction Manager's failure to familiarize itself as required in this paragraph with the Site or pertinent documents shall be deemed waived.

ARTICLE 3
CONSTRUCTION MANAGER'S DUTIES, OBLIGATIONS AND RESPONSIBILITIES

3.1 **Performance of Work.** The Construction Manager shall perform and complete its obligations under this Contract for Construction Management using its best skill and attention, and covenants with the Owner to furnish management, supervision, coordination, labor and services (i) which expeditiously, economically and properly complete the Work in the manner most consistent with the Owner's interests and objectives; (ii) which comply with the Construction Documents and this Contract for Construction Management; and (iii) in accordance with the highest standards currently practiced by persons and entities performing or providing management, supervision, coordination, labor and services on projects similar in size, complexity and cost to the Project.

3.1.1 The Construction Manager shall not be required to provide professional services which constitute the practice of architecture or engineering.

3.1.2. All services rendered by the Construction Manager for the Project shall be performed by or under the immediate supervision of persons possessing expertise in the discipline of the service being rendered, unless such services are specifically required by the Construction Documents for a portion of the Work or unless the Construction Manager needs to provide such services in order to carry out the Construction Manager's responsibilities for construction means, methods, techniques, sequences and procedures. The Construction Manager shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Construction Manager by the Construction Documents, the Owner and Professional shall specify all performance and design criteria that such services must satisfy. The Construction Manager shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on the drawings, calculations, specifications, certifications, shop drawings and other submittals prepared by such professional. Shop drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Professional. The Owner and the Professional shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided the Owner and the Professional have specified to the Construction Manager all performance and design criteria that such services must satisfy. The Professional shall review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Construction Documents. The Construction Manager shall not be responsible for the adequacy of the performance or design criteria required by the Construction Documents.

3.1.3 The Construction Manager shall, in the course of providing the Work, cooperate and communicate with the Owner and all other persons or entities as required for satisfactory completion of the Project.

3.1.4 Intentionally Deleted.

3.1.5 The Construction Manager shall not damage, endanger, compromise or destroy any part of the Project or the Site, except as required by the Construction Documents, including by way of example and not limitation, work being performed by others on the Site, monuments, stakes, benchmarks and other survey points, utility services, and existing features or structures on the Site. Subject to the provisions of the Agreement concerning Builder's Risk insurance, and the terms of **Appendix "M"**, should the Construction Manager damage, compromise or destroy any part of the Project or the Site, the Construction Manager shall be fully and exclusively responsible for and bear all costs associated therewith.

3.2 **Compliance With Governmental Requirements.** The Construction Manager shall:

3.2.1 Comply with all applicable laws, statutes, building codes, rules, regulations and lawful orders of all governmental, public and quasi-public authorities and agencies having jurisdiction over the Project, provided, however, that the Construction Manager is not responsible for insuring that the Construction Documents comply with applicable codes or laws;

3.2.2 Prepare and file documents required to obtain, and shall obtain, all necessary approvals and permits as identified in Construction Manager's GMP Proposal, including building permit(s), of all governmental authorities having jurisdiction over the Work; and

3.3.3 Give all notices required of it by governmental authorities relating to the Project.

3.3 **Safety.** Safety shall be a prime concern of the Construction Manager at all times. The Construction Manager shall be responsible for and have control over the means, methods, techniques, sequences and procedures for coordinating and constructing the Work, including Site safety and safety precautions and programs. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Construction Manager shall evaluate the jobsite safety thereof and shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Construction Manager determines that such means, methods, techniques, sequences or procedures may not be safe, the Construction Manager shall give timely written notice to the Owner and the Professional and shall not proceed with that portion of the Work without further written instructions from the Professional. If the Construction Manager is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Construction Manager, the Owner shall be solely responsible for any resulting loss or damage.

3.4 **Concurrent Records.** The Construction Manager shall, concurrently with performance, maintain detailed records of activities on the Site.

3.5 **As-Built Drawings.** The Construction Manager shall maintain at the Site one copy of all drawings, specifications, addenda, approved shop drawings, change orders, submittals, and other modifications in good order and accurately marked depicting all changes as they occur during construction. The as-built drawings shall be available at all times to the Owner, the Professional(s), the Owner's consultants, and quality control and testing agency personnel. The drawings shall be neatly and clearly marked in color during construction to record all variations made during construction, and the Construction Manager shall include such supplementary notes and details necessary to clearly and accurately represent as-built construction; provided, however, that the as-built drawings shall be kept electronically, and signed and sealed by the Professional, upon request of the Owner.

3.6 **Bribes And Kick-Backs.** The Construction Manager shall not by any means:

3.6.1 Induce any person or entity employed in the construction of the Project to give up any part of the compensation to which that person or entity is entitled;

3.6.2 Confer on any governmental, public or quasi-public official having any authority or influence over the Project, any payment, loan, subscription, advance, deposit of money, services or anything of value, present or promised;

3.6.3 Offer nor accept any bribes or kick-backs in connection with the Project from or to any individual or entity, including any of its trade contractors, subcontractors, consultants, suppliers or manufacturers of Project goods and materials; or

3.6.4 Without the express written permission of the Owner, call for or by exclusion require or recommend the use of any subcontractor, consultant, product, material, equipment, system, process or procedure in which the Construction Manager has a direct or indirect proprietary or other pecuniary interest.

3.7 **Quality Control and Testing.** The Construction Manager shall develop and implement a quality management program to insure quality construction. Unless otherwise specified in this Contract for Construction Management, the Owner shall select the quality control and testing agencies and pay for the cost of specified measures and tests required by the Construction Documents. The Construction Manager shall coordinate all tests and inspections required by the Construction Documents, and the Construction Manager shall arrange for tests and inspections to be conducted as necessary to avoid any interference with the progress of Work. No claims for extension of time or extra costs will be allowed on account of any testing, retesting, inspection, re-inspection, or rejection of Work when defective or deficient Work is found.

3.8 **Incident Reporting.** The Construction Manager shall immediately notify the Owner and Professional(s), both orally and in writing, of the nature and details of all incidents which may adversely affect the quality or progress of the Work including, but not limited to, union jurisdictional disputes, accidents, delays, damages to Work and other significant occurrences.

3.9 **Hazardous Substances.** The Construction Manager shall immediately notify the Owner and the Professional(s), both orally and in writing, of the presence and location of any physical evidence of, or information regarding, environmental contamination on the Site (including but not limited to Hazardous Substances and petroleum releases) of which it

becomes, or reasonably should have become, aware. If the Construction Manager encounters environmental contamination (including but not limited to Hazardous Substances and petroleum releases), the Construction Manager shall (i) immediately stop performance of Work or that portion of the Work affected by or affecting such contamination; (ii) secure the contaminated area against intrusion; (iii) not disturb or remove the contamination; (iv) not proceed, or allow any subcontractor or supplier to proceed, with any Work or other activities in the area affected by such contamination until directed to do so by the Owner; and (v) take any other steps necessary to protect life and health. The Owner shall be responsible for obtaining the services of a licensed laboratory to verify a presence or absence of the material or substance reported by the Construction Manager and, in the event such material or substance is found to be present, to verify that it has been rendered harmless. To the fullest extent permitted by Section 768.28, Florida Statutes, the Owner shall indemnify and hold harmless the Construction Manager, and 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 in the affected area if in fact the material is asbestos or polychlorinated biphenyl (PCB) or other hazardous materials and has not been rendered harmless, 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) including loss of use resulting therefrom.

3.10 **Owner's Use of and Access to The Site.** The Construction Manager shall perform the Work so as not to unduly interrupt any operations of the Owner on the Site. Owner and Construction Manager will coordinate any planned interruptions or closures.

3.10.1 The Construction Manager understands and acknowledges that the Owner may need access to or use of certain areas of the Site or Work prior to the Construction Manager achievement of Substantial Completion, and that such occupancy, access or use shall not constitute the Owner's acceptance of any Work.

3.10.2 The Construction Manager shall not enter any Owner-occupied area of the Site or Project unless first approved and scheduled by the Owner. The Construction Manager understands and acknowledges that the Owner may incur damages if the Owner's operations on the Site are unduly interrupted or impaired as a result of the Work.

3.10.3 The Construction Manager shall reasonably afford the Owner's own forces, and other consultants, trade contractors, subcontractors and suppliers, access to the Site for performance of their activities, and shall connect and coordinate its construction and operations with theirs as required by the Construction Documents. All such personnel will follow Construction Manager's rules for the Site.

3.11 **Commissioning.** The Construction Manager shall work with the Owner's Representative to schedule and coordinate all equipment and systems start-ups and Project commissioning.

3.11.1 The Construction Manager shall provide the Owner with a minimum of two (2) bound operation and maintenance manuals. The manuals should include but not be limited to the following: building system instruction manuals, building system

warranties, and as built drawings/diagrams. These manuals shall be provided not less than thirty (30) calendar days prior to the required date of Substantial Completion to allow adequate time for training prior to commissioning and the Owner's occupancy of the Project.

3.11.2 The Construction Manager shall meet with the Owner's personnel not less than thirty (30) calendar days prior to the required date of Substantial Completion to familiarize and schedule training with respect to maintenance and use of the Project. The appropriate Professional(s) will attend and assist with such familiarization and training.

3.12 **Owner's Procedures and Review.** The Owner has in place certain procedures for the review and approval of plans, drawings, specifications, construction and quality of Work relating to the Project. These procedures include reviews by personnel and agencies of the Owner. The consideration provided herein contemplates and includes the Construction Manager's participation in these procedures. These procedures and committees are exclusively for the use and benefit of the Owner and do not inure to the benefit of any other party including, without limitation, the benefit of the Construction Manager. These procedures do not revise, alter or diminish the standard of care which the Construction Manager shall apply to the Project, nor shall they revise, alter or diminish the Construction Manager's obligations under this Agreement or otherwise provide any defense or set-off to the Construction Manager for issues relating to its performance under the Agreement.

3.13 **Coordination of Work.** The Construction Manager acknowledges and understands that other contractor(s) may perform work on or around the Project. Construction Manager herein agrees to coordinate its work with other contractor(s) on the Project so as to not interfere with the other contractor(s)' work and so as to insure that all predecessor work is completed and accepted before the commencement of the Work of the Construction Manager set forth herein.

ARTICLE 4
CONSTRUCTION MANAGER'S PERSONNEL, SUBCONTRACTORS, SUPPLIERS AND SITE FACILITIES

4.1 **Project Staffing**. The Construction Manager shall staff the Project with qualified and designated individuals and entities responsible for its obligations and performance.

4.1.1 The Construction Manager shall name a representative (the "Construction Manager's Representative") to serve as its primary communication contact with the Owner and the Professional(s).

4.1.2 The Construction Manager shall employ persons skilled in the tasks assigned to them and shall contract with subcontractors and suppliers skilled in the tasks assigned to them and capable of working harmoniously with all trades, crafts and other individuals on the Project. The Construction Manager shall use its best efforts to minimize the likelihood of any strike, work stoppage or other labor disturbance.

4.1.3 The Construction Manager shall immediately remove from the Site, for the duration of the Project, any person making an inappropriate religious, racial, sexual or ethnic comment, statement or gesture toward any other individual.

4.1.4 The Construction Manager shall immediately remove from the Site, for the duration of the Project, any person who is incompetent, careless, or not working in harmony.

4.1.5 The Construction Manager shall be responsible to the Owner for the acts and omissions of its agents and employees, consultants, subcontractors and suppliers.

4.2 **Subcontractor / Supplier Contracts.** The Construction Manager shall enter into written contracts with its subcontractors and suppliers, and those written contracts shall be consistent with this Contract for Construction Management.

4.2.1 The Construction Manager shall make available to each subcontractor and supplier, prior to the execution of written contracts with any of them, a copy of the pertinent portions of this Contract for Construction Management, including those portions of the Construction Documents to which the subcontractor or supplier will be bound, and shall require that each subcontractor and supplier shall similarly make copies of applicable parts of such documents available to its respective subcontractors and suppliers.

4.2.2 The Construction Manager shall include in its written contracts with its subcontractors and suppliers a provision which contains the acknowledgment and agreement of the subcontractor or supplier that it has received and reviewed the applicable terms, conditions and requirements of this Contract for Construction Management that are included by reference in its written contract with the Construction Manager, and that it will abide by those terms, conditions and requirements.

4.2.3 The Construction Manager's written contracts with its subcontractors and suppliers shall preserve and protect the rights of the Owner to insure that the Work is done in accordance with the Construction Documents and include the acknowledgment and agreement of each subcontractor or supplier that, if Construction Manager defaults in its obligations or fails persistently to enforce the subcontracts, the Owner may enforce rights as a third-party beneficiary of the contract. The Construction Manager's agreements with its subcontractors and suppliers shall require that in the event of default under, or termination for default of, this Contract for Construction Management, and upon request of the Owner, the Construction Manager's contracts with subcontractors and suppliers will be assigned to Owner.

4.3 **Resolution of Trade Disputes.** The Construction Manager shall promptly resolve claims, complaints, labor disputes and disputes over assignment of work tasks by and among its subcontractors and suppliers.

ARTICLE 5
GOODS, PRODUCTS AND MATERIALS

5.1 **Quality of Materials.** The Construction Manager shall furnish goods, products, materials, equipment and systems which:

5.1.1 Comply with this Contract for Construction Management;

5.1.2 Conform to applicable specifications, descriptions, instructions, drawings, data and samples;

5.1.3 Are new (unless otherwise specified or permitted) and without apparent damage;

5.1.4 Are of quality, strength, durability, capacity or appearance equal to or higher than that required by the Construction Documents;

5.1.5 Are merchantable;

5.1.6 Are free from defects; and

5.1.7 Are beyond and in addition to those required by manufacturers' or suppliers' specifications where such additional items are required by the Construction Documents.

5.2 **Installation and Use of Materials.** All goods, products, materials, equipment and systems named or described in the Construction Documents, and all others furnished as equal thereto shall, unless specifically stated otherwise, be furnished, used, installed, employed and protected in strict compliance with the specifications, recommendations and instructions of the manufacturer or supplier, unless such specifications, recommendations or instructions deviate from accepted construction practices, or the Construction Documents, in which case the Construction Manager shall so inform the Owner and the appropriate Professional and shall proceed as directed by that Professional, unless otherwise directed by the Owner. The Construction Manager shall coordinate and interrelate all trade contracts, and subcontracts to ensure compatibility of goods, products, materials, equipment and systems, and validity of all warranties and guarantees, required by the Construction Documents for the Work.

5.3 **Unsuitable Materials.** The Construction Manager shall inform the Owner of goods, products, materials, equipment or systems which the Construction Manager knows are unsuitable or unavailable at the time of bid submission, and claims relating to or arising out of claims that goods, products, materials, equipment or systems are unsuitable or unavailable shall not be entertained by the Owner unless the Construction Manager, subcontractor, or supplier notified the Owner in writing at the time of bid submission, along with proposed alternatives, unless the unsuitability or unavailability arose after bid submission. Approval by the Owner and a Professional of substitute goods, products, materials, equipment or systems does not mean or imply final acceptance by the Owner and Professional if such items should be defective or not as previously represented. Should the Construction Manager furnish any approved goods, products, materials, equipment or systems different from or in addition to those required by the Construction Documents which require supplemental materials or installation procedures different from or in addition to those required for specified items, the Construction Manager shall provide such at no increased cost to the Owner.

5.4 **Security for the Project.** The Construction Manager shall provide security for the Project as indicated on **Appendix "M"**, including but not limited to security for its Work in progress and for the goods, products, materials, equipment, systems, construction machinery, tools, devices and other items required, used or to be used for its scope of the Work, whether stored on or off-site by the Construction Manager or its subcontractors, materialmen, or others under its supervision.

5.5 **Payment for Materials.** Unless otherwise provided in this Contract for Construction Management, payments shall be made on account of materials and equipment delivered and suitably stored at the Site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off-site at a location agreed upon in writing. Payment for materials and equipment stored on or off-site shall be conditioned upon compliance by the Construction Manager with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the Site for such materials and equipment stored off-site.

5.6 **Brand Name or Alternate.** Notwithstanding the foregoing, if a product or service has been identified in the specifications by brand name, such identification is intended to be descriptive and not restrictive and is to indicate the quality and characteristics of service that will be acceptable. Unless the Construction Manager clearly indicated in its bid that it was proposing an alternate product or service, the bid shall be considered as offering the same brand name referenced in the specifications; provided, however, that if the Construction Manager proposes to furnish an alternate product or service after this Contract For Construction Management has been fully executed, or after **Appendix "M"** has been executed if applicable, the Construction Manager shall receive the written authorization from the Professional and Owner prior to incorporating such alternate product or service into the Work. An alternate to the brand name product/material specified will only be considered if the product/material is not readily available to meet the Construction Schedule. Should the Professional/Owner accept an alternate brand name product/material any additional costs shall be borne by the Construction Manager. Also such alternate will require cost comparison evidence and if found to be less expensive than the brand specified, the Owner will be entitled to a credit for the cost difference including the apportioned General Conditions and Management Fee. For purposes of this paragraph, an alternate shall be defined as a product or material differing substantially in quality and characteristics from the product or material set forth in the Contract Documents. If the Contract Documents specify an "or equal" product or material, an equal is defined as a product or material with the same quality or characteristics as that specified, but differing in brand name.

