



**COLLEGE**  
OF THE  
**FLORIDA KEYS**

## **AGREEMENT FOR CONTRACTOR SERVICES**

**The College of the Florida Keys  
Key Largo Campus  
106040 Overseas Hwy.  
Key Largo, FL 33070**

**PROJECT NO:** \_\_\_\_\_

**OWNER:**

THE COLLEGE OF THE FLORIDA  
KEYS  
5901 W. College Road  
Key West, FL 33040

**CONTRACTOR:**

THORNTON CONSTRUCTION COMPANY, INC.  
13290 NW 42 Ave,  
Opa-Locka, FL 33054

**ARCHITECT-ENGINEER:**

K2M Design  
1150 Virginia St.  
Key West, FL 33404

## AGREEMENT FOR CONTRACTOR SERVICES

**THIS AGREEMENT FOR CONTRACTOR SERVICES** made and entered into on the \_\_\_\_day of \_\_\_\_\_, 2020 by and between THE COLLEGE OF THE FLORIDA KEYS, 5901 W. College Road, Key West, Florida 33040, the “Owner”, and THORNTON CONSTRUCTION COMPANY, INC., a Florida corporation, the “Contractor”.

For the mutual covenants, conditions, and considerations set forth herein, the parties hereto do hereby agree as follows:

### **ARTICLE 1 EXTENT OF AGREEMENT**

The Contractor accepts the relationship of trust and confidence established between him and the Owner by this Agreement and is working as a Contractor through a negotiated fee, Guaranteed Maximum Price (or “GMP”) methodology as set forth herein. The Contractor covenants to furnish his best skill and judgment as the Contractor with specific expertise in the planning and construction of college campus facilities, and to cooperate with the Architect-Engineer(s) in furthering the interest of the Owner. The Contractor agrees to furnish efficient business administration and superintendence and use his best efforts to complete the Project in the best and soundest way and in the most expeditious and economical manner consistent with the interest of the Owner.

- 1.1 The Contractor and the Architect-Engineer shall work jointly during the pre-construction phase and through final construction completion and shall be available thereafter should additional services be required. The Architect-Engineer will provide leadership during the pre-construction phase with support from the Contractor who shall control all matters relating to construction.
- 1.2 This Agreement for the Project between the Owner and the Contractor supersedes any prior negotiations, representations or agreements. When drawings, specifications and other descriptive documents defining the work to be included under a construction authorization or the Guaranteed Maximum Price are complete, they shall be identified in the construction authorization issued by the Owner. This Agreement shall not be superseded by any provisions of the documents for construction and may be amended only by written instrument signed by both Owner and Contractor.
- 1.3 Definitions.

Project: The Project is the total work to be performed under this Agreement for the new campus project to be constructed at 106040 Overseas Highway, Key Largo, Florida. The Project consists of planning, design, permitting, construction and code inspection necessary to build the component parts of the project identified in plans and specifications as prepared by the Architect (“Drawings and Specifications”).

Owner: The College of the Florida Keys.

Contractor: Thornton Construction Company, Inc.

Architect-Engineer: K2M Design

Estimate: The Contractor's latest estimate of probable applicable Project construction cost.

Substantial Completion: The earlier of the date on which (i) the Project construction is sufficiently complete so the Owner can occupy or utilize the work for the use for which it is intended or (ii) a certificate of occupancy is obtained for the Project.

Permitting Authority: means any federal, state, or local government, or political subdivision thereof, or agency or commission entitled to issue permits and approvals for the Project.

Grant: That certain estimated \$16,000,000 grant to Owner from the Economic Development Administration for the Project.

1.4 Owner's Construction Budget.

For purpose of this Agreement, said term shall mean the sum total of all of the Owner's funds budgeted and requested for construction of the Project. The Owner's Construction Budget includes all Contractor fees, costs of the work, and Contractor's construction contingencies as defined in Articles 8 and 9. This acknowledgment of the Owner's budgeted funds is not to be construed as the Contractor's Guaranteed Maximum Price. A Guaranteed Maximum Price will be by separate documentation as outlined in Article 7.