ARTICLE 6
DOCUMENTS AND INFORMATION

6.1 **Information from Owner.** The Owner shall provide the Construction Manager with information reasonably necessary to assist the Construction Manager in performing its services including, if applicable:

6.1.1 The Site legal description and any required survey;

6.1.2 All written and tangible material in its possession concerning conditions below ground, and in unobservable areas of existing structures, at the Site;

6.1.3 If the Project involves an existing structure, all available as-built drawings, record drawings, plans, specifications and structure system information with respect to such structure; and

6.1.4 The Owner's pertinent Project dates and key milestone dates.

6.2 **Resolution of Questions.** The Construction Manager shall resolve all questions concerning the Construction Documents with the Professional who has prepared the documents.

6.3 **Processing of Documents.** When requested to do so by the Owner, the Construction Manager shall process documents, and provide other reasonably required drawings, services and certifications, necessary to enable the Owner to (i) obtain financing or insurance for the Project; (ii) obtain approvals, permits and Certificates of Occupancy for the Project not otherwise required to be obtained by Construction Manager; and (iii) represent that the Work complies with requirements of governmental agencies having jurisdiction over the Project.

6.4 **Sufficiency of Owner Information.** The furnishing of information by the Owner to the Construction Manager shall not relieve the Construction Manager of responsibilities contained elsewhere in this Contract for Construction Management to evaluate information and documents provided by the Owner and the Construction Manager shall timely notify the Owner in writing of any additional information needed or services required from the Owner in order for the Construction Manager to perform the Work.

ARTICLE 7
SUBMITTALS

7.1 **Submittal Schedule.** The Construction Manager shall timely prepare and transmit to the designated Professional a schedule for all anticipated submittals. The schedule shall (i) include submittals required by the specifications; (ii) be in a format acceptable to the Professional; and (iii) set forth specific dates for submission of the listed submittals. The Construction Manager shall review and approve all submittals prior to submission to a Professional.

7.2 **Processing Of Submittals.** The Construction Manager shall in timely fashion review, approve if appropriate and forward submittals to the Professional(s) for review and approval along with such detail and information as the Professional requires. No part of

the Work dealt with by a submittal shall be fabricated or performed until such approval has been given.

7.2.1 A Professional is responsible to the Owner, but not to the Construction Manager, to verify that the submittals conform to the design concept and functional requirements of the plans and specifications, that the detailed design portrayed in shop drawings and proposed equipment and materials shown in submittals are of the quality specified and will function properly, and that the submittals comply with the Contract for Construction Management.

7.2.2 The Construction Manager shall perform no portion of the Work for which the Contract Documents require submittal and review of shop drawings, product data, samples or similar submittals until the respective submittal has been approved by the Professional. The Work shall then be performed in accordance with the approved submittals except that the Construction Manager shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Professional's approval of shop drawings, product data, samples or similar submittals unless the Construction Manager has specifically informed the Professional in writing of such deviation at the time of submittal and (i) the Professional has given written approval to the specific deviation as a minor change in the Work; or (ii) a change order or construction change directive has been issued authorizing the deviation. The Construction Manager shall not be relieved of responsibility for errors or omissions in shop drawings, product data, samples or similar submittals by the Professional's approval thereof.

7.3 The Professional will review and approve, or take other appropriate action, upon the Construction Manager's submittals such as shop drawings, product data and samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Professional's action will be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Construction Manager or separate contractors, while allowing sufficient time in the Professional's judgment to permit adequate review. Review of 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 as required by the Contract Documents. The Professional's review of the Construction Manager's submittals shall not relieve the Construction Manager of its obligations hereunder, and the Professional's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Professional, of any construction means, methods, techniques, sequences or procedures. The Professional's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

7.4 By approving and submitting shop drawings, product data, samples and similar submittals, the Construction Manager represents that the Construction Manager has determined and verified materials, field measurements, and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

ARTICLE 8
CONSTRUCTION MANAGER'S INSPECTION AND CORRECTION OF DEFECTIVE OR INCOMPLETE WORK

8.1 **Rejection and Correction Of Work In Progress.** During the course of the Project, the Construction Manager shall inspect and promptly reject any Work (i) which does not conform to the Construction Documents; or (ii) which it discovers does not comply with any applicable law, statute, building code, rule or regulation of any governmental, public and quasi-public authorities and agencies having jurisdiction over the Project.

8.1.1 The Construction Manager shall promptly correct or require the correction of all rejected Work, whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Construction Manager shall bear all costs of correcting such Work, including additional testing and inspections and compensation for all services and expenses necessitated by such correction, so long as the correction was due to an error or omission in Construction Manager's Work.

8.1.2 The Construction Manager shall bear the cost of correcting destroyed or damaged Work, whether completed or partially completed, of the Owner or other trade contractors or subcontractors caused by the Construction Manager 's correction or removal of Work rejected due to an error in Construction Manager's Work.

8.2 **Covered Or Concealed Work.** If a portion of the Work has been covered, the Construction Manager shall, if notified to do so by the Owner or a Professional, uncover the designated portion for observation and then replace it.

8.2.1 If the designated portion of the Work was covered contrary to the request of the Owner or the Professional, or to requirements specifically expressed in the Construction Documents, the Construction Manager shall receive no additional compensation for the costs of uncovering and replacement or modification of the Construction Schedule.

8.2.2 If the designated portion of the Work was covered prior to a specific request by the Owner or the Professional that it remain uncovered, the Construction Manager shall receive additional compensation for the costs of uncovering and replacement or modification of the Construction Schedule(s) only if the designated portion of the Work was in conformance with the Construction Documents.

8.3 **Acceptance of Non-conforming Work.** If the Owner prefers to accept Work which is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Construction Price shall be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 9
CHANGE ORDERS AND CHANGES TO THE WORK

9.1 **Change Order Requests.** Any party to the construction process may request changes to the Work, compensation or applicable schedules after execution of this Contract, and without invalidating this Contract. Unless otherwise specified herein, the Professional shall prepare the change orders and construction change directives. All Change Order requests shall be in writing and approved prior to the work which is the subject of the Change Order being completed, unless otherwise stated herein.

9.1.1 With respect to such requests for changes by the Construction Manager, the Construction Manager shall prepare and submit change order requests to the designated Professional.

9.1.2 With respect to requests for changes by parties other than the Construction Manager, the Construction Manager shall promptly review and respond to change order requests submitted by a Professional.

9.1.3 When requested to do so, the Construction Manager shall prepare and submit to the Professional drawings, specifications or other data in support of a change order request.

9.1.4 Unless the parties agree to reserve it, each change order shall include time and monetary impacts of the change, whether the change order is considered alone or with all other changes during the course of the Project.

9.2 **Owner-Directed Changes.** The Owner may unilaterally direct the Construction Manager to implement changes in the Work so long as the Work the Owner is requiring is not outside of the general scope of this Contract for Construction Management, and the Construction Manager, upon written direction from the Owner, shall proceed with such change.

9.3 **Professional-Directed Changes**. A Professional, with the Owner's prior approval, may authorize or direct the Construction Manager to make minor changes in the Work which are consistent with the intent of the Construction Documents and which do not involve a change in Project cost, time for construction, scope, or approved design elements, and the Construction Manager shall promptly carry out such changes. Any such minor changes shall be implemented by written field order and executed by the Construction Manager and Owner.

9.4 **Administration of Changes.** A Professional will administer and manage all change order requests and change orders and will prepare required drawings, specifications and other supporting data as necessary in connection with minor changes, change order requests and change orders.

9.5 **Compensation for Changes.** With respect to all change order requests involving credit to the Owner or additional compensation to the Construction Manager, the Construction Manager shall (i) obtain from subcontractors and suppliers the best possible price quotations; (ii) review such quotations to ascertain whether they are reasonable; (iii) prepare an itemized accounting together with appropriate supporting data, including reasonable expenditures by, and savings to, those performing the Work involved in the

proposed change; and (iv) provide a reasonable price quotation to the designated Professional.

9.5.1 If price quotations for change order requests are determined by the Professional to be unreasonable, the Construction Manager shall, in writing, justify said quotations or provide additional back-up materials. If after review of the additional information the Professional determines the quotation is unreasonable, the Owner may require the subject Work be performed on a time and material basis.

9.5.2 The Construction Manager and its subcontractors and suppliers shall be allowed no additional compensation for any costs, fees or expenses incurred in performing services already required by this Contract for Construction Management, and shall not be entitled to additional reimbursement for home-office, other non-jobsite or indirect overhead expenses, but shall be paid for change order Work as allowed by other sections of this Agreement.

9.5.3 It is the responsibility of the Construction Manager to review and approve all pricing of additional work required of its subcontractors and suppliers.

9.5.4 Additional work which is not part of the Contract Documents and which does not impact the critical path shall require an executed change order and is not entitled to an extension of time but the Construction Manager shall be compensated as provided in Paragraph 4.3, Chapter 1.

9.5.5 Additional work which is not part of the Contract Documents and which does impact the critical path shall require a change order and the Construction Manager is entitled to an extension of time and the Construction Manager shall be compensated as provided in Paragraph 4.3, Chapter 1. No other costs relating to the approved extension of time shall be permitted.

9.6 **Performance of Changes.** Upon receipt of a field order or change order, changes in the Work shall be promptly performed. All changes in the Work shall be performed under applicable conditions of the Construction Documents.

9.7 **Disputes Regarding Changes.**

9.7.1 Regardless if there is a dispute (i) that a change has occurred; (ii) whether a change in the Work will result in adjustment of compensation or applicable schedules; or (iii) as to the amount of any adjustment of compensation or applicable schedules, the change shall be carried out if the Owner so directs. No claim shall be prejudiced by performance of the Work so long as the Owner is notified of the claim in writing prior to performance of the Work which is the subject of the dispute and the party disputing the decision of the Owner recites the reasons for its dispute in the written notice. Failure to notify the Owner in writing shall constitute a waiver of any claim resulting from the change.

9.7.2 In the event a change order request is approved by the Owner in the absence of an agreement as to cost, time, or both, the appropriate Professional will (i) receive and maintain all documentation pertaining thereto; (ii) examine such documentation on the Owner's behalf; (iii) take such other action as may be

reasonably necessary or as the Owner may request; and (iv) make a written recommendation to the Owner concerning any appropriate adjustment in the Construction Price or time.

9.7.3 A Construction Change Directive is a written order prepared by the Professional and signed by the Owner and the Professional, directing a change in the Work prior to agreement on any change in the contract price, time or both. The issuance of a Construction Change Directive does not invalidate the Contract for Construction Management. A Construction Change Directive shall be used in the absence of agreement on the terms of a Change Order. If the Directive provides for a change in the contract price, the adjustment shall be based on one of the following:

(i) Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;

(ii) Unit prices stated in the Contract Documents or subsequently agreed upon;

(iii) Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or

(iv) As set forth below.

9.7.4 The Construction Manager shall promptly proceed with the Work upon receipt of a Construction Change Directive, and shall immediately advise the Professional of any disagreement with the method of compensation set forth in the Directive.

9.7.5 The Construction Manager shall sign the Construction Change Directive if the Construction Manager agrees with the adjustment in the time or contract price. Upon signature, the Change Order Directive shall be effective as a Change Order.

9.7.6 If the Construction Manager does not respond promptly or disagrees with the method of adjustment, the method of adjustment shall be determined by the Professional on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, include a reasonable allowance for overhead and profit on increases in scope. In such case, the Construction Manager shall keep and present to the Professional an itemized accounting together with appropriate supporting data. Unless otherwise specified herein, costs shall be limited to:

(i) Costs of labor, including social security, unemployment insurance, fringe benefits required by agreement or custom, and worker's compensation insurance directly attributable to the change;

(ii) Costs of materials, supplies and equipment, including the cost of transportation, whether incorporated or consumed directly attributable to the change;

(iii) Rental costs of machinery and equipment, exclusive of hand tools,

whether rented from the Construction Manager or others directly attributable to the change;

(iv) Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work directly attributable to the change; and

(v) Additional costs of supervision and field office personnel directly attributable to the change.

9.7.7 The amount of credit to be allowed by the Construction Manager to the Owner for a deletion or change which results in a net decrease in the contract price shall be the actual net cost as confirmed by the Professional. When there are both increases and decreases in the Work, the allowance for overhead and profit shall be figured on the basis of net increase, if any, of the change.

9.7.8 Pending final determination of the total cost of the Change Directive, amounts not in dispute shall be included in future invoices for payment, accompanied by the Change Order. For costs in dispute, the Professional shall make an interim determination for purposes of monthly certification for payment for those costs. Either party may then submit a claim according to other provisions contained herein.

9.8 **Necessity for Signed Writing.** No act, omission or course of dealing shall alter the requirement that change orders shall be in writing and signed by the Owner, and that change orders are the exclusive method for effecting any adjustment to compensation or applicable schedules. The Construction Manager understands and agrees, on behalf of itself and its subcontractors and suppliers, that neither compensation nor applicable schedules can be changed by implication, oral agreement, or unwritten change order.

9.9 **Change Order as Final Agreement.** Agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work which is the subject of the Change Order, including but not limited to, all direct and indirect costs and general conditions associated with such change and any and all adjustments to the Contract Sum, Contract Time and the Construction Schedule. In the event a Change Order increases the Contract Sum, Contractor shall include the Work covered by such Change Orders in Applications for Payment as if such Work were originally part of the Contract Documents.

9.10 **Incorporated Language to Change Orders.** Each and every Change Order executed under this Agreement shall be interpreted to incorporate and include the following clause, whether or not such clause is specifically included or incorporated into the Change Order. "This Change Order represents a written modification between the parties to the Agreement and in based on the terms and conditions of that Agreement. This Change Order supersedes all prior negotiations, qualifications and terms for the changes in scope described in this Change Order and the Work contemplated is, except as noted otherwise specifically provided, subject to all the terms and conditions of the Agreement, including, without limitation, those concerning payment. By executing this Change Order, Contractor acknowledges that this Change Order includes all direct and indirect charges and costs arising out of this change. The Contractor further agrees that by executing this Change Order, it will be fully compensated for the cost and time impact

of the change(s) required by the Owner. All claims against the Owner which are incidental to or as a consequence of this change, including, without limitation, delays, disruptions, suspensions, acceleration or other impacts, or claims arising out of the cumulative effect of the Change Orders for the Work, are fully satisfied. Contractor will commence its services upon the execution of this Change Order and will complete and Work in accordance with the current schedule, it being understood and agreed that time is of the essence in the completion of each and every provision or condition of this Change Order and the Agreement." The omission of this clause from any particular Change Order, any number of Change Orders or all Change Orders shall not constitute a waiver of this provision.

ARTICLE 10
FINANCIAL CLAIMS AND LIENS

10.1 **Notification Regarding Liens.** The Construction Manager shall immediately notify the Owner and Professional(s), both orally and in writing, of the nature and details of any mechanics' liens, construction liens, Construction Manager's trust fund claims, or claims of any type made by anyone against the Owner, the Professional(s), the Construction Manager or any subcontractor or supplier of any of them or against the Project whether or not such claims arise from the Work.

10.2 **Discharge of Liens.** The Construction Manager shall take all action necessary to obtain the prompt discharge of any liens or claims filed against the Project. If any lien or claim filed against the Project is not discharged and released by the claimant, the Construction Manager shall, within a reasonable period of time, but in no event more than thirty (30) calendar days after request and at its own cost, promptly obtain discharge and release of, or indemnity for, such lien or claim by providing or filing, as appropriate, the requisite bond. If the Construction Manager fails to have any such lien or claim discharged and released, or fails to provide or file the requisite bond, the Owner shall have the right to pay all sums necessary to obtain such a discharge and release, and the Construction Manager shall bear all expenses incurred by the Owner in so doing.

ARTICLE 11
OWNER'S CONSULTANT(S), PROFESSIONAL(S) AND CONSTRUCTION ADMINISTRATION

11.1 **Owner's Designated Professional Representative.** Unless otherwise directed by the Owner, one (1) designated Professional shall act as the Owner's representative from the effective date of this Contract for Construction Management until one (1) year from the date of achievement of Substantial Completion.

11.1.1 The Professional so designated will be the Owner's design representative during performance of the Work and will consult with and advise the Owner on all design and technical matters.

11.1.2 The designated Professional will act as initial interpreter of the requirements of this Contract for Construction Management and as the Owner's advisor on claims.

11.2 **Professional Site Visits.** The Professional(s) will visit the Site with sufficient frequency for familiarization with the progress and quality of the Work and to inspect the Work to determine compliance of the Work with (i) this Contract for Construction Management, including approved shop drawings and other submittals; (ii) the Construction Schedule; and (iii) applicable laws, statutes, building codes, rules or regulations of all governmental, public and quasi-public authorities and agencies having or asserting jurisdiction over the Project.

11.3 **Professional Rejection of Work.** The Professional(s) may disapprove or reject Work which does not comply with (i) this Contract for Construction Management including approved shop drawings and other submittals; or (ii) applicable laws, statutes, building codes, rules or regulations of any governmental, public and quasi-public authorities and agencies having or asserting jurisdiction over the Project.

11.4 **Professional Evaluations.**

11.4.1 The Professional(s) will review and evaluate the results of all inspections, tests and written reports required by this Contract for Construction Management and by any governmental entity having or asserting jurisdiction over the Project. The Professional(s) will take appropriate action on test results, including acceptance, rejection, requiring additional testing or corrective work, or such other action deemed appropriate by the Professional(s). The Professional(s) will promptly reject Work which does not conform to and comply with testing requirements.

11.4.2 The Professional(s) may require inspection or testing of any Work in addition to that required by this Contract for Construction Management or governmental entities having or asserting jurisdiction over the Project when such additional inspections and testing is necessary or advisable, whether or not such Work is then fabricated, installed or completed. The Professional(s) will take appropriate action on all such special testing and inspection reports, including acceptance, rejection, requiring additional testing or corrective work, or such other action deemed appropriate by the Professional(s).

11.5 **Professional Submittal Activities.** The Professional(s) will timely review and approve, reject or take other appropriate action on submittals such as shop drawings, product data, samples and proposed equal materials or equipment and requested substitutions within not more than fourteen (14) calendar days, and will not approve any submittals unless such submittals conform with (i) the Project Construction Documents; (ii) this Contract for Construction Management; and (iii) the Owner's budgeted Total Project Construction Cost. A Professional's review of submittals shall not constitute final acceptance of materials or equipment furnished or installed if such materials or equipment should be defective or not as represented by approved submittals or as otherwise required by the Construction Documents. The Construction Manager remains responsible for details and accuracy, for confirming and correlating all quantities and dimensions, for selecting fabrication processes, for techniques of assembly, and for performance of the Work.

11.6 **Professional Interpretations.** The Professional will, when requested to do so in writing by the Construction Manager, promptly and so as to cause no unnecessary delay, render written or graphic interpretations and decisions necessary for the proper

execution of the Work. A Professional's interpretations and decisions relating to artistic effect shall be final if not inconsistent with this Contract for Construction Management.

11.7 **Professional Change Order Activities.** The Professional(s) will consult with and advise the Owner concerning, and will administer and manage, all change order requests and change orders on behalf of the Owner.

11.8 **Professional Pay Application Activities.** The appropriate Professional will review applications for payment, including such accompanying data, information and schedules as the Professional requires, to determine the amounts due to the Construction Manager and shall authorize payment by the Owner to the Construction Manager in writing. After the Work is determined to be finally complete and the Professional determines that the Construction Manager has completed the Work, the Professional will determine whether the Construction Manager is entitled to final payment, and if so will so certify to the Owner in writing.

11.9 **Professional Relationship to Construction Manager.** The duties, obligations and responsibilities of the Construction Manager under this Contract for Construction Management shall not be changed, abridged, altered, discharged, released, or satisfied by any duty, obligation or responsibility of any Professional. The Construction Manager shall not be a third-party beneficiary of any agreement by and between the Owner and any Professional. The duties of the Construction Manager to the Owner shall be independent of, and shall not be diminished by, any duties or obligations of the Professional to the Owner.

ARTICLE 12
INSPECTION, CORRECTION OF WORK, AND PROJECT CLOSE OUT

12.1 **Substantial Completion.** Substantial Completion of the Work shall be deemed to have occurred on the later of the dates that the Work passes a Substantial Completion inspection, and the required Substantial Completion documentation and items have been produced. Notwithstanding anything herein, Substantial Completion shall not occur prior to the date which all applicable governmental agencies having jurisdiction over the Work, have issued either an unconditional Certificate of Completion or unconditional Certificate of Occupancy with respect to the Work, including landscaping and common areas (whichever is applicable) and the Owner is otherwise able to fully utilize the Work for its intended purpose. Notwithstanding anything to the contrary contained herein, Contractor shall be responsible for obtaining the unconditional Certificate of Completion or unconditional Certificate of Occupancy (whichever is applicable) with respect to the Work, and in connection therewith, Owner shall comply with all of its obligations required by the issuing authority in order to enable the Contractor to obtain such Certificate.

12.1.1 When the Construction Manager believes that the Work is substantially complete, it shall notify the Owner and the appropriate Professional that the Work is ready for a Substantial Completion inspection.

12.1.2 At or prior to the Substantial Completion inspection, the Construction Manager will prepare and furnish to the Professional a Declaration of Substantial Completion, which at a minimum must:

(i) Contain a blank for entry of the date of Substantial Completion, which date will fix the commencement date of warranties and guaranties and allocate between the Owner and the Construction Manager responsibility for security, utilities, damage to the Work and insurance;

(ii) Include a list of items to be completed or corrected and state the time within which the listed items will be completed or corrected; and

(iii) Contain signature lines for the Owner, the Construction Manager and the Professional.

12.1.3 Upon receipt of notification from the Construction Manager the appropriate Professional will coordinate with the Owner and the Construction Manager a date for inspection of the Work to determine whether the Work is substantially complete.

12.1.4 At inspection(s) to determine whether the Work is substantially complete, the Professional will:

(i) Inspect the Work;

(ii) List additional items to be completed or corrected; and

(iii) Determine, in consultation with the Owner, whether Substantial Completion of the Work has occurred.

12.1.5 If the Work is determined not to be substantially complete, the Work shall be prosecuted until the Work is substantially complete and the inspection process shall be repeated at no additional cost to the Owner until the Work is determined to be substantially complete.

12.1.6 On or prior to the required date of Substantial Completion, the Construction Manager shall deliver to the appropriate Professional keys, permits, the certificate of occupancy, and other necessary and customary documents and items pre-requisite for the Owner's occupancy and use of the Work for its intended purpose. The Professional will obtain and review Substantial Completion documentation and items, and will inform the Construction Manager of any deficiencies.

12.1.7 When the Owner, the Construction Manager and the appropriate Professional agree that the Work has passed the Substantial Completion inspection and the Construction Manager has produced the required Substantial Completion documentation and items, they shall each sign the Declaration of Substantial Completion declaring the Work substantially complete and establishing the actual date of Substantial Completion. The Declaration of Substantial Completion shall also include a list of and timeline for the completion of Work needing completion and correction. Failure of the Construction Manager to include an item on the list does not alter the responsibility of the Construction Manager to complete all Work in accordance with this Contract for Construction Management.

12.1.8 The Construction Manager shall promptly correct the Work properly rejected by the Professional or failing to conform to the requirements of this Contract for Construction Management , whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting the rejected Work, including additional testing and inspections and compensation for the Professional's services and expenses made necessary thereby, shall be at the Construction Manager's expense.

12.1.9 Substantial Completion must be accompanied by a Certificate of Occupancy.

12.2 **Final Completion.** Final Completion of the Work shall be deemed to have occurred on the later of the dates that the Work passes a Final Completion inspection. Final Completion shall not be deemed to have occurred and no final payment shall be due the Construction Manager or any of its subcontractors or suppliers until the Work has passed the Final Completion inspection.

12.2.1 When the Construction Manager believes the Work is finally complete, the Construction Manager shall notify the Owner and the appropriate Professional that the Work is ready for Final Completion inspection.

12.2.2 Upon receipt of such notification from the Construction Manager, the Professional will coordinate with the Owner and the Construction Manager a date for inspection of the Work to determine whether the Work is finally complete.

12.2.3 At the Final Completion inspection to determine whether the Work is finally complete, the Professional will:

(i) Inspect the Work;

(ii) Determine whether all items on the list included with the Declaration of Substantial Completion have been satisfactorily completed and corrected;

(iii) Determine whether the Work complies with (a) this Contract for Construction Management; (b) applicable laws, statutes, building codes, rules or regulations of all governmental, public and quasi-public authorities and agencies having jurisdiction over the Project; and (c) applicable installation and workmanship standards;

(iv) Determine whether required inspections and approvals by the official(s) having or asserting jurisdiction over the Project have been satisfactorily completed; and

(v) Determine, in consultation with the Owner, whether the Work is finally complete.

12.2.4 If the Work is not finally complete, the Construction Manager shall continue to prosecute the Work, and the inspection process shall be repeated at no additional cost to the Owner, until the Work is finally complete.

12.2.5 On or prior to the date of Final Payment, the Construction Manager shall deliver to the appropriate Professional the following Final Completion close-out

documentation:

(i) Two (2) bound operation and maintenance manuals as required by Appendix B, Chapter 3, Article 3, Subsection 3.11.1

(ii) Two (2) sets of as-built drawings and markups;

(iii) Certification and affidavit that all insurance required of the Construction Manager beyond final payment, if any, is in effect and will not be canceled or allowed to expire without notice to the Owner;

(iv) Written consent of the surety(ies), if any, to final payment;

(v) Full, final and conditional waivers of mechanics or construction liens, releases of Construction Manager's trust fund or similar claims, and release of security interests or encumbrances on the Project property from each contractor, subcontractor, supplier or other person or entity who has, or might have a claim against the Owner or the Owner's property;

(vi) Full, final and conditional certification and affidavit that all of the Construction Manager's obligations to contractors, subcontractors, suppliers and other third parties for payment for labor, materials or equipment have been paid or otherwise satisfied;

(vii) All written warranties and guarantees relating to the labor, goods, products, materials, equipment and systems incorporated into the Work have been endorsed, countersigned, and assigned as necessary;

(viii) Affidavits, releases, bonds, waivers, permits and other documents necessary for final close-out of the Work;

(ix) A list of any item(s) due but unable to be delivered and the reason for non-delivery; and

(x) Any other documents reasonably and customarily required or expressly required herein for full and final close-out of the Work.

12.2.6 The appropriate Professional will review and determine the sufficiency of all Final Completion close-out documentation and items required for Final Payment which are submitted by the Construction Manager, and will immediately inform the Construction Manager about any deficiencies and omissions.

ARTICLE 13
CONSTRUCTION MANAGER 'S WARRANTIES AND GUARANTEES

13.1 **One-Year Warranty.** In addition to the warranties and guarantees set forth elsewhere in this Contract for Construction Management, the Construction Manager, upon request by the Owner or the Professional, shall promptly correct all failures or defects in the Work for a period of one (1) year after the actual date of Substantial Completion.

13.1.1 The Construction Manager shall schedule, coordinate and participate in a walk-through inspection of the Work one (1) month prior to the expiration of the one-year correction period, and shall notify the Owner, the appropriate Professional(s), and any necessary subcontractors and suppliers of the date of, and request their participation in, the walk-through inspection. The purpose of the walk-through inspection will be to determine if there are defects or failures which require correction.

13.1.2 Should the Construction Manager fail to promptly correct any failure or defect, the Owner may take whatever actions it deems necessary to remedy the failure or defect and the Construction Manager shall promptly reimburse the Owner for any expenses or damages it incurs as a result of the Construction Manager 's failure to correct the failure or defect.

13.2 **Express Warranties And Guarantees – Construction Manager.** In addition to the warranties and guarantees set forth elsewhere herein, the Construction Manager expressly warrants and guarantees to the Owner:

13.2.1 That the Work complies with (a) the Construction Documents; and (b) to the best of its knowledge all applicable laws, statutes, building codes, rules and regulations of all governmental, public and quasi-public authorities and agencies having jurisdiction over the Project.

13.2.2 That all goods, products, materials, equipment and systems incorporated into the Work conform to applicable specifications, descriptions, instructions, drawings, data and samples and shall be and are (a) new (unless otherwise specified or permitted) and without apparent damage or defect; (b) of quality equal to or higher than that required by the Construction Documents; and (c) merchantable; and

13.2.3 That all management, supervision, labor and services required for the Work shall comply with this Contract for Construction Management and shall be and are performed in a workmanlike manner.

13.3 **Express Warranties and Guarantees - Subcontractors and Suppliers.** The Construction Manager shall require that all of its subcontractors and suppliers provide written warranties, guarantees and other undertakings to the Owner and the Construction Manager in a form identical to the warranties, guarantees and other undertakings set forth in this Contract for Construction Management, including the warranties, guarantees and undertakings set forth in this Article, which warranties, guarantees and undertakings shall run to the benefit of the Owner as well as the Construction Manager.

13.4 **Non-Exclusivity and Survival.** The warranties and guarantees set forth in this Article shall be in addition to all other warranties, express, implied or statutory, and shall survive the Owner's payment, acceptance, inspection of or failure to inspect the Work, and review of the Construction Documents.

13.5 **Non-Limitation.** Nothing contained in Paragraph 13.1 shall be construed to establish a period of limitation with respect to the Construction Manager's obligations under this Contract for Construction Management. Paragraph 13.1 relates only to the Construction

Manager's specific obligations with respect to the Work, and has no relationship to the time within which the Construction Manager's contractual obligations under this Contract for Construction Management may be enforced, nor to the time within which proceedings may be commenced to establish the Construction Manager's liability with respect to any contractual obligations pursuant to Paragraph 13.1 or contained elsewhere herein.

13.6 **Commencement of Obligations.** Unless otherwise specified, all of the Construction Manager's warranty and guaranty obligations, including the time period(s) for all written warranties and guarantees of specifically designated equipment required by the Construction Documents, shall begin on the actual date of Substantial Completion.

13.7 **Limitation.** The Construction Manager's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Construction Manager, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. If required by the Owner, the Construction Manager shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

ARTICLE 14
OWNER'S DUTIES, OBLIGATIONS AND RESPONSIBILITIES

14.1 **Timely Compensation of Construction Manager.** The Owner shall timely compensate the Construction Manager in accordance with this Contract for Construction Management.

14.2 **Payment for Testing.** Unless otherwise required to be provided by the Construction Manager in its scope of services, Owner shall secure and pay for all Project testing.

14.3 **Owner Review of Documents.** The Owner shall review documents prepared by the Construction Manager in a timely manner and in accordance with schedule requirements. Review by the Owner shall be solely for the purpose of determining whether such documents are generally consistent with the Owner's intent. No review of such documents shall relieve the Construction Manager of any of its responsibilities.

14.4 **Status of Owner.** The Owner shall not have control or charge of construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Construction Manager, for any of the foregoing purposes, be deemed the agent of the Owner.

14.5 **Owner's Utilities.** The Owner shall provide water/sewer, gas and electrical energy only as they exist at the Site prior to the start of construction. Any fee charged by a utility company shall be an Owner's Cost with the exception of any utility usage charges incurred during construction, which shall be the responsibility of the Construction Manager as part of the General Conditions. The Construction Manager shall additionally be responsible for the costs associated with the provision of chemical toilets, with such costs included in the General Conditions. Costs associated with temporary wiring, temporary lighting, temporary electrical connections, temporary water/sewer connections, temporary gas connections, protection of existing utilities, and routing of utilities for jobsite and office trailer use shall be a Subcontractors' Cost. Any fees charged by a utility after installation of permanent meters shall be an Owner's Cost.

14.5.1 Acceptance by the Construction Manager of the use of the Owner's water, gas and electrical energy constitutes a release from the Construction Manager to the Owner of all claims and liability for any damages or losses which may be incurred

by the Construction Manager as a result of water, gas and electrical energy outages or voltage variations or surges, but not for time extensions arising out of the interruption or cessation of these utilities.

14.6 **Statements of Owner's Capacity.** The Owner, upon reasonable written request, shall furnish to the Construction Manager in writing statements of:

14.6.1 The record legal title to the Site on which the Project is located and the Owner's interest therein at the time of execution of this Contract for Construction Management; and

14.6.2 The Owner's financial capacity to pay for the Project, subject to such reasonable confidentiality requirements that the Owner may impose.

ARTICLE 15
CONSTRUCTION MANAGER'S COMPENSATION

15.1 **Unit Prices.** For the purposes of calculating any additive or deductive changes for materials or items of work for which the Construction Manager has provided Unit Prices as incorporated into Exhibit "5" of **Appendix "M"**, the cost or savings of the change shall be calculated using the Unit Prices described in Exhibit "5" of **Appendix "M".**

15.2 **Schedule of Values.** Attached as Exhibit "4" of **Appendix "M"**, is the Construction Managers Schedule of Values apportioning the different elements of the Work for purposes of periodic and final payment, including the times and amounts of payments for General Conditions and Management Fees. The Construction Manager's schedule of values shall be presented in the format, and with such detail and supporting information, requested by the Professional or Owner. The Construction Manager shall not imbalance or artificially inflate any element of its schedule of values. Upon the Professional and Owner's acceptance, the schedule of values shall be used to process and pay the Construction Manager's payment requests. The schedule of values shall not be changed without written approval by the Owner.

15.3 **Invoicing Procedures.** In accordance with the procedures and requirements set forth in this Article, the Construction Manager shall invoice the Owner and the Owner shall pay the Construction Manager the Construction Price.