**ARTICLE 2 CONTRACTOR'S  
SERVICES**

Contractor agrees to perform under the Agreement and the construction of the Project with the standard of care, skill, and diligence normally provided by a professional person in the performance of such services in respect of work similar to that hereunder and for projects similar to the Project and Contractor shall complete all services and work under this Agreement in compliance with all applicable law and the Grant. Contractor is hereby given notice that Owner will be relying on the accuracy, competence, and completeness of Contractor's services hereunder.

Contractor accepts the relationship of trust and confidence established by this Agreement. Contractor covenants with Owner to cooperate with Architect-Engineer; to utilize Contractor's best skill, efforts and judgment in furthering the interest of Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the work on the Project in the best way and the most expeditious and economical manner, consistent with the interests of Owner, and in compliance with all applicable law and the Grant. Further, Contractor acknowledges that (i) it has represented to Owner that it has specific expertise in the planning, management, and construction of campus facilities and has the expertise to cause the Project to be constructed in compliance with the Grant and all requirements of the Economic Development Administration and (ii) that such representation is a material inducement to Owner to enter into this

Contractor acknowledges and agrees that the Project is being partially financed by the Grant and Owner is subject to multiple obligations under the Grant and the State of Florida and Contractor agrees that it will cooperate with, abide by, and be subject to any and all other policies and procedures that may be set out by Owner, the Grant, the State of Florida or any other applicable law.

The detailed description of services which follows is intended to assist the Owner in understanding the scope of those services to be performed by Contractor under this Agreement and is not designed to be totally complete or exhaustive.

2.1 Project Management Information System (PMIS).

2.1.1 General.

- (1) Commencing immediately after contract award, the Contractor shall implement and shall utilize throughout the life of this Agreement all subsystems of the Project Management Information System hereinafter referred to as PMIS.
- (2) The reports, documents, and data to be provided shall represent an accurate assessment of the current status of the Project and of the work remaining to be accomplished and it shall provide a sound basis for identifying variances and problems and for making management decisions. It shall be prepared and furnished to the Owner and the Architect-Engineer monthly and shall accompany each pay request.
- (3) If requested by the Owner, the Contractor shall conduct a comprehensive workshop in Monroe County, Florida, for participants designated by the Owner and additional seminars as

required to provide instruction. This workshop and the seminars shall facilitate each participant's and the Owner's representatives' use and understanding of PMIS College.

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

The above reports shall be submitted at least on a monthly basis.

#### 2.1.2 Narrative Reporting Subsystem.

- (1) The Contractor shall prepare written reports as described hereunder. All reports shall be in 8 -1/2" x 11" format.
- (2) The Narrative Reporting Subsystem shall include the following reports:
  - (a) A Monthly Executive Summary which provides an overview of current issues and pending decisions, future developments and expected achievements, and any problems or delays, including code violations found by the Permitting Authority.
  - (b) A Monthly Cost Narrative describing the current construction cost estimate status of the Project.
  - (c) A Monthly Scheduling Narrative summarizing the current status of the overall Project schedule. This report shall include an analysis of the various project schedules, a description of the critical path, and other analyses as necessary to compare planned performance with actual performance.
  - (d) A Monthly Accounting Narrative describing the current cost and payment status of the entire project. This report shall relate current encumbrances and expenditures to the budget allocations.
  - (e) A Monthly Construction Progress Report during the construction phase summarizing the work of the various subcontractors. This report shall include information from the weekly job site meetings as applicable such as general conditions, long lead supplies, current deliveries, safety and labor relations programs permits, construction problems and recommendations, and plans for the succeeding month.
  - (f) A Daily Construction Diary during the construction phase describing events and conditions on site.
- (3) The Reports outlined in subsection (2)(a) through (e) above shall be bound with applicable computer reports and submitted monthly during design and construction phases and shall be current through the end of the preceding month. Copies shall be transmitted to the Owner and the Architect-Engineer. A copy, bound, of the complete diary shall be submitted to the Owner at the conclusion of the Project.