15.3.1 At least every thirty (30) calendar days after commencement of performance, but no more frequently than once a month, the Construction Manager shall submit invoices to the Professional requesting payment for labor and services rendered during the preceding thirty (30) calendar days. Each invoice shall contain such detail and be backed up with whatever supporting information the Owner or the Professional reasonably requests and shall at a minimum state:

(i) The total Construction Price for the Project;

(ii) The amount due for properly provided labor, materials and equipment properly incorporated into the Project; and with respect to amounts invoiced for materials or equipment necessary for the Project and properly stored at the Site (or elsewhere if offsite storage is approved in writing by the Owner), be accompanied by written proof that the Owner

has title to such materials or equipment and that such material and equipment is fully insured against loss or damage;

(iii) A breakdown of the various parts of the Work as related to the Construction Price as shown on the Schedule of Values;

(iv) The value of the various parts of the Work actually performed;

(v) Previously invoiced amounts and credit payments made;

(vi) The total amount due, less any agreed retainage;

(vii) Submit a current CPM Schedule with every pay application;

and shall also have attached such lien waiver and other documentation verifying the Construction Manager's payment to subcontractors and suppliers as the Owner or the Professional may reasonably request. Without limitation, at any stage of the Work, the Owner may require that the Construction Manager provide a lien release executed by the Construction Manager, each Subcontractor having provided Notice to Owner and any other Subcontractor, Laborer, Materialman or person or entity providing labor, materials or services as may reasonably by required by the Owner which such release and waiver of lien shall relate to the work which is the subject of the Application for Payment.

15.4 **Payment Procedures.**

15.4.1 The Professional will review the Construction Manager's applications for payment, including such accompanying data, information and schedules as the Professional requires, to determine the amounts due to the Construction Manager and, based upon such review, together with its inspections of the Work, shall authorize payment by the Owner to the Construction Manager in writing. Such authorization will constitute the Professional's certification to the Owner that:

(i) The Work described in the Construction Manager's invoice has progressed to the level indicated;

(ii) The work has been performed in accordance with the Contract for Construction Management;

(iii) All necessary and appropriate lien waivers have been submitted; and

(iv) The amount requested is currently due and owing to the Construction Manager.

15.4.2 In the case of unit price work, the Professional's recommendations for payment will constitute a final determination of quantities and classifications of such work.

15.4.3 Payments shall be deemed timely if postmarked at least two (2) business days before the Payment Date defined in Chapter 1 or any other payment due date stated in this Article 15.

15.4.4 The Professional may withhold all or part of an application for payment to the extent reasonably necessary to protect the Owner if in the Professional's opinion the representations to the owner required by subsection 15.4.1 cannot be made. If the Professional is unable to certify payment in the amount of the application, the Professional shall notify the Construction Manager and the Owner as provided for herein. If the Construction Manager and the Professional cannot agree on a revised amount, the Professional shall promptly authorize payment for the amount which the Professional is able to make such representations to the Owner. The Professional may also withhold payment or, because of subsequently discovered evidence, may nullify the whole or part of an application for payment previously issued, to such extent as may be necessary in the Professional's opinion to protect the Owner from loss for which the Construction Manager is responsible, including loss resulting from its acts and omissions, because of

(i) Defective Work not remedied;

(ii) Third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Construction Manager;

(iii) Failure of the Construction Manager to make payments properly to subcontractors for labor, materials or equipment;

(iv) Reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Price;

(v) Damage to the Owner or other contractor;

(vi) Reasonable evidence that the Work will not be completed within dates established in the Construction Schedule, and that the unpaid balance would not be adequate to cover liquidated damages for the anticipated delay; or

(vii) Persistent failure to carry out the Work in accordance with this Contract for Construction Management.

15.5 **Owner's Right to Refuse Payment.** A Professional's approval of the Construction Manager's invoice shall not preclude the Owner from exercising any of its remedies under this Contract for Construction Management. These remedies include, without limitation the Owner's right to withhold all or part of any payment (including Final Payment) for the reasons described in Paragraph 15.4.1 or in this Paragraph 15.5. In the event of a dispute, payment shall be made on or before the Payment Date for amounts not in dispute, subject to any setoffs claimed by the Owner. The Owner shall have the right to refuse to make payment and, if necessary, may demand the return of a portion or all of the amount previously paid to the Construction Manager to the extent due to:

15.5.1 The Construction Manager's failure to perform the Work in compliance with the requirements of this Contract for Construction Management or any other agreement between the parties;

15.5.2 The Construction Manager's failure to correctly and accurately represent the Work performed in a payment request, or otherwise;

15.5.3 The Construction Manager's performance of the Work at a rate or in a manner that, in the Owner's reasonable opinion, is likely to result in the Project being inexcusably delayed;

15.5.4 The Construction Manager's failure to use funds previously paid the Construction Manager by the Owner, to pay the Construction Manager's Project-related obligations including, but not limited to, the Construction Manager's subcontractors, materialmen, and suppliers;

15.5.5 Claims made against the Owner or its property;

15.5.6 Loss caused by the Construction Manager or the Construction Manager's subcontractors, or suppliers and not paid by insurance or covered by bonds provided by Construction Manager; or

15.5.7 The Construction Manager's failure or refusal to perform any of its obligations to the Owner.

15.6 **Construction Manager's Right to Refuse Performance for Non-Payment.** If within the time set forth in Section 218.735, Florida Statutes, the Owner, without cause or basis hereunder, fails to pay the Construction Manager any amounts then due and payable to the Construction Manager, the Construction Manager shall have the right, in addition to all other rights and remedies contained herein, to cease performance of the Work until receipt of proper payment after first providing fourteen (14) calendar days written notice to the Owner of its intent to cease work.

15.7 **Correction of Past Payments.** All prior payments, whether based on estimates or otherwise, may be corrected and adjusted in any subsequent payment and shall be corrected and adjusted in the final payment. In the event that any invoice contains a defect or impropriety which would prevent payment by the Payment Date, the Owner shall notify the Construction Manager in writing of such defect or impropriety in accordance with Section 218.735, Florida Statutes. Any disputed amounts determined by the Owner to be payable to the Construction Manager shall be due in the time frames set forth in Section 218.735, Florida Statutes, from the date the dispute is resolved.

15.8 **Interest on Outstanding Amounts Due.** To the extent allowed by Chapter 218, Florida Statutes, interest shall accrue on amounts owed by the Owner to the Construction Manager which remain unpaid thirty (30) calendar days following the date on which payment is due.

15.8.1 No interest shall accrue when payment is delayed because of a dispute between the Owner and the Construction Manager, or a dispute as to the accuracy or completeness of any request for payment received. This exception to the accrual of interest shall apply only to that portion of a delayed payment which is actually the subject of the dispute and shall apply only for the duration of such disagreement. Interest shall accrue on retainage which is withheld to assure performance of this Contract for Construction Management.

15.9 **Invoice Warranties and Guarantees.** The Construction Manager expressly warrants and guarantees to the Owner that:

15.9.1 Title to all goods, products, materials, equipment and systems covered by an invoice will pass to the Owner either by incorporation into the Work, or upon receipt of payment by the Construction Manager, whichever occurs last;

15.9.2 All goods, products, materials, equipment and systems covered by an invoice are free and clear of liens, claims, security interests or encumbrances; and

15.9.3 No goods, products, materials, equipment or systems covered by an invoice have been acquired by the Construction Manager, or its subcontractors or suppliers, subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the Construction Manager, or its subcontractors or suppliers.

15.10 **Construction Manager's Signature.** The signature of the Construction Manager on any invoice constitutes the Construction Manager's certification to the Owner that (i) the Construction Manager's services listed in the invoice have progressed to the level indicated and have been performed as required by this Contract for Construction Management; (ii) the Construction Manager has paid its subcontractors and suppliers their proportional share of all previous payments received from the Owner; and (iii) the amount requested is currently due and owing.

15.11 **Taxes.** The Construction Manager shall incorporate into the Construction Price, and pay, all sales, consumer, use and similar taxes for goods, products, materials, equipment and systems incorporated into the Work which were legally required at the time of execution of this Contract for Construction Management, whether or not yet effective or merely scheduled to go into effect. The Construction Manager shall secure, defend, protect, hold harmless, and indemnify the Owner from and against any and all liability, loss, claims, demands, suits, costs, fees and expenses (including actual fees and expenses of attorneys, expert witnesses, and other consultants) relating to any taxes assessed or imposed upon, incurred by or asserted against the Owner by any taxing authority with respect to such taxes. The Construction Manager shall cooperate with and assist the Owner in securing qualified refunds of any sales or use tax paid by the Owner or Construction Manager on goods, products, materials, equipment or systems. Any refund secured shall be paid to the Owner.

15.11.1 Sales Tax Recovery Program. In accordance with Section 212.08(6), Florida Statutes, and Rule 12A-1.094, Florida Administrative Code, the Owner is tax exempt when it purchases tangible personal property for use in public works projects, subject to certain restrictions. In the event this project is declared a sales tax recovery project by the Owner, the following procedures shall apply:

(i) The Owner, through the Department of Facilities Development and Management, shall determine whether the Owner shall directly purchase certain materials required for the Work.

(ii) Upon acceptance of the GMP, the Construction Manager shall prepare a list of proposed items that may be desirable for owner direct purchasing.

Proposed items shall be items that are purchased in a single order from a single vendor with a value greater than $10,000. Upon reviewing this list, the Owner shall determine whether it will directly purchase certain materials. The Owner shall notify the Construction Manager in writing of the specific materials which are intended to be purchased.

(iii) Within ten (10) calendar days from receipt of the written notice described in Paragraph 15.11.1(ii), the Construction Manager shall advise the Owner in writing of: (a) the date upon which the materials must be on-site according to the Construction Schedule approved at that time, (b) the date that the Construction Manager directs that the Owner place the order for the described materials, (c) the location to which the materials are to be delivered, and (d) any other particular details of the order which the Construction Manager requests that the Owner include in the Purchase Order to the vendor.

(iv) The Owner may, but is not required to, provide the Construction Manager with the proposed Purchase Order for the materials. In that case, the Construction Manager shall review the Purchase Order for compliance with the Construction Documents, including, without limitation, the plans, specifications and Construction Schedule. Within the earlier of: five (5) calendar days from the receipt of the proposed Purchase Order or the day prior to the date provided by the Construction Manager pursuant to Paragraph 15.11.1(ii)(b) above, the Construction Manager shall provide the Owner with written approval of the Purchase Order or shall provide written revisions to the Purchase Order, in order that the materials and the delivery thereof shall comply with the Construction Documents, including, without limitation, the plans, specifications and Construction Schedule.

(v) The Owner, through the Department of Facilities Development and Management, shall thereafter issue a Purchase Order for the materials with the vendor.

(vi) The Owner shall take title to those materials directly from the vendor and shall bear the risk of loss or damage to the materials which are delivered by the vendor through the time that the materials are delivered to the location designated by the Construction Manager. After the materials are delivered to the location designated by the Construction Manager, the Construction Manager shall have full responsibility for their storage, protection, risk-of-loss and installation pursuant to the Construction Documents, including, without limitation, the plans, specifications and Construction Schedule.

(vii) The vendor shall invoice the Owner directly for the materials purchased from the vendor. The Owner shall pay the invoices for the materials directly, presenting its sales tax exemption certificate to each vendor at the time of payment.

With respect to the materials specifically designated by this section, the Construction Manager shall be relieved only of its responsibilities to place the order for the subject

materials, to pay for the materials and to insure the materials against loss through the date that they are delivered to the location designated by the Construction Manager. Otherwise, nothing herein shall revise or modify the Construction Manager's responsibilities set forth in this Agreement, including, without limitation, the responsibility to schedule the timely ordering and delivery of the materials purchased under this Paragraph 15.11.1, the management of the materials once delivered or the incorporation of the materials into the Work, as provided in the Construction Documents, including, without limitation, the plans, specifications and Construction Schedule.

The cost of any materials purchased through the sales tax recovery program shall be deducted from the contract amount. The Owner and Construction Manager shall execute a written change order described in this Agreement, and approved in accordance with the Owner's policy and the Change Order shall become a part of the Contract Documents as provided in this Agreement. The Construction Manager's fee will be calculated on the basis that the Construction Manager, rather than the Owner, procured the materials. Therefore, for purpose of calculating the fee, the total of subcontractor and supplier costs will include payments made by the Owner under this program. The calculation of the fee in this manner shall provide, among other things, specific supplemental consideration for the provisions of this Paragraph 15.11.1.

15.12 **Compensation of Construction Manager's Subcontractors And Suppliers.** Upon receipt of payment from the Owner, the Construction Manager shall pay each of its subcontractors and suppliers out of the amount received by the Construction Manager on account of such subcontractor's or supplier's portion of the Work, the amount to which each entity is entitled, reflecting percentages actually retained from payments to the Construction Manager on account of such entity's portion of the Work. The Owner shall have no obligation to pay, and shall not be responsible for payments to, the Construction Manager's subcontractors or suppliers. However, the Owner reserves the right, but has no duty, to make payment jointly to the Construction Manager and to any of its subcontractors or suppliers in the event that the Owner becomes aware that the Construction Manager fails to pay or unreasonably withholds payment from one or more of those entities. Such joint check procedure, if employed by the Owner, shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check and shall not be deemed to commit the Owner to repeat the procedure in the future.

15.13 **Final Payment.** Prior to being entitled to receive final payment, and as a condition precedent thereto, the Construction Manager must achieve Final Completion of the Work and provide documents needed for final payment. The Owner shall, subject to its rights set forth above in this Article, make final payment of all sums due the Construction Manager within fourteen (14) calendar days of a Professional's execution of a final approval for payment.

15.14 **Intentionally Deleted.**

ARTICLE 16
SCHEDULE REQUIREMENTS

16.1 **Construction Schedule.** The Construction Schedule for the project shall include all pertinent dates and periods for timely completion of the Work.

16.1.1 Unless otherwise directed and approved by the Owner, the Construction Manager shall prepare the Construction Schedule as a critical path schedule with separate divisions for each major portion of the Work or operations. The Construction Schedule shall include and properly coordinate dates for performance of all divisions of the Work, including completion of off-site requirements and tasks, so that the Work can be completed in a timely and orderly fashion consistent with the required dates of Substantial Completion and Final Completion.

16.1.2 The Construction Schedule shall include (i) the required Commencement Date, the required dates of Substantial Completion and Final Completion; (ii) any guideline and milestone dates required by the Owner; (iii) any applicable subcontractor and supplier subschedules; (iv) a submittal schedule which allows sufficient time for review of documents and submittals; (v) the complete sequence of construction by activity, with dates for beginning and completion of each element of construction; and (vi) required decision dates.

16.1.3 By reviewing the Construction Schedule, the Owner and Professional do not assume any of the Construction Manager's responsibility (i) that the Construction Schedule be coordinated or complete; or (ii) for timely and orderly completion by the required dates of Substantial Completion, Final Completion and any milestone dates required by the Owner.

16.1.4 The Construction Manager shall review, on a weekly basis, the actual status of the Work against the Construction Schedule. The Construction Manager shall discuss the status of the Work weekly with the designated Professional, so that proper overall management may be provided.

16.1.5 The Construction Manager shall periodically and in all instances when the Construction Manager anticipates that performance of the Work will be delayed or in fact has been delayed, but not less frequently than monthly, prepare a revised Construction Schedule and show actual progress of the Work through the revision date, projected completion of each remaining activity, activities modified since previous submittal, major changes in scope, and other identifiable changes. The updated Construction Schedule shall be accompanied by a narrative report which (i) states and explains any modifications of the critical path schedule, including any changes in logic; (ii) defines problem areas and lists areas of anticipated delays; (iii) explains the anticipated impact the problems and delays will have on the schedule and scheduled activities; (iv) reports corrective action taken or proposed; and (v) states how problems anticipated by projections shown on the schedule will be resolved to avoid delay in delivering the Work by the required dates of Substantial Completion and Final Completion, and other milestone dates required by the Owner, if any.

16.1.6 The Contractor's initial Construction Schedule, developed pursuant to Article 2 of the Preconstruction Services shall be attached as Exhibit "2" to **Appendix "M"**. In the event that the attached Construction Schedule does not strictly comply with this Paragraph, the Owner does not waive, and specifically reserves, its right to require the Construction Manager's strict compliance with this Paragraph.

16.1.7 The receipt of the required updated Construction Schedule is a condition precedent to payment upon any Application for Payment. In addition, the Construction Manager agrees to provide an updated Construction Schedule which strictly complies with this Paragraph on or before ten (10) days after the Owner's written request therefore. Any submissions of the Construction Schedule hereunder shall be in hard copy and electronic data file format, either in its native data format, or converted to a format requested by the Owner.

16.1.8 In the event any updated Construction Schedule indicates any delays to the required Milestones or Completion Date, the Construction Manager shall propose an affirmative plan to recover from any delay to achieve the Milestones and Completion Date, including overtime and/or additional labor, if necessary. In no event shall any updated Construction Schedule or plan for recovery hereunder constitute notice, demand or acceptance of an adjustment in the Contract Time, Contract Sum, any Milestone Date or the Completion Date unless any such adjustment is agreed to by the Owner and authorized pursuant to Change Order as provided in the Contract.

16.1.9 The Owner may, but is not required to, review any Construction Schedule for, among other things, whether the schedule describes in a manner satisfactory to the Owner, a reasonable and realistic progress of the Work that achieves the required Milestones and Completion Date. The Owner may reject the Construction Schedule if the Construction Schedule fails to describe in a manner satisfactory to the Owner, a reasonable and realistic progress of the Work that achieves the required Milestones and Completion Date, or, if the Construction Schedule indicates any delays to the required Milestones or Completion Date, whether the Construction Manager has provided a plan for recovery which describes in a manner satisfactory to the Owner, a reasonable and realistic recovery that achieves the required Milestones and Completion Date. If the Construction Schedule is not accepted by the Owner, the Construction Manager shall promptly revise the Construction Schedule in accordance with the reasonable recommendations of the Owner and re-submit a revised updated Construction Schedule to the Owner.

16.1.10 Construction Manager shall monitor the progress of the Work for conformance with the requirements of the Construction Schedule and shall promptly advise the Owner of any proposed change in the Construction Schedule or of any delays or potential delays in the Construction Schedule.

16.1.11 The Construction Manager shall engage such personnel and staff as are required to fulfill its requirements under this Section. At the very least, the Construction Manager shall staff the Project with one (1) scheduling manager who shall have, as his or her responsibility for the Project, the fulfillment of the Construction Manager's requirements hereunder. The manager shall be assigned to the Project for such hours per week as are required to achieve the

Construction Manager's responsibilities hereunder and consistent with the conditions of the Project.

16.1.12 Construction Manager agrees to perform the Work in the manner, sequence and timing necessary to fully comply with the Construction Schedule, or any updates thereof. Construction Manager will perform the Work diligently, expeditiously and with adequate resources to complete all of the Work by the date determined in the Construction Schedule.

16.1.13 **TIME IS OF THE ESSENCE WITH RESPECT TO EACH TERM OF THE CONSTRUCTION MANAGER'S PERFORMANCE OF THIS AGREEMENT. WITHOUT LIMITATION, ACHIEVEMENT OF EACH MILESTONE IN THE CONSTRUCTION SCHEDULE AND SUBSTANTIAL COMPLETION OF THE CONSTRUCTION OF THE WORK BY THE SUBSTANTIAL COMPLETION DATE, THE CONSTRUCTION MANAGER'S PERFORMANCE OF THE AGREEMENT PURSUANT TO THE CONSTRUCTION SCHEDULE, INCLUDING WITHOUT LIMITATION, ACHIEVEMENT OF EACH MILESTONE IN THE CONSTRUCTION SCHEDULE AND SUBSTANTIAL COMPLETION OF THE CONSTRUCTION OF THE WORK BY THE COMPLETION DATE IS A CRITICAL AND MATERIAL REQUIREMENT OF THE CONSTRUCTION MANAGER'S PERFORMANCE OF THE WORK. THE CONSTRUCTION MANAGER ACKNOWLEDGES THAT THE ACHIEVEMENT OF SUBSTANTIAL COMPLETION OF THE WORK BY THE COMPLETION DATE IS A CRITICAL AND MATERIAL REQUIREMENT OF THE CONSTRUCTION MANAGER'S PERFORMANCE OF THE WORK, AGREES THAT THE WORK CAN BE PERFORMED BY THE COMPLETION DATE AND OTHERWISE AGREES TO USE ITS BEST EFFORTS TO PERFORM THE WORK TO ACHIEVE THE SUBSTANTIAL COMPLETION BY THE COMPLETION DATE.**

16.2 **Delay in Performance.**

16.2.1 The Construction Manager expressly agrees to complete the work within the time specified. Upon request and approval as provided for in the Contract Documents, Owner may grant an extension of the allowable Contract Time when Work on the critical path is delayed by factors or impacts determined to be beyond the Construction Manager's control which could not have been reasonably anticipated or contemplated at the time bids for the Work were received. Extension of the Contract Time will not be granted for impacts or delays due to fault or negligence of the Construction Manager, or for reasonable anticipated adverse weather conditions. No claim for an extension of time for delays shall be considered unless notice is provided to the Owner in writing within five (5) business days after commencement of each such occurrence stating the probably duration of the delay and unless the Construction Manager establishes by critical path method (CPM) analysis that the impact affects the critical path of the project and delayed the planned Substantial Completion date of the Work

16.2.2 The extension of time provided for in Paragraph 16.2.1 shall be the Construction Manager's sole remedy for any delay. The Owner shall not be obligated or liable to the Construction Manager for, and the Construction Manager expressly waives any claims against the Owner on account of, any damages, costs or expenses of any nature whatsoever which the Construction

Manager, its subcontractors of any tier or any other person may incur as a result of any delays, interference, suspensions, rescheduling, changes in sequence, congestion, disruptions or the like, it being understood and agreed that the Construction Manager's sole and exclusive remedy in such event shall be an extension of the schedule as provided for above. Without limitation, the Construction Manager waives claims relating to damages, delay damages or time-related costs or damages, including, without limitation: (1) profit on the additional costs beyond those as allowed elsewhere in the documents; (2) loss of anticipated profit; (3) indirect expenses; (4) impact costs; (5) loss of productivity; (6) inefficiency costs; (7) home-office overhead; (8) consequential damages, including but not limited to, loss of bonding capacity, loss of bidding opportunities, and insolvency; and (9) legal fees, claims preparation, expenses, or costs of dispute resolution. However, this provision shall not preclude the recovery of damages by the Construction Manager for hindrances or delays due solely to fraud, bad faith or active interference on the part of the Owner.

16.2.3 Claims relating to time shall be made in accordance with the applicable provisions of Chapter 3, Article 9.

16.2.4 In the event the Construction Manager is delayed through fraud, bad faith or active interference of the Owner, or is delayed as a result of an Owner requested Change Order that impacts the critical path, then the Construction Manager shall be entitled to compensation in the same manner as set forth in Chapter 1, Paragraph 4.3. Additionally, in the event the Construction Manager's delay is deemed compensable by a court of competent jurisdiction, then the Construction Manager's compensation shall be determined as set forth in Chapter 1, Paragraph 4.3.

16.3 **Modifications to Time for Performance**. The Construction Manager shall determine and promptly notify the Owner and the Professional(s) in writing when it believes adjustments to the required dates of Substantial Completion or Final Completion, or other milestone dates required by the Owner, if any, are necessary, but no such adjustments shall be effective unless approved in writing by the Owner and Professional(s).

16.4 **Early Completion**. The Construction Manager may attempt to achieve Substantial Completion before the required date of Substantial Completion. However, such planned early completion shall be for the Construction Manager's sole convenience and shall not create any additional Construction Manager rights or Owner obligations under this Contract for Construction Management, nor shall it change the required dates of Substantial Completion or Final Completion. The Owner shall not pay the Construction Manager any additional compensation for achievement of Substantial Completion or Final Completion prior to the required dates nor will the Owner owe the Construction Manager any compensation should the Owner cause the Construction Manager not to achieve Substantial Completion earlier than the required date of Substantial Completion or Final Completion earlier than the required date of Final Completion.

16.5 **Modification Dates of Substantial Completion or Final Completion**. The Construction Manager may propose modifications to the required dates of Substantial Completion or Final Completion. The Owner may, but is not required to, accept the Construction Manager's proposal. Modification(s) of the required dates of Substantial

Completion or Final Completion shall be accomplished only by duly authorized and accepted change order(s) stating the new date(s) with specificity and reciting that all references in this Contract for Construction Management to the required dates of Substantial Completion or Final Completion shall thereafter refer to the date(s) as modified, and all rights and obligations, including the Construction Manager's liability for liquidated damages, shall be determined in relation to the date(s) as modified.

16.6 **Document Review**. The Construction Manager shall provide documents to the Owner and Professional(s) for review in accordance with schedule requirements and with sufficient lead time to allow the Owner and Professional(s) reasonable time for review as established in **Appendix "M"**.

ARTICLE 17
LIQUIDATED DAMAGES

17.1 **Time of the Essence.** The parties hereto mutually understand and agree that time is of the essence in the performance of this Contract for Construction Management and that the Owner will incur damages if the Work is not completed on time. The Construction Manager shall at all times carry out its duties and responsibilities as expeditiously as possible and shall begin, perform and complete its services so that (i) the Work progresses in accordance with the Construction Schedule; (ii) the Work is substantially completed by the required date of Substantial Completion; and (iii) the Work is finally complete by the date of Final Completion.

17.2 **Failure to Timely Achieve Completion.** The parties hereto mutually understand and agree that the Owner will sustain substantial monetary and other damages in the event of a failure or delay by the Construction Manager in the completion of the Work. If the Construction Manager inexcusably fails to achieve Substantial Completion by the required date of Substantial Completion as established and previously set forth in this Contract for Construction Management, due to the fault or neglect of Construction Manager, then the Construction Manager shall pay to the Owner, as liquidated damages for delay and not as a penalty, the daily amount specified in Chapter 1 for each and every day after the required date of Substantial Completion until Substantial Completion. This liquidated damages provision shall apply and remain in full force and effect in the event that the Construction Manager is terminated by Owner for default and shall apply until Substantial Completion has been achieved by any completing Construction Manager. If the Construction Manager fails to achieve Final Completion by the required date of Final Completion as established and previously set forth in this Contract for Construction Management, due to the fault or neglect of Construction Manager, then the Construction Manager shall pay to the Owner, as liquidated damages for delay and not as a penalty, the daily amount set forth in Chapter 1, for each calendar day of unexcused delay in achieving Final Completion.

17.3 **Intentionally Deleted.**

17.4 **Excusable Delay**. If the Construction Manager is delayed at any time in the progress or performance of the Work by (i) acts or omissions of the Owner or Professional(s); (ii) changes ordered by the Owner in the scope of Work; (iii) fire; (iv) unusual delays in transportation; (v) adverse unusual weather conditions not reasonably anticipated by the Construction Manager and material or labor shortages resulting therefrom; (vi) unavoidable casualties (including terrorism or acts of God); (vii) causes beyond the

Construction Manager 's control which the Owner agrees in writing are justifiable; or (viii) any other cause which the Owner reasonably determines may justify the delay, the Construction Schedule shall be extended for a period equal to the length of such delay, but only if (a) such delay is not in any way caused by default or collusion on the part of the Construction Manager or by any cause which the Construction Manager could reasonably control or circumvent; (b) the Construction Manager would have otherwise been able to timely perform all of its obligations under this Contract for Construction Management but for such delay; and (c) immediately but not later than seven (7) calendar days after the beginning of any such delay or after Construction Manager knows of the delay, the Construction Manager gives notice of its delay claim to the Owner. Concurrent delays, i.e., those concurrently caused by an act or omission identified in this Article 17.4 and by Construction Manager, are excusable but not compensable

17.5 **Owner's Right To Withhold Payment.** When it reasonably believes (i) that Substantial Completion will be inexcusably delayed; or (ii) that the Construction Manager will fail to achieve Final Completion by the date of Final Completion, the Owner shall be entitled, but not required, to withhold from any amounts otherwise due the Construction Manager the daily amount specified for liquidated damages in this Article for each calendar day of the unexcused delay.

17.5.1 If and when the Construction Manager overcomes the delay in timely achieving Substantial Completion or Final Completion, or any part thereof, for which the Owner has withheld payment, the Owner shall promptly release to the Construction Manager those funds withheld, but no longer applicable, as liquidated damages.

17.5.2 Delay caused by labor disputes, picketing, employee boycotts, or the like which directly or indirectly involves employees of the Construction Manager or its subcontractors and suppliers is not the responsibility of the Owner and will result in time extensions only if agreed to in writing by the Owner at the time such events arise.

ARTICLE 18
CONCEALED AND UNFORESEEN CONDITIONS

18.1 **Notification Regarding Unusual Conditions.** If (i) the Construction Manager encounters concealed and unforeseen conditions of an unusual nature which affect the performance of the Work; or (ii) the conditions vary from those indicated by the Construction Documents; and (iii) such conditions are not ordinarily found to exist or differ materially from those generally recognized as inherent in work of the character provided by the Construction Manager, the Construction Manager shall promptly, but in no event later than three (3) calendar days after first observance of the conditions, or within three (3) calendar days of the Construction Manager being notified by a subcontractor of the condition, notify the appropriate Professional(s) and the Owner before conditions are disturbed and give the Professional(s) or the Owner opportunity to observe the condition in its undisturbed state.

18.1.1 The conditions will be promptly investigated and, if they differ substantially and cause a material increase or decrease in the Construction Manager's cost of, or time required for, performance of the Work, compensation or time for

performance or both will be equitably adjusted.

18.1.2 All adjustments in compensation or extensions of time shall be by change order. Change order requests must be made within twenty one (21) calendar days from the date of observation of the changed conditions.

18.1.3 The Construction Manager 's failure to notify the Professional(s) and Owner as provided in this Article shall constitute a waiver of any claim arising out of or relating to such concealed or unknown condition.

ARTICLE 19
CONSTRUCTION MANAGER'S RECORDS

19.1 **Preparation of Records.** The Construction Manager shall, concurrently with performance of its services, prepare substantiating records regarding services rendered and goods furnished.

19.2 **Retention of Records.** The Construction Manager shall retain in its records copies of all (i) written communications; (ii) memoranda of verbal communications; (iii) accounting records (including original estimates and estimating work sheets, purchase orders and invoices); (iv) job site notes; (v) daily logs; (vi) reports; (vii) notices; (viii) all subcontract files (including proposals of successful and unsuccessful bidders); (ix) change order files (including documentation covering negotiated settlements); (x) written policies and procedures, (xi) records necessary to evaluate and verify direct and indirect costs (including by way of example overhead allocations, payroll records, time sheets, rental receipts, fixed asset records); and (xii) other documents such as plans, specifications, submittals, correspondence, minutes, memoranda, tape recordings, videos, accounting records, documents reflecting the unit price of construction and other writings or things which document the Project, its design, its cost, and its construction.

19.2.1 The Construction Manager shall maintain substantiating records for five (5) years after the date of Final Completion or for any longer period of time as may be required by law or good construction practice. If the Construction Manager receives notification of a dispute or the commencement of litigation regarding the Project within this five-year period, the Construction Manager shall continue to maintain all Project records until final resolution of the dispute or litigation.

19.2.2 The Construction Manager shall, upon seven (7) days' request from the Owner, for good cause secure from its subcontractors and suppliers copies of (i) written communications; (ii) memoranda of verbal communications; (iii) accounting records (including original estimates and estimating work sheets, purchase orders and invoices); (iv) job site notes; (v) daily logs; (vi) reports; (vii) notices; (viii) all subcontract files (including proposals of successful and unsuccessful bidders); (ix) Change Order files (including documentation covering negotiated settlements); (x) written policies and procedures, (xi) records necessary to evaluate and verify direct and indirect costs (including overhead allocations), and (xii) other documents generated with respect to the Project.

19.3 **Access to Records.** Upon the request of the Owner, the Construction Manager shall make its Project records available during normal business hours to the Owner, its authorized representative(s) or to any state, federal or other regulatory authority. Any such authority, the Owner and its authorized representative(s) shall be entitled to audit,

inspect, examine, review and copy the Construction Manager's Project records at the copying party's reasonable expense, within adequate work space at the Construction Manager's facilities. Failure by the Construction Manager to supply substantiating Project records from itself and its subcontractors and suppliers upon the request of the Owner shall be reason to exclude the related costs from amounts which might otherwise be payable by the Owner pursuant to this Contract for Construction Management.

19.4 **Public Records / Copyrights.**

A. All electronic files, audio and/or video recordings, and all papers pertaining to any activity performed by the Construction Manager for or on behalf of the County shall be the property of the County and will be turned over to the County upon request. In accordance with Chapter 119, Florida Statutes, each file and all papers pertaining to any activities performed for or on behalf of the County are public records available for inspection by any person even if the file or paper resides in the contractor's office or facility. The Construction Manager shall maintain the files and papers for not less than three (3) complete calendar years after the project has been completed or terminated, or in accordance with any grant requirements, whichever is longer. Prior to the close out of the contract, the Construction Manager shall appoint a records custodian to handle any records request and provide the custodian's name and telephone number(s) to the County.

B. Any copyright derived from this agreement shall belong to the author. The author and the Construction Manager shall expressly assign to the County nonexclusive, royalty free rights to use any and all information provided by the Construction Manager in any deliverable and/or report for the County's use which may include publishing in County documents and distribution as the County deems to be in the County's best interests. If anything included in any deliverable limits the rights of the County to use the information, the deliverable shall be considered defective and not acceptable and the contractor will not be eligible for any compensation.

C. Pursuant to Section 119.0701, Florida Statutes, the Construction Manager shall comply with the Florida Public Records' laws, and shall:

(i) Keep and maintain public records that ordinarily and necessarily would be required by the Owner in order to perform the services identified herein.

(ii) Provide the public with access to public records on the same terms and conditions that the Owner would provide the records and at a cost that does not exceed the cost provided for by law.

(iii) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.

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

Failure to comply with this section shall be deemed a breach of this Agreement and enforceable as set forth in Section 119.0701, Florida Statutes.