#### 2.1.3 Scheduled Control Subsystem.

- (1) Master Project Schedule: Immediately upon execution of this Agreement, the Contractor shall submit a master project schedule covering the pre-construction, construction, and Owner occupancy of the Project. The master project schedule shall be produced and updated monthly throughout the Project.
- (2) Construction Schedule: Within thirty (30) days after the date of the Owner's issuance of Notice to Proceed, for the construction phase, the Contractor shall prepare and submit to the Owner a Critical Path Method construction schedule graphically depicting the activities contemplated to occur as a necessary incident to performance of the work required to complete the Project, showing the sequence in which the Contractor proposes for each activity to occur and duration (dates of commencement and completion, respectively) of each activity. Form of the construction schedule shall be Primavera Suretrak or comparable software, and will be acceptable to the Owner if used by the Contractor; provided, however, that the Owner shall determine whether the construction schedule developed and submitted by the Contractor meets the requirements stated above; and such determination shall be binding on the Contractor. Failure of the Contractor to develop and submit a construction schedule as aforesaid shall be sufficient grounds for the Owner to find the Contractor in substantial default and that sufficient cause exists to terminate the contract, after providing written notice to Contractor and after a 10 day cure period or to withhold any payment. The Owner will accept and approve the Contractor's schedule if it shows a logical progression of the Project and shows substantial completion and completion by the dates provided herein. However, it is the sole responsibility of the Contractor to ensure that the schedule is practicable and to ensure compliance with the schedule as the same may be modified by change order. By approving the Contractor's schedule, the Owner does not warrant, guarantee, or otherwise represent that the Project can be accomplished as provided therein. The Contractor's schedule must make reasonable allowance for adverse weather normally experienced at the Project location.

Following development and submittal of the construction schedule as aforesaid, the Contractor shall, at the end of each calendar month occurring thereafter during the period of time required to finally complete the Project, or at such earlier intervals as circumstances may require, update and/or revise the construction schedule which shall be submitted to the Owner in duplicate. Failure of the Contractor to update, revise, and submit the construction schedule as aforesaid shall be sufficient grounds for the Owner to find the Contractor in substantial default and that sufficient cause exists to terminate the Contract, after providing written notice to Contractor and after a 10 day cure period, or to withhold payment to the Contractor until a schedule or schedule update acceptable to the Owner is submitted.

- (3) The Contractor shall prepare and incorporate into the schedule database, at the required intervals, the following schedules:
  - (a) Pre-Bid Schedules (Subnetworks). The Contractor shall prepare a construction schedule for work encompassed in each bid package. The schedule shall be sufficiently detailed as to be suitable for inclusion in the bid package as a framework for contract completion by the successful bidder. It shall show the interrelationships between the work of the successful bidder and that of other subcontractors and shall establish milestones keyed to the overall master schedule.
  - (b) Subcontractor Construction Schedules (Subnetworks). Upon the award of each subcontract, the Contractor shall jointly with the subcontractor, develop a schedule which is more detailed than the pre-bid schedule included in the bid packages, taking into account the work schedule of the other subcontractors. The construction schedule shall include as many activities as necessary to make the schedule an effective tool for construction planning and for monitoring the performance of the subcontractor.

The construction schedule shall also show pertinent activities for material purchase orders, shop drawing schedules and mater

- (c) Occupancy Schedule. The Contractor shall jointly develop with the Architect-Engineer and Owner a detailed plan, inclusive of punch lists, final inspections, maintenance training and turn-over procedures, to be used for ensuring accomplishment of a smooth and phased transition from construction to agency occupancy. The Occupancy Schedule shall be produced and updated monthly from its inception through final Owner occupancy.

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

- (a) At establishment of the Guaranteed Maximum Price.