ARTICLE 20
PROPRIETARY DOCUMENTS AND CONFIDENTIALITY

20.1 **Nature and Use of Information.** All information, documents, and electronic media furnished by the Owner to the Construction Manager (i) belong to the Owner; (ii) are proprietary and confidential; (iii) are furnished solely for use on the Owner's Project; (iv) shall be kept confidential by the Construction Manager except for use for this Project; and (v) shall not be used by the Construction Manager on any other project or in connection with any other person or entity, unless disclosure or use thereof in connection with any matter other than services rendered to the Owner hereunder is specifically authorized in writing by the Owner in advance. The Owner hereby grants to the Construction Manager a limited license to use and reproduce applicable portions of the Construction Documents necessary for execution of the Work. All copies made under this license shall bear the statutory copyright notice, if any, shown on the documents.

20.2 **Intentionally Deleted**.

20.3 **Disclosure of Information.** The Construction Manager shall not disclose any information it receives from the Owner to any other person or entity except to the extent necessary to allow it to perform its duties under this Contract for Construction Management.

20.4 **Instructions to Employees.** Because it is difficult to separate proprietary and confidential information from that which is not, the Construction Manager shall instruct its employees and agents to regard all information which is not in the public domain as information which is proprietary and confidential, subject to uses permitted hereunder.

20.5 **Non-Publication.** Submission or distribution of documents to meet official regulatory requirements or for other required purposes in connection with the Project is not to be construed as publication in derogation of the Owner's common law copyrights or other reserved rights.

ARTICLE 21
GENERAL INSURANCE REQUIREMENTS

21.1 **General Insurance Requirements.** During Construction, the Construction Manager shall secure, pay for and maintain insurance as described and in the amounts and limits set forth in **Appendix "G"** hereto. The companies providing the insurance as described in the Certificate of insurance may be changed only with the written permission of the Owner. The cost of such insurance will be detailed in the GMP Proposal. Without limitation, each insurance policy shall:

21.1.1 Shall be issued by an insurance carrier reasonably acceptable to the Owner;

21.1.2 Shall be kept in force throughout performance of the Construction Manager's services;

21.1.3 Shall be an occurrence policy; and

21.1.4 Shall be evidenced by a certificate of insurance acceptable to the Owner which provides that the coverage evidenced thereby shall not be substantially modified or canceled without thirty (30) calendar days' prior written notice to the Owner.

21.2 **Certificates of Insurance.** Prior to performance of services on the Project, the Construction Manager shall (i) have all required insurance coverage in effect; and (ii) deliver to the Owner certificates of insurance for all its required minimum insurance coverage. The Construction Manager shall (i) require that its subcontractors, and suppliers have similar coverage in effect, and prior to the performance of any services on the Project by the Construction Manager's subcontractors and suppliers, and (ii) shall ensure that all required insurance coverages of its subcontractors and suppliers is in effect. The Owner shall have no responsibility to verify compliance by the Construction Manager or its subcontractors and suppliers. Upon the request of the Owner, the Construction Manager shall deliver to the Owner certificates of insurance and/or copies of policies for all required insurance coverage.

21.3 **Effect of Insurance.** Unless otherwise specified in the GMP proposal, compliance with insurance requirements shall not relieve the Construction Manager of any responsibility to indemnify the Owner for any liability to the Owner as specified in any other provision of this Contract for Construction Management, and the Owner shall be entitled to pursue any remedy in law or equity if the Construction Manager fails to comply with the contractual provisions of this Contract for Construction Management. Indemnity obligations specified elsewhere in this Contract for Construction Management shall not be negated or reduced by virtue of any insurance carrier's (i) denial of insurance coverage for the occurrence or event which is the subject matter of the claim; or (ii) refusal to defend any named insured.

ARTICLE 22
GENERAL BOND REQUIREMENTS

22.1 **General Bond Requirements.** If the Construction Manager is required to provide performance and payment bond(s), the penal sum of each bond shall be in an amount not less than the Construction Price, as adjusted by any change order(s), and each bond shall:

22.1.1 Be in a form approved by the Owner;

22.2.2 Incorporate by reference the terms of this Contract for Construction Management;

22.2.3 Be accompanied by a power of attorney certifying that the person(s) executing the bond have the authority to do so.

22.2 **Delivery of Bonds.** The Construction Manager shall deliver any required bond(s), check(s) for all recording fees, and power(s) of attorney to the Owner prior to commencement of the Work. The costs of the bonds, including recording fees, are considered general conditions fees.

ARTICLE 23
OWNER'S RIGHT TO STOP WORK OR RIGHT TO CARRY OUT WORK

23.1 **Cease And Desist Order.** If the Construction Manager fails or refuses to perform or fails to correct defective Work as required, or persistently fails to carry out the Work in accordance with the Contract for Construction Management, the Owner may, by written notice, order the Construction Manager to cease and desist in performing the Work or any portion of the Work until the cause for the order has been eliminated to the satisfaction of the Owner. Upon receipt of such instruction, the Construction Manager shall immediately cease and desist as instructed by the Owner and shall not proceed further until the cause for the Owner's order has been corrected, no longer exists, or the Owner instructs that the Work may resume.

23.1.1 The Construction Manager shall not be entitled to an adjustment in the time for performance or the Construction Price under this clause since such stoppages are considered to be the fault of the Construction Manager.

23.1.2 The right of the Owner to stop Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Construction Manager or others.

23.1.3 In the event the Owner issues instructions to cease and desist, and in the further event that the Construction Manager fails and refuses with seven (7) calendar days to provide adequate assurance to the Owner that the cause of such instructions will be eliminated or corrected, then the Owner shall have the right, but not the obligation, to carry out the Work in accordance with Paragraph 23.2 below, or any portion of the Work with its own forces, or with the forces of another contractor, and the Construction Manager shall be responsible for the cost of performing such Work by the Owner.

23.1.4 The rights set forth herein are in addition to, and without prejudice to, any other rights or remedies the Owner may have against the Construction Manager.

23.2 **Right to Carry Out Work.** If the Construction Manager defaults or neglects to carry out the Work in accordance with the Contract Documents and fails to commence and continue correction of such default or neglect within the seven (7) days after receipt of the written notice from the Owner as set forth in Paragraph 23.1.3 above, to do so with diligence and promptness, the Owner may after such seven-day period give the Construction Manager a second written notice to correct such deficiencies. The second written notice shall require the Construction Manager to correct such default or neglect within three (3) days of receipt of the written notice. If the Construction Manager fails to correct such deficiencies the Owner may, without prejudice to other remedies available to the Owner, correct the deficiencies and issue a Change Order deducting from the Contract Price the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Professional's additional services made necessary by the default, neglect or failure. Such action by the Owner and amounts charged to the Construction Manager are both subject to prior approval of the Professional. If payment then or thereafter due the Construction Manager is not sufficient to cover such amounts, the Construction Manager shall pay the difference to the Owner.

ARTICLE 24
TERMINATION OR SUSPENSION OF CONTRACT FOR CONSTRUCTION MANAGEMENT

24.1 **Termination for Cause by Owner.**

24.1.1 The Owner may terminate this Contract for Construction Management for cause if the Construction Manager materially breaches this Contract for Construction Management by:

(i) Refusing, failing or being unable to properly manage or perform on any Project;

(ii) Refusing, failing or being unable to supply the Project with sufficient numbers of workers, properly skilled workers, proper materials, or maintain applicable schedules;

(iii) Refusing, failing or being unable to make prompt payment to subcontractors or suppliers;

(iv) Disregarding laws, ordinances, rules, regulations or orders of any public authority or quasi-public authority having jurisdiction over the Project;

(v) Refusing, failing or being unable to substantially perform in accordance with the terms of the Contract for Construction Management as determined by the Owner, or as otherwise defined elsewhere herein; or

(vi) Refusing, failing or being unable to substantially perform in accordance with the terms of any other agreement between the Owner and Construction Manager.

24.1.2 Upon the occurrence of any of the events described in Paragraph 24.1.1, the Owner may give written notice to the Construction Manager setting forth the nature of the default and requesting cure within seven (7) calendar days from the date of notice. At any time thereafter, if the Construction Manager fails to initiate the cure or if the Construction Manager fails to expeditiously continue such cure until complete, the Owner may give another written notice requiring the default be cured within three (3) calendar days, and if not cured the Owner may notify the Construction Manager in writing of its intent to immediately terminate this Contract for Construction Management, and the Owner, without prejudice to any other rights or remedies, may take any or all of the following actions:

(i) Complete all or any part of the Work, including supplying workers, material and equipment which the Owner deems expedient to complete the Work;

(ii) Contract with others to complete all or any part of the Work, including supplying workers, material and equipment which the Owner deems expedient to complete the Work;

(iii) Take such other action as is necessary to correct such failure;

(iv) Take possession of all materials, tools, construction equipment and machinery on the Site owned or leased by the Construction Manager;

(v) Directly pay the Construction Manager's subcontractors and suppliers compensation due to them from the Construction Manager;

(vi) Finish the Work by whatever method the Owner may deem expedient; and

(vii) Require the Construction Manager to assign the Construction Manager's right, title and interest in any or all of Construction Manager's subcontracts or orders to the Owner.

24.1.3 If the Owner terminates the Contract for Construction Management for cause, and the Owner takes possession of all materials, tools, construction equipment and machinery on the Site owned or leased by the Construction Manager, the Construction Manager's compensation shall be increased by fair payment, either by purchase or rental at the election of the Owner, for any materials, tools, construction equipment and machinery items retained, subject to the Owner's right to recover from the Construction Manager the Owner's damages resulting from the termination.

24.1.4 If the Owner terminates this Contract for Construction Management for cause, and it is subsequently determined by a court of competent jurisdiction that such termination was without cause, then in such event, said termination shall be deemed a termination for convenience as set forth in Paragraph 24.3.

24.2 **Termination Due to Unavailability of Funds.** When funds are not appropriated or otherwise made available to support continuation of performance under this Contract for Construction Management, the Construction Manager will be promptly notified in writing, the Contract shall be cancelled and the Construction Manager shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of the goods or services delivered under this Contract, plus fee earned on those costs.

24.3 **Termination or Suspension for Convenience.** The Owner may at any time give written notice to the Construction Manager terminating this Contract for Construction Management or suspending the Project, in whole or in part, for the Owner's convenience and without cause. If the Owner suspends the Project for convenience, the Construction Manager shall immediately reduce its staff, services and outstanding commitments in order to minimize the cost of suspension. If the Owner terminates for Cause pursuant to Paragraph 24.1, and it is subsequently determined that the grounds for the cause did not exist, the Termination for Cause pursuant to Paragraph 24.1, shall be deemed a Termination for Convenience pursuant to this clause, effective upon the date of the notice of Termination for Cause.

24.4 **Construction Manager's Compensation When Owner Terminates for Cause or Convenience.** If this Contract for Construction Management is (i) terminated by the Owner pursuant to Paragraph 24.2; (ii) terminated by the Owner pursuant to Paragraph 24.3; or (iii) suspended more than three (3) months by the Owner pursuant to Paragraph 24.3, the Owner shall pay the Construction Manager specified amounts due for Work

actually performed prior to the effective termination date, fee earned through termination, and reasonable costs associated with termination. The Owner may agree to additional compensation, if any, due to the Construction Manager. Absent agreement on the additional amount due the Construction Manager, the Owner shall pay the Construction Manager:

24.4.1 Reasonable costs incurred in preparing to perform the terminated portion of the Work, and in terminating the Construction Manager's performance, plus a fair and reasonable allowance for overhead and profit thereon (such profit shall not include anticipated profit or consequential damages.

24.4.2 Reasonable costs of settling and paying claims arising out of the termination of subcontracts or supplier orders. These costs shall not include amounts paid in accordance with other provisions hereof.

24.5 **Construction Manager's Compensation When Owner Terminates for Cause.** If this Contract for Construction Management is terminated by the Owner for cause pursuant to Paragraph 24.1, no further payment shall be made to the Construction Manager until Final Completion of the Project. At such time, the Construction Manager shall be paid the remainder of the Construction Price less all costs and damages incurred by the Owner as a result of the default of the Construction Manager, including liquidated damages applicable thereto. The Construction Manager shall additionally reimburse the Owner for any additional costs or expenses incurred.

24.6 **Limitation in Termination Compensation.** Irrespective of the reason for termination or the party terminating, the total sum paid to the Construction Manager shall not exceed the Contract Construction Price, as properly adjusted, reduced by the amount of payments previously made and penalties or deductions incurred pursuant to any other provision of this Contract for Construction Management, and shall in no event include duplication of payment.

24.7 **Construction Manager's Responsibility Upon Termination.** Irrespective of the reason for termination or the party terminating, if this Contract for Construction Management is terminated, the Construction Manager shall, unless notified otherwise by the Owner,

24.7.1 Immediately stop work to the extent requested;

24.7.2 Terminate or assign to Owner if requested outstanding orders and subcontracts;

24.7.3 Settle the liabilities and claims arising out of the termination of subcontracts and orders; and

24.7.4 Transfer title and deliver to the Owner such completed or partially completed Work, and, if paid for by the Owner, materials, equipment, parts, fixtures, information and such contract rights as the Construction Manager has.

24.8 **Lack of Duty to Terminate.** The right to terminate or suspend the Work shall not give rise to a duty on the part of either the Owner or the Construction Manager to exercise that right for the benefit of the Owner, the Construction Manager or any other persons or entities.

24.9 **Limitation on Termination Claim.** If the Construction Manager fails to file a claim within one (1) year from the effective date of termination, the Owner shall pay the Construction Manager only for services actually performed and expenses actually incurred prior to the effective termination date.

ARTICLE 25
APPLICABLE LAW AND DISPUTE RESOLUTION

25.1 **Applicable State Law.** This Contract for Construction Management shall be deemed to be entered into in and shall be interpreted under the laws of the state of Florida.

25.2 **Court Actions.** Except as expressly prohibited by law:

25.2.1 All legal actions hereunder shall be conducted only in state court or federal court districts where the Project is located and having subject matter jurisdiction over the matter in controversy; except that any final judgment may be enforced in other jurisdictions in any manner provided by law;

25.2.2 The choice of jurisdiction and venue described in the preceding paragraph shall be mandatory and not permissive in nature, thereby precluding the possibility of litigation or trial in any jurisdiction or venue other than that specified herein;

25.2.3 The parties waive any right to assert the doctrine of *forum non conveniens* or to object to venue; and

25.2.4 The parties waive any right to a jury trial, and agree that all legal actions shall be tried, both as to factual and legal issues, only to the Court.

25.3 **Mutual Discussion.** In case of any dispute, claim, question or disagreement arising from or relating to the Project or arising out of this Contract for Construction Management or the breach thereof, the parties shall first attempt resolution through mutual discussion.

25.4 **Facilitative Mediation.** If the parties cannot resolve any dispute, claim, question, or disagreement arising from or relating to the Project or arising out of this Contract for Construction Management or the breach thereof through mutual discussion, the parties shall in good faith participate in private, non-binding facilitative mediation seeking a just and equitable solution satisfactory to all parties. In the event that mediation pursuant to this section was not conducted within six (6) months prior to the initiation of any Court Action or litigation of any dispute, claim, question, or disagreement hereunder, the parties shall participate in the mediation described herein of the issues described in the Court Action or litigation within three (3) months of the initiation of any such Court Action or litigation.

25.4.1 All parties to a mediation shall promptly provide all other parties to the mediation with copies of essential documentation relevant to the support or defense of the matter being mediated.

25.4.2 The parties shall not be required to mediate for a period greater than ninety-one calendar days unless otherwise agreed to in writing by the parties. The parties

shall share equally any administrative costs and fees of such proceedings, but shall each be responsible for their own expenses otherwise incurred.

25.4.3 In the event that the statute of limitations would run during the required mediation period, either party may institute litigation so as to avoid the running of such statute upon the condition that such party immediately seek a stay of such litigation pending the conclusion of the mediation period.

25.4.4 During the course of mediation, any party to the mediation may apply for injunctive relief from any court of competent jurisdiction until the mediation period expires or the dispute is otherwise resolved.

25.4.5 The Owner, the Professional(s), the Construction Manager, and any other parties involved in any way in the design or construction of the Project are bound, each to each other, by this requirement to mediate prior to commencement of any litigation, provided that they have signed this Contract for Construction Management or an agreement that incorporates this Contract for Construction Management by reference or signed any other agreement which binds them to mediate. Each such party agrees that it may be joined as an additional party to a mediation involving other parties under any such agreement. In the case where more than one mediation is begun under any such agreement and any party contends that the mediations are substantially related, the mediations may be conducted by the mediator selected in the first mediation which was commenced.

25.5 **Conflicting Dispute Resolution Provisions.** Neither party to this Contract for Construction Management shall enter into any contract with regard to the Project which directly or indirectly gives the right to resolve any dispute with, involving, or affecting the other to any other person or legal entity which is in conflict with the dispute resolution procedures required by this Article.

25.6 **Arbitration Preclusion.** In case of a dispute relating to the Project, or arising out of this Contract for Construction Management, no party to this Contract for Construction Management shall be required to participate in or be bound by, any arbitration proceedings.

25.7 **Performance During Dispute Resolution.** The Owner and the Construction Manager agree that pending the resolution of any dispute, controversy, or question, the Owner and the Construction Manager shall each continue to perform their respective obligations without interruption or delay, and the Construction Manager shall not stop or delay the performance of the Work.

25.8 **Claims and Disputes.**

25.8.1 For purposes of this Contract for Construction Management, a claim is a demand by one of the parties seeking an adjustment or interpretation of the Contract Documents, Contract Price, Contract Time, or seeking resolution to other disputes or matters in question between the Owner and the Construction Manager. Claims must be initiated by written notice to the Professional and other party within twenty-one (21) calendar days after reasonably recognizing that the event giving rise to the claim has or will have a cost or schedule impact, unless another provision of this Contract for Construction Management sets a different

time. Pending final resolution of a claim, except as otherwise agreed to in writing executed by the parties, the Construction Manager shall proceed diligently with performance of the Contract for Construction Management and the Owner shall continue to make payments in accordance with the Contract Documents. A claim shall be filed in accordance with this paragraph if the Construction Manager believes that additional cost is involved for reasons including but not limited to (i) a written interpretation from the Professional; (ii) an order by the Owner to stop the Work where the Construction Manager was not at fault; (iii) a written order for a minor change in the Work issued by the Professional; (iv) failure of payment by the Owner; (v) termination of this Contract for Construction Management by the Owner; (vi) Owner's suspension ; or (vii) other reasonable grounds.

25.8.2 Claims shall be referred initially to the Professional for decision. An initial decision by the Professional shall be required as a condition precedent to mediation, arbitration or litigation of all claims between the Construction Manager and the Owner, unless thirty (30) calendar days have passed after the claim has been referred to the Professional with no decision having been rendered by the Professional. The Professional shall not decide disputes between the Construction Manager and persons or entities other than the Owner.

25.8.3 The Professional shall review claims within ten (10) calendar days of receipt and shall either (i) request additional supporting data from the claimant or a response with supporting data from the other party, to be submitted to the Professional within ten (10) calendar days of receipt of the request; (ii) reject the claim in whole or in part; (iii) approve the claim; (iv) suggest a compromise; or (v) advise the parties that the Professional is unable to resolve the claim. The Professional shall have the option to seek information from or consult with either party or other persons with special knowledge who may assist the Professional in rendering a decision. The Professional may also retain other persons as necessary with prior written approval of the Owner and at the Owner's expense.

25.8.4 The Professional shall approve or reject claims by written decision, which shall state the reasons therefore and which shall notify the parties of any change in the Contract Price, Time or both. When a written decision of the Professional is rendered, the parties shall have thirty (30) calendar days to submit to mediation pursuant to the provisions of Chapter 3, Article 25. Failure to request mediation within this time frame shall result in the Professional's decision becoming final and binding upon the Owner and the Construction Manager.

25.8.5 Upon receiving a claim against the Construction Manager, the Professional or the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the claim. If the claim relates to the possibility of the Construction Manager's default, the Professional or the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

ARTICLE 26
DAMAGES AND REMEDIES

26.1 **Construction Manager's Repair.** The Construction Manager shall, at its expense, promptly correct, repair, or replace all goods, products, materials, systems, labor and services which do not comply with the warranties and guarantees set forth in this Contract for Construction Management, or any other applicable warranty or guarantee.

26.2 **Construction Manager's Reimbursement.** The Construction Manager shall promptly reimburse the Owner for any expenses or damages incurred by the Owner as a result of (i) the Construction Manager 's failure to substantially perform in accordance with the terms of this Contract for Construction Management; (ii) deficiencies or conflicts in the Construction Documents attributable to the Construction Manager or of which the Construction Manager was or should have been aware; (iii) breach of the warranties and guarantees set forth in this Contract for Construction Management or any other applicable warranty or guarantee; or (iv) other acts or omissions of the Construction Manager.

26.3 **General Indemnity.** To the fullest extent permitted by law the Construction Manager shall secure, defend, protect, hold harmless, and indemnify the Owner from and against any and all liability, loss, claims, demands, suits, costs, fees and expenses (including actual fees and expenses of attorneys, expert witnesses, and other consultants), by whomsoever brought or alleged, and regardless of the legal theories upon which premised, to the extent caused by the negligence, intentional wrongful act or breach by Construction Manager and arising out of bodily injury to, or sickness or death of, any person, or property damage or destruction (except to the Work itself, and including loss of use), which may be imposed upon, incurred by or asserted against the Owner. For purposes of this Article, the acts, breach or omissions of Construction Manager include those of the Construction Manager; or of the Construction Manager's subcontractors or suppliers, or of the agents, employees or servants of the Construction Manager or its subcontractors or suppliers. The obligations of the Construction Manager under this Article shall not extend to the liability of the Owner, Professional(s), their consultants, and agents and employees of any of them.

26.3.1 To the fullest extent permitted by law, the Construction Manager, for itself and for its subcontractors and suppliers, and the respective agents, employees and servants of each, expressly waives any and all immunity or damage limitation provisions available to any agent, employee or servant under any workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts, to the extent such statutory or case law would otherwise limit the amount recoverable by the Owner or the Owner's Related Parties pursuant to the indemnification provision contained in the paragraph above.

26.4 **Intellectual Property Indemnity.** To the fullest extent permitted by law, the Construction Manager shall defend, protect, hold harmless, and indemnify the Owner and the Owner's Related Parties from and against any and all liability, loss, claims, demands, suits, costs, fees and expenses (including actual fees and expenses of attorneys, expert witnesses, and other consultants), by whomsoever brought or alleged, for infringement of patent rights, copyrights, or other intellectual property rights, except with respect to designs, processes or products of a particular manufacturer expressly required by the Owner or Professional(s) in writing. If the Construction Manager has reason to believe the use of a required design, process or product is an infringement of a patent, the Construction Manager shall be responsible for such loss unless such information is promptly given to the Owner.

26.5 **Non-Exclusivity of Owner's Remedies.** The Owner's selection of one or more remedies for breach of this Contract for Construction Management contained herein shall not limit the Owner's right to invoke any other remedy available to the Owner under

this Contract for Construction Management or by law. Without limitation, the damages specifically provided for in this Agreement are not exclusive and are cumulative to any other remedy permitted and provided by law, unless specifically and unambiguously excluded herein. Owner's exclusive remedy for delay is liquidated damages as set forth in Paragraph 4.5, Chapter 1.

26.6 **Waiver of Damages.** The Construction Manager and Owner mutually waive and shall not be entitled to monetary claims for or damages arising from or related to, lost profits, lost business opportunities, unabsorbed overhead or any indirect or consequential damages.

26.7 **Interest.** The Owner is entitled to interest on all amounts due from the Construction Manager that remain unpaid (30) thirty days after the amount is deemed due, whether as a result of a resolution of a dispute or otherwise. Any such interest shall be calculated by the same method as set forth in Paragraph 15.8.

ARTICLE 27
MISCELLANEOUS PROVISIONS

27.1 **Integration.** This Contract for Construction Management represents the entire and integrated agreement between the Owner and the Construction Manager, and supersedes all prior negotiations, representations or agreements, either written or oral, for the Project. This Contract for Construction Management may be amended only by written instruments signed by both the Owner and the Construction Manager, and is subject to such reasonable modifications as may be required by the Owner's lender(s) or insurer(s), if any.

27.2 **Severability.** If any provision of this Contract for Construction Management, or the application thereof, is determined to be invalid or unenforceable, the remainder of that provision and all other provisions shall remain valid and enforceable.

27.3 **Waiver.** No provision of this Contract for Construction Management may be waived except by written agreement of the parties. A waiver of any provision on one occasion shall not be deemed a waiver of that provision on any subsequent occasion, unless specifically stated in writing. A waiver of any provision shall not affect or alter the remaining provisions of this Contract for Construction Management. Furthermore, no action or failure to act by the Owner, Professional, or Construction Manager shall constitute a waiver of a right or duty afforded them under this Contract for Construction Management, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed to in writing.

27.4 **Strict Compliance.** No failure of the Owner to insist upon strict compliance by the Construction Manager with any provision of this Contract for Construction Management shall operate to release, discharge, modify, change or affect any of the Construction Manager's obligations.

27.5 **Third-Party Beneficiaries.** This Contract for Construction Management shall inure solely to the benefit of the parties hereto and their successors and assigns, and, except as otherwise specifically provided in this Contract for Construction Management, nothing contained in this Contract for Construction Management is intended to or shall create a

contractual relationship with, or any rights or cause of action in favor of, any third party against either the Owner or the Construction Manager.

27.6 **Survival.** All provisions of this Contract for Construction Management which contain continuing obligations shall survive its expiration or termination.

27.7 **Assignment.** Except as prohibited by applicable law, neither party shall assign any or all of its benefits or executory obligations under this Contract for Construction Management without the approval of the other party, except in case of assignment solely for security or assignment by the Owner to a Related Party of the Owner, or except as otherwise specifically provided for in this Contract for Construction Management in case of default. The Owner and the Construction Manager bind their successors and assigns to the other party to this Contract for Construction Management.

27.8 **Execution Of Documents.** Upon the request of the Owner, the Construction Manager shall execute documents required by the Owner's lender whereby the Construction Manager agrees that in the event of the Owner's default under, or the termination of, any construction loan agreement, the Construction Manager will complete the services required by this Contract for Construction Management under the terms and conditions contained herein so long as the lender fulfills the obligations of the Owner toward the Construction Manager as set forth in this Contract for Construction Management.

27.9 **Intentionally Deleted**.

27.10 **Public Entity Crimes.** A person or affiliate who has been placed on the convicted vendor list following a conviction of a public entity crime may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity in excess of the threshold amount provided in Florida Statutes, section 287.017 for Category Two for a period of thirty-six (36) months from the date of being placed on the convicted vendor list.

27.11 **Prohibition Against Contingent Fees.** Construction Manager warrants that they have not employed or retained any company or person, other than a bona fide employee working solely for the Construction Manager to solicit or secure this Contract and that they have not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the Construction Manager, any fee, commission, percentage, gift or other consideration contingent upon or resulting from the award or making of this Contract.

ARTICLE 28
DEFINITIONS

When one of the following capitalized words, terms or phrases is used in this contract, it shall be interpreted or construed first as defined below, second according to its generally accepted meaning in the construction industry, and third according to its common and customary usage.

Construction Price: The dollar amount for which the Construction Manager agrees to perform the Work set forth in this Contract for Construction Management.

Construction Documents: Plans, specifications, change orders, revisions, addenda, and other information which set forth in detail the Work.

Construction Schedule: The timetable which sets forth pertinent dates for timely completion of the Work.

Contract for Construction Management: A written agreement between the Owner and a Construction Manager for provision of goods, products, materials, equipment, systems, management, supervision, labor and services required to construct all or part of a Project.

Declaration of Substantial Completion: Document declaring the Work substantially complete and suitable for occupancy or beneficial use by the Owner.

Final Completion: The stage of construction when the Work has been completed in accordance with the Contract for Construction Management and the Owner has received all documents and items necessary for closeout of the Work.

Hazardous Substances: The term "Hazardous Substance" shall have the same meaning and definition as set forth in the Comprehensive Environmental Response Compensation and Liability Act as amended, 42 U.S.C. § 6901 *et seq.*, and regulations promulgated thereunder (collectively "CERCLA") and any corresponding state or local law or regulation, and shall also include: (a) any Pollutant or Contaminant as those terms are defined in CERCLA; (b) any Solid Waste or Hazardous Constituent as those terms are defined by, or are otherwise identified by, the Resource Conservation and Recovery Act as amended, 42 U.S.C. § 6901 *et seq.*, and regulations promulgated thereunder (collectively "RCRA") and any corresponding state or local law or regulation; (c) crude oil, petroleum and fractions of distillates thereof; (d) any other material, substance or chemical defined, characterized or regulated as toxic or hazardous under any applicable law, regulation, ordinance, directive or ruling; and (e) any infectious or medical waste as defined by any applicable federal or state laws or regulations.

Owner's Related Parties: Any parent, subsidiary or affiliated entities of the Owner, including the respective officers, trustees, office holders, directors, shareholders, partners, and employees of each.

Professional: An entity, including but not limited to an architect, civil engineer or geotechnical engineer, engaged directly by the Owner to provide design or engineering services.

Project: A planned construction undertaking as more specifically described immediately preceding the recitals in Chapter 1 of the Contract for Construction Management.

Site: The geographical location of a Project, usually defined by legal boundary lines, and the location characteristics including, but not limited to, grades and lines of streets, alleys, pavements and adjoining structures, rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, existing buildings and improvements, and service and utility lines.

Substantial Completion: The stage of construction when the Owner can occupy or beneficially use satisfactorily completed Work for its intended purpose.

Total Project Construction Cost: The total cost to the Owner to complete construction of the Project, including, without limitation, the Cost of the Work, the General Conditions, the Management Fee, and the Owner's costs.

Work: Any and all computers, construction machinery, documents, equipment, facilities, fixtures, furnishings, goods, heat, items, labor, licenses, management, materials, permits,

products, services, supervision, supplies, systems, taxes, testing, tools, utilities, transportation, vehicles, and water, required by the Construction Documents to be performed or supplied for proper execution and completion of the Project, or some portion thereof, whether or not incorporated or to be incorporated into the Project; provided, however, that Work does not include performance of pre-construction services by a Construction Manager.

APPENDIX C

APPENDIX D
INDEX OF PRELIMINARY PLANS AND SPECIFICATIONS FOR THE PROJECT
[To be included in the Project-specific Scope of Services]

APPENDIX E
SCHEDULE FOR PERFORMANCE OF
PRE-CONSTRUCTION SERVICES
[To be included in the Project-specific Scope of Services]

APPENDIX F
SCHEDULE OF REQUIRED INSURANCE
FOR PRE-CONSTRUCTION SERVICES

The Construction Manager shall provide and maintain at all times during the term of this contract without costs or expense to the County policies of insurance with a company or companies authorized to do business in the State of Florida and which are acceptable to the County, insurance the Construction Manager against any and all claims, demands or causes of action whatsoever, for injuries received or damage to property relating to the performance of duties, services and/or obligations under this contract.

Such policies of insurance and confirming certificates of insurance shall insure the Construction Manager is in accordance with the following minimum limits:

General Liability insurance on forms no more restrictive than the latest edition of the Commercial General Liability policy (CG 00 01) of the Insurance Services Office or equivalent without restrictive endorsements, with the following minimum limits and coverage:

Each Occurrence/General Aggregate	$1,000,000/$2,000,000
Products-Completed Operations	$2,000,000
Personal & Adv. Injury	$1,000,000
Fire Damage	$50,000
Medical Expense	$5,000
Contractual Liability	Included

Automobile liability insurance, including owned, non-owned, and hired autos with the following minimum limits and coverage:

Combined Single Limit	$1,000,000

Workers' compensation insurance based on proper reporting of classification codes and payroll amounts in accordance with Chapter 440, Florida Statutes, and/or any other applicable law requiring workers' compensation (Federal, maritime, etc.). If not required by law to maintain workers' compensation insurance, the Construction Manager must provide a notarized statement that if he or she is injured, he or she will not hold the County responsible for any payment or compensation.

Employers Liability insurance with the following minimum limits and coverage:

Each Accident	$1,000,000
Disease-Each Employee	$1,000,000
Disease-Policy Limit	$1,000,000

Professional liability and/or specialty insurance (medical malpractice, engineers, architect, consultant, environmental, pollution, errors and omissions, etc.) as applicable, with minimum limits of $1,000,000 and annual aggregate of $2,000,000.

The following additional coverage must be provided:

Builder's Risk at coverage value of:	$GMP value

Lake County, a Political Subdivision of the State of Florida, and the Board of County Commissioners, shall be named as additional insured as their interest may appear on the general liability policy.

Certificate(s) of insurance shall provide for a minimum of thirty (30) days prior written notice to the County of any change or cancellation of the required insurance.

Certificate(s) of insurance shall identify the contract number in the Description of Operations section of the Certificate.

Certificate holder shall be:

LAKE COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF FLORIDA,
AND THE BOARD OF COUNTY COMMISSIONERS.
P.O. BOX 7800
TAVARES, FL 32778-7800

Certificates of insurance shall evidence a waiver of subrogation in favor of the County, that coverage shall be primary and noncontributory, and that each evidenced policy includes a Cross Liability or Severability of Interests provision, with no requirement of premium payment by the County.

The Construction Manager shall be responsible for subcontractors and their insurance. Subcontractors are to provide certificates of insurance to the Construction Manager evidencing coverage and terms in accordance with the Construction Manager's requirements.

All self-insured retentions shall appear on the certificate(s) and shall be subject to approval by the County. At the option of the County, the insurer shall reduce or eliminate such self-insured retention; or the vendor shall be required to procure a bond guaranteeing payment of losses and related claims expenses.

The County shall be exempt from, and in no way liable for, any sums of money, which may represent a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of the vendor and/or subcontractor providing such insurance.

Failure to obtain and maintain such insurance as set out above will be considered a breach of contract and may result in termination of the contract for default.

Neither approval by the County of any insurance supplied by the vendor, nor a failure to disapprove that insurance, shall relieve the vendor of full responsibility of liability, damages, and accidents as set forth herein.