2.1.5 Project Accounting Subsystem. This subsystem shall enable the Contractor to plan effectively and the Owner to monitor and control the funds available for the Project, cash flow, costs, change orders, payments, and other major financial factors by comparison of budget, estimate, total commitment, amounts invoiced, and amounts payable, and also enable the Owner to stay informed. This subsystem will be produced and updated monthly and includes the following reports:

- (1) Costs Status Report representing the budget, estimate, and base commitment (awarded contracts and purchase orders) for any given contract or budget line item. It shall show approved change orders for each contract which when added to the base commitment will become the total commitment. Pending change orders will also be shown to produce the total estimated probable cost to complete the work.
- (2) A Payment Status Report showing the value in place (both current and cumulative), the amount invoiced (both current and cumulative), and the balance remaining. A summary of this report shall accompany each pay request.
- (3) A Detailed Status Report showing the complete activity history of each item in the Project accounting structure. It shall include the budget, estimate, and base commitment figures for each contract. It shall give the change order history including change order numbers, description, proposed and approved dates, and the proposed and approved dollar amounts. It shall also show all pending or rejected change orders.
- (4) A Cash Flow Diagram showing the projected accumulation of cash payments against the Project. Cash flow projections shall be generated for anticipated monthly payments as well as cumulative payments.

## 2.2 Policy and Procedure Manual.

2.2.1 Upon execution of this Agreement, the Contractor shall develop a draft of the comprehensive Policy and Procedure Manual describing the services set forth in this Agreement. This shall provide a plan for the control, direction, coordination and evaluation of work performed throughout the Project; the Project organization including identification of key personnel, responsibilities of the Contractor, Owner and Architect-Engineer; workflow diagrams; and strategy for bidding the work. The Owner shall have the right to review the Policy and Procedure Manual and to approve its content and format. The Policy and Procedure Manual may be updated as necessary throughout the pre-construction, construction and Owner occupancy phases, but substantive changes will not be made without the Owner's concurrence. Five copies of the Policy and Procedure Manual and any updates shall be submitted to the Owner and Architect-Engineer. In developing the Policy and Procedure Manual, the Contractor shall coordinate with the Owner and the

Architect-Engineer. The initial manual shall be submitted to the Owner for approval.

2.2.2 Contents of Policy and Procedure Manual. The Policy and Procedure Manual shall describe in detail the procedures for executing the work and the organizations participating. The Policy and Procedure Manual shall include, as a minimum, the following sections:

- (a) Project Definition. The known characteristics of the Project or sub-projects shall be described in general terms which will provide the participants a basic understanding of the Project or sub-projects .
- (b) Project Goals. The schedule, budget, physical, minority participation, technical and other objectives for the Project shall be defined.
- (c) Project Strategy. A narrative description of the Project delivery methods shall be utilized to accomplish the Project goals.
- (d) Project Work Plan. A matrix display of the program of work to be performed by the Contractor, the Architect-Engineer and the Owner during each phase of the Project.
- (e) Project Organization. A summary organization chart showing the interrelationships between the Owner, the Contractor and the Architect-Engineer, and other supporting organizations and permitting review agencies. Detailed charts, one each for the Contractor and Architect-Engineer, showing organizational elements participating in the Project shall be included.
- (f) Responsibility Performance Chart. A detailed matrix showing the specific responsibilities and interrelationships of the Owner, the Architect-Engineer, and Contractor. The Responsibility Performance Chart shall indicate major responsibility, and minor responsibility, for each specific task required to deliver the Project. The Contractor shall develop a similar chart for the personnel within his own organization who are assigned to the Project, and the Architect-Engineer from data supplied by such.
- (g) Flow Diagrams. These charts shall display the flow of information and the decision process for the review and approval of shop drawings and submittals, progress, and change orders and requests for information.
- (h) Written Procedures. The Contractor will provide written procedures for communications and coordination required between Construction Team members referenced on Exhibit A, throughout the Project. Procedures shall cover such items as correspondence, minutes, reports, inspections, team meetings, technical reviews, design reviews, and other necessary communications.
- (i) The Policy and Procedure Manual draft shall be completed and submitted to the Architect-Engineer and Owner prior to payment of any fees under this Agreement.
- (j) This Policy and Procedure Manual is merely an amplification and clarification of this Agreement. Any conflicts between the Policy and Procedure Manual and this Agreement shall be governed by the latter.

2.3 Design and Review and Recommendations.

- (1) Review, Recommendations and Warranty. The Contractor shall familiarize himself thoroughly with the architectural, civil, mechanical, plumbing, electrical, and structural plans and the Drawings and Specifications and shall follow the development of Construction Documents. The Contractor shall make recommendations with respect to the selection of systems and materials, and cost-reducing alternatives including assistance to the Architect-Engineer, and Owner in evaluating alternative comparisons versus long term cost effects. The evaluation shall speak to the benefits of the speed of erection and early

completion of the Project. Contractor shall furnish pertinent information as to the availability of materials and labor that will be required. The Contractor shall submit to the Owner, Permitting Authority and Architect-Engineer such comments as may be appropriate concerning construction feasibility and practicality. The Contractor shall call to the Owner's and the Architect-Engineer's attention any apparent defects in the design, Drawings and Specifications or other documents. The Contractor shall prepare estimates of the construction cost utilizing the unit quantity survey method in the CSI format.

- (2) Review Reports. Within 45 days after receiving the Construction Documents, the Contractor shall perform a specific review thereof, focused upon factors of a nature encompassed in Paragraph (1) above and on factors set out in Paragraph (5). Within the same 45-day period, the Contractor shall submit to the Owner and Permitting Authority, with copies to the Architect-Engineer, a written report covering suggestions or recommendations previously submitted, additional suggestions or recommendations as the Contractor may deem appropriate, and all actions taken by the Architect-Engineer with respect to same, any comments the Contractor may deem to be appropriate with respect to separating the work into separate contracts, alternative materials, and all comments called for under this Article 2.3.

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

- (3) Long Lead Procurement. The Contractor shall review the design for the purpose of identifying long lead procurement items (machinery, equipment, materials and supplies that require in excess of 60 days of procurement). When each item is identified, the Contractor shall notify the subcontractors, Owner and the Architect-Engineer of the required procurement and schedule. Such information shall be included in the bid documents and made a part of all affected subcontracts. As soon as the Architect-Engineer has completed Drawings and Specifications and the Contractor has obtained applicable permitting approval, the Contractor shall prepare invitations for bids. Copies to be supplied to Owner in advance of the invitation to bid for Owner's review. The Contractor shall keep himself informed of the progress of the respective subcontractors or suppliers, manufacturing or fabricating such items and advise Owner and Architect-Engineer of any problems or prospective delay in delivery.
- (4) Separate Contracts Planning. The Contractor shall review the design and shall determine how it desires to divide the sequence of construction activities, and will determine the breakdown and composition of bid packages for award on the current schedule while the design is being completed, and shall supply copy to Owner for his review. Contractor shall take into consideration such factors as natural and practical lines of severability, sequencing effectiveness, access and availability constraints, total time for completion, construction market conditions, availability of labor and materials, community relations and any other factors pertinent to saving time and cost by overlapping design and construction that are authorized by the Owner. Contractor will supply the Owner a copy of the schedule for the Owner's review.

Interfacing.

- (a) The Contractor shall take such measures as are appropriate to provide that all construction requirements will be covered in the separate procurement of long lead items, the separate construction subcontractors and the general conditions items performed without duplication or overlap, sequenced to maintain completion of all work on schedule. Particular attention shall be given to provide that each bid package clearly identifies the work included in that particular separate subcontract, its schedule for start and completion and its relationship to other separate contractors.
- (b) Without assuming any Design responsibilities of the Architect-Engineer, the Contractor shall



include in the reports required under Article 2.3(2) comments on overlap with any other separate subcontracts, omissions, lack of correlation between drawings, and any other deficiencies noted, in order that the Architect-Engineer may arrange for necessary corrections.

- (5) Job-Site Facilities. The Contractor shall arrange for all job-site facilities as required by the Owner and necessary to enable the Contractor and Architect-Engineer to perform their respective duties and to accommodate any representatives of the Owner which the Owner may choose to have present on the job, the description of which shall be finalized prior to the establishment of the GMP.
- (6) Weather Protection. The Contractor shall ascertain what temporary enclosures, if any, of building areas should be provided for and may be provided as a practical matter, in order to assure orderly progress of the work in periods when extreme weather conditions are likely to be experienced.
- (7) Market Analysis and Stimulation of Bidder Interest.
  - (a) The purpose of this subsection is to insure that the Contractor makes a genuine effort to stimulate interest in the Project and maximize participation of potential qualified subcontractors in the bidding process. The Contractor shall monitor conditions in the construction market to identify factors that will or may affect costs and time for completing the Project; it shall make analysis as necessary to (1) determine and report on availability of labor, materials, equipment, potential bidders, and possible impact of any shortages or surpluses of labor or material, and (2) in light of such determination, make recommendations and take action as may be appropriate with respect to long lead procurement, separation of construction into bid packages, sequencing of work, use of alternative materials, equipment or methods, other economics in design or construction, and other matters that will promote cost savings and completion within the schedule time.
  - (b) Within thirty (30) days after execution of this Agreement, The Contractor shall submit a Written Construction Market Analysis and Prospective Bidders Report. As various bid packages are prepared for bidding, the Contractor shall submit to the Owner and Architect-Engineer, a list of potential bidders. The General Contractor shall be responsible to stimulate bidder interest in the local marketplace and identify and encourage bidding competition. Contractor shall make procurement documents available to potential subcontractors using a registry, and Contractor shall ensure that it retains a list of registered plan holders. Documents are disbursed and tracked electronically. Printing costs for hard copies used in vendor bids will be borne by bidder.
  - (c) The Contractor shall carry out an active program of stimulating interest of qualified contractors in bidding on the work and of familiarizing those bidders with the requirements of this Project.

#### 2.4 Construction Phase.

- (1) Contractor's Staff. The Contractor shall maintain sufficient off-site support staff, and competent full time staff at the Project site authorized to act on behalf of the Contractor to coordinate, inspect and provide general direction of the work and progress of the subcontractors and shall provide no less than those personnel during the respective phases of construction as set forth in Exhibit C. The Contractor shall not change any of those persons named unless mutually agreed to by the Owner and Contractor. In such case, the Owner shall have the right of reasonable approval of the qualifications of replacement personnel.
- (2) Lines of Authority. The Contractor shall establish and maintain lines of authority for its personnel, and shall provide this definition to the Owner and all other affected parties, such as the code inspectors of the Permitting Authority, the subcontractors, and the Architect-Engineer to provide general direction of the work and progress of the various phases and subcontractors. The Owner and Architect-Engineer may attend meetings between the Contractor and his subcontractors; however, such attendance is

optional and shall not diminish either the authority or responsibility of the Contractor to administer the subcontract(s).

- (3) Schedule and Policy and Procedure Manual Provision-Construction Phase. The Contractor shall provide the Owner, its representatives and the Architect-Engineer with copies of the Policy and Procedure Manual (total number of copies not to exceed 6) developed and updated as required by Article 2.2 expanded for the Construction Phase employing their respective milestones, beginning and finishing dates, their respective responsibilities for performance and the relationships of their work with respect to subcontractors and suppliers. The Contractor shall also continue to provide current scheduling information and provide direction and coordination regarding milestones, beginning and finishing dates, responsibilities for performance and the relationships of the Contractor's work to the work of his subcontractors and suppliers to enable them to perform their respective tasks so that the development of construction progresses in a smooth and efficient manner in conformance with the overall Project schedule. The schedule shall include all phases of the construction work, material supplies, long lead procurement, approval of shop drawings, change orders in progress, schedules for change orders, and performance testing requirements. The Contractor shall advise the Owner, its representatives and the Architect-Engineer of their required participation in any meeting or inspection giving each at least one week notice unless such notice is made impossible by conditions beyond his control. The Contractor shall hold jobsite meetings at least once each month with the Construction Team and at least once each week with the subcontractors and the Architect-Engineer