APPENDIX G
SCHEDULE OF REQUIRED INSURANCE FOR CONSTRUCTION OF THE WORK

The Construction Manager shall provide and maintain at all times during the term of this contract without costs or expense to the County policies of insurance with a company or companies authorized to do business in the State of Florida and which are acceptable to the County, insurance the Construction Manager against any and all claims, demands or causes of action whatsoever, for injuries received or damage to property relating to the performance of duties, services and/or obligations under this contract.

Such policies of insurance and confirming certificates of insurance shall insure the Construction Manager is in accordance with the following minimum limits:

General Liability insurance on forms no more restrictive than the latest edition of the Commercial General Liability policy (CG 00 01) of the Insurance Services Office or equivalent without restrictive endorsements, with the following minimum limits and coverage:

Each Occurrence/General Aggregate	$1,000,000/$2,000,000
Products-Completed Operations	$2,000,000
Personal & Adv. Injury	$1,000,000
Fire Damage	$50,000
Medical Expense	$5,000
Contractual Liability	Included

Automobile liability insurance, including owned, non-owned, and hired autos with the following minimum limits and coverage:

Combined Single Limit	$1,000,000

Workers' compensation insurance based on proper reporting of classification codes and payroll amounts in accordance with Chapter 440, Florida Statutes, and/or any other applicable law requiring workers' compensation (Federal, maritime, etc.). If not required by law to maintain workers' compensation insurance, the Construction Manager must provide a notarized statement that if he or she is injured, he or she will not hold the County responsible for any payment or compensation.

Employers Liability insurance with the following minimum limits and coverage:

Each Accident	$1,000,000
Disease-Each Employee	$1,000,000
Disease-Policy Limit	$1,000,000

Professional liability and/or specialty insurance (medical malpractice, engineers, architect, consultant, environmental, pollution, errors and omissions, etc.) as applicable, with minimum limits of $1,000,000 and annual aggregate of $2,000,000.

The following additional coverage must be provided:

Builder's Risk at coverage value of:	$GMP value

Lake County, a Political Subdivision of the State of Florida, and the Board of County Commissioners, shall be named as additional insured as their interest may appear on the general liability policy.

Certificate(s) of insurance shall provide for a minimum of thirty (30) days prior written notice to the County of any change or cancellation of the required insurance.

Certificate(s) of insurance shall identify the contract number in the Description of Operations section of the Certificate.

Certificate holder shall be:

LAKE COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF FLORIDA,
AND THE BOARD OF COUNTY COMMISSIONERS.
P.O. BOX 7800
TAVARES, FL 32778-7800

Certificates of insurance shall evidence a waiver of subrogation in favor of the County, that coverage shall be primary and noncontributory, and that each evidenced policy includes a Cross Liability or Severability of Interests provision, with no requirement of premium payment by the County.

The Construction Manager shall be responsible for subcontractors and their insurance. Subcontractors are to provide certificates of insurance to the Construction Manager evidencing coverage and terms in accordance with the Construction Manager's requirements.

All self-insured retentions shall appear on the certificate(s) and shall be subject to approval by the County. At the option of the County, the insurer shall reduce or eliminate such self-insured retention; or the vendor shall be required to procure a bond guaranteeing payment of losses and related claims expenses.

The County shall be exempt from, and in no way liable for, any sums of money, which may represent a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of the vendor and/or subcontractor providing such insurance.

Failure to obtain and maintain such insurance as set out above will be considered a breach of contract and may result in termination of the contract for default.

Neither approval by the County of any insurance supplied by the vendor, nor a failure to disapprove that insurance, shall relieve the vendor of full responsibility of liability, damages, and accidents as set forth herein.

APPENDIX H
CONSTRUCTION MANAGER'S PRE-CONSTRUCTION SERVICES TEAM

Emmett Sapp, Jr.	Project Executive
Shelton Crow	Project Manager
Susan Sapp	Administrative Executive
Joe Szeidel	Safety Director
Dominic Giannini	Superintendent
Deana Myrick	Project Controller

APPENDIX I
OWNER'S CONSULTANT'S CHART
[To be determined on a Project-specific basis]

PROFESSIONAL:

Representative:	Robert S. Day, Senior Project Manager
	KTH Architects, Inc.
Address:	827 North Thornton Avenue
City, State, Zip:	Orlando, Florida 3283
Office:	(407) 203-6707
E-mail:	RDay@ktharch.com

APPENDIX J
REQUIRED FORM OF PAYMENT AND
PERFORMANCE BOND

BOND NO. _____

PERFORMANCE BOND (SAMPLE)

KNOW ALL MEN BY THESE PRESENTS: that We,

Contractor_____
Contractor Address_____
Contractor Address 2_____
Contractor Telephone_____

(hereinafter called the "Principal"), whose principal business address and telephone number is as stated above; and

(Surety)_____
Surety Address_____
Surety Address 2 _____
Surety Phone _____

(hereinafter called the "Surety"), whose principal address and telephone number is as stated above, a surety insurer chartered and existing under the laws of the State of _____and authorized to do business in the State of Florida;

are held and firmly bound unto Lake County Board of County Commissioners, Lake County, Florida (hereinafter called the "Obligee"), whose principal address is P.O. Box 7800, Tavares, Florida 32778, and whose principal telephone number is (352) 483-9000, in the sum of

_____
_____ ($_____)

for payment of which we bond ourselves, our heirs, our personal representatives, our successors and our assignees, jointly and severally.

WHEREAS, Principal has entered into a contract with Obligee for «ProjectName», Bid No. «BidNumber» in accordance with drawings and specifications, which contract is incorporated herein by reference and made a part hereof, and is referred to as the Contract.

THE CONDITION OF THIS BOND is that if Principal:

1. Performs the Contract at the times and in the manner prescribed in the Contract; and

2. Pays Obligee any and all losses, damages, costs and attorneys' fees, including appellate

proceedings, that Obligee sustains because of any default by Principal under the Contract, including, but not limited to, all delay damages, whether liquidated or actual, incurred by Obligee; and

3. Performs the guarantee of all work and materials furnished under the Contract for the time specified in the Contract;

then this bond is void; otherwise it remains in full force.

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

The Surety, for value received, hereby stipulates and agrees that no changes, extensions of time, alterations or additions to the terms of the Contract or other work to be performed hereunder, or the specifications referred to therein shall in anyway affect its obligation under this bond, and it does hereby waive notice of any such changes, extensions of time, alterations or additions to the terms of the Contract or to work or to the specifications.

This instrument shall be construed in all respects as a statutory bond. It is expressly understood the time provisions and statute of limitation under Section 255.05, Florida Statutes, shall apply to this bond.

By execution of this bond, the Surety acknowledges that it has read the Surety qualifications and obligations imposed by the construction contract and hereby satisfies those conditions.

IN WITNESS WHEREOF, the above bounded parties have executed this instrument this _____ day of _____, 20____, the name of each party being affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

Signed, sealed and delivered
in the presence of:

PRINCIPAL:

«Contractor»

_____
Witness as to Principal

By:_____
«ContractorPrincipal»

_____
Witness as to Principal

_____
(Printed Name)
«PrincipalTitle»
(Title)

«ContratorAddress », «ContratorAddress2»
(Business Address)

BOND NO._____

STATE OF_____
COUNTY OF_____

The forgoing instrument was acknowledged before me this_____
by_____
_____of_____, a_____
_____ Corporation, on behalf of the Corporation. He/She is personally known to me or has produced Florida Driver's License as identification and who did (did not) take an oath.

NOTARY:_____
Print Name: _____

COMMISSION NUMBER:_____
My commission expires:_____

_____
Witness as to Surety

_____
Witness as to Surety

By: _____
(Authorized Signature)

_____
(Printed Name)

_____
(Title)

_____
_____
_____
(Business Address)

OR

_____
Witness as Attorney In Fact

_____
Witness as Attorney In Fact

_____
As Attorney In Fact (Attach Power of Attorney)

_____
(Printed Name)

_____
_____
_____
(Business Address)

_____
(Telephone Number)

BOND NO._____

STATE OF_____

COUNTY OF_____

The forgoing instrument was acknowledged before me this_____ __by _____of _____, a _____ Corporation, on behalf of the Corporation. He/She is personally known to me or has produced Florida Driver's License as identification and who did (did not) take an oath.

NOTARY:_____
Print Name:_____
COMMISSION NUMBER:_____ My commission expires:_____

BOND NO._____

PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS: that We,

Contractor_____
Contractor Address_____
Contractor Address 2_____
Contractor Telephone_____

(hereinafter called the "Principal"), whose principal business address and telephone number is as stated above; and

Surety_____
Surety Address_____
Surety Address 2 _____
Surety Phone _____

(hereinafter called the "Surety"), whose principal address and telephone number is as stated above, a surety insurer chartered and existing under the laws of the State of _____ and authorized to do business in the State of Florida;

are held and firmly bound unto Lake County Board of County Commissioners, Lake County, Florida (hereinafter called the "Obligee"), whose principal address is P.O. Box 7800, Tavares, Florida 32778, and whose principal telephone number is (352) 483-9000, in the sum of

_____
_____ ($_____)

for payment of which we bind ourselves, our heirs, our legal representatives, our successors and our assignees, jointly and severally.

WHEREAS, Principal and Obligee have reached a mutual agreement (hereinafter referred to as the "Contract") for _____Bid No. _____ said Contract being made a part of this Bond by this reference.

THE CONDITION OF THIS BOND is that if Principal:

1. Shall promptly make payments to all claimants as defined in section 255.05(1), Florida Statutes, supplying the Principal with labor, materials or supplies, as used directly or indirectly by the Principal in the prosecution of the work provided for in the Contract; and

2. Shall pay the Obligee for all losses, damages, expenses, costs and attorneys' fees, including those resulting from appellate proceedings, that the Obligee sustains because of a default by the Principal in contravention to the Contract in regard to payment for such labor, materials, or supplies furnished to the Principal;

then this bond shall be void; otherwise this Bond remains in full force and effect.

BE IT FURTHER KNOWN:

1. Any changes in or under the Contract and compliance or noncompliance with any formalities connected with the said Contract or alterations which may be made in the terms of the said Contract, or in the work to be done under it, or the giving by the Obligee of any extension of time for the performance of the said Contract, or any other forbearance on the part of the Obligee or Principal to the other, shall not in any way release the Principal and the Surety, or either of them, their heirs, personal representatives, successors or assigns from liability hereunder, notice to the Surety of any such changes, alterations, extensions or forbearance being hereby waived.

2. Certain claimants seeking the protection of this Bond must timely comply with the strict requirements set forth in Section 255.05, Florida Statutes, and as otherwise provided by law.

3. The Provisions of this bond are subject to the limitations of Section 255.05(2), Florida Statutes.

By execution of this bond, the Surety acknowledges that it has read the Surety qualifications and obligations imposed by the construction contract and hereby satisfies those conditions.

THIS BOND DATED THE _____ DAY OF_____ 20____ (the date of issue by the Surety or by the Surety's agent and the date of such agent's power-of-attorney).

Signed, sealed and delivered in the presence of:

PRINCIPAL:

_____
(Company Name)

_____
Witness as to Principal

By:_____
(Authorized Signature)

_____
Witness as to Principal

_____
(Printed Name)

_____
(Title)

_____

_____

_____
(Business Address)

STATE OF_____
COUNTY OF_____

The forgoing instrument was acknowledged before me this_____
by_____
of_____, a _____
Corporation, on behalf of the Corporation. He/She is personally known to me or has produced _____ as identification and who did/did not take an oath.

NOTARY: _____
Print Name: _____
Commission Number: _____
My commission expires: _____

BOND NO._____

_____
Witness as to Surety

_____
Witness as to Surety

By:_____
(Authorized Signature)

_____
(Printed Name)

_____
(Title)

_____
_____
_____
(Business Address)

OR

_____
Witness as Attorney In Fact

_____
Witness as Attorney In Fact

_____
As Attorney In Fact (Attach Power of Attorney)

_____
(Printed Name)

_____
_____
_____
(Business Address)

_____
(Telephone Number)

STATE OF_____
COUNTY OF_____

The forgoing instrument was acknowledged before me this_____
by _____
of_____, a _____
Corporation, on behalf of the Corporation. He/She is personally known to me or has produced
_____ as identification and who did/did not take an oath.

NOTARY: _____
Print Name: _____
Commission Number: _____
My commission expires: _____

APPENDIX K
INTENTIONALLY DELETED

APPENDIX L
INTENTIONALLY DELETED

APPENDIX M
AUTHORIZATION FOR CONSTRUCTION

EXHIBIT 1	INDEX OF FINAL PLANS AND SPECIFICATIONS
EXHIBIT 2	CONSTRUCTION SCHEDULE
EXHIBIT 3	CONSTRUCTION MANAGER'S PROJECT TEAM
EXHIBIT 4	SCHEDULE OF VALUES
EXHIBIT 5	UNIT PRICES
EXHIBIT 6	CONSTRUCTION MANAGER'S SUBCONTRACTORS AND SUPPLIERS CHART
EXHIBIT 7	QUALIFICATIONS AND ASSUMPTIONS AS REQUIRED BY S. 2.7.5.6

APPENDIX M
AUTHORIZATION FOR CONSTRUCTION

Pursuant to Chapter 1, Article 3 and Chapter 2, Article 2 of the Contract for Construction Management Between Lake County, Florida, a political subdivision of the State of Florida ("Owner") and _____ ("Construction Manager"), for the Project known as _____, the Owner and the Construction Manager hereby execute this Appendix M and further agree as set forth below.

1. The Construction Manager's Guaranteed Maximum Price ("GMP") proposal including general conditions costs dated _____, attached hereto and incorporated herein, is accepted by the Owner.

2. The Construction Management Fee is ____percent (%) of the Cost of the Work and is inclusive of the Preconstruction Services Fee, as defined in Chapter 2, Paragraph 2.7.2.3 of **Appendix "A".** This Management Fee shall not exceed the applicable fee in the attached bid sheet. The Management Fee shall be paid as follows:

3. The Subcontracts Cost is _____($_____).

4. The Estimated Owner's Costs, as defined in Chapter 2, Paragraph 2.7.3, shall be _____($_____).

5. The Guaranteed Maximum Price is _____ ($_____).

6. The Date of Substantial Completion shall be _____.

7. This Appendix M shall include the following Exhibits:

Exhibit 1:	Index of Final Plans and Specifications
Exhibit 2:	Construction Schedule
Exhibit 3:	Construction Manager's Project Team
Exhibit 4:	Schedule of Values
Exhibit 5:	Unit Prices
Exhibit 6:	Construction Manager's Subcontractors and Suppliers Chart
Exhibit 7:	Qualifications and Assumptions as required in Chapter 2, Paragraph 2.7.5.6

This _____ day of _____, 20___.

_____	_____
[Insert legal name of Owner]	*[Insert legal name of Construction Manager]*
("Owner")	("Construction Manager")
By:_____	By:_____
Its: _____	Its:_____
Date:_____	Date:_____

ACORD® CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 1/16/2015

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER	CONTACT NAME: Marsha Johnson
Lassiter-Ware Insurance of Leesburg 1317 Citizens Blvd. Leesburg FL 34748	PHONE (A/C, No, Ext): (800) 845-8437 FAX (A/C, No): (888) 983-8680 E-MAIL ADDRESS: MarshaJ@lassiter-ware.com

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A: Amerisure Mutual Insurance Co.	23396
INSURER B: Amerisure Insurance Company	19488
INSURER C:	
INSURER D:	
INSURER E:	
INSURER F:	

INSURED
Emmett Sapp Builders, Inc
4430 NE 83rd Road

Wildwood FL 34785

COVERAGES CERTIFICATE NUMBER: 15-16 Revised Master REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	GENERAL LIABILITY [X] COMMERCIAL GENERAL LIABILITY [ ] CLAIMS-MADE [X] OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: [ ] POLICY [X] PRO-JECT [ ] LOC			CPP20510640702	1/8/2015	1/8/2016	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG	$ 2,000,000 $ 300,000 $ 10,000 $ 2,000,000 $ 4,000,000 $ 4,000,000
B	AUTOMOBILE LIABILITY [X] ANY AUTO [ ] ALL OWNED AUTOS [ ] SCHEDULED AUTOS [ ] HIRED AUTOS [ ] NON-OWNED AUTOS			CA20510630701	1/8/2015	1/8/2016	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident) Uninsured motorist combined	$ 1,000,000 $ $ $ $ 1,000,000
A	[X] UMBRELLA LIAB [X] OCCUR [ ] EXCESS LIAB [ ] CLAIMS-MADE [ ] DED [X] RETENTION $ 0			CU20510660702	1/8/2015	1/8/2016	EACH OCCURRENCE AGGREGATE	$ 6,000,000 $ 6,000,000
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) Y/N [ ] If yes, describe under DESCRIPTION OF OPERATIONS below	N/A		WC20510670701	1/8/2015	1/8/2016	[X] WC STATU-TORY LIMITS [ ] OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	$ 1,000,000 $ 1,000,000 $ 1,000,000
A	Rented/Leased Equipment			CPP20510640702	1/8/2015	1/8/2016	$500 Deductible	350,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

15-0218

CERTIFICATE HOLDER

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Larry Humes/JUDYG

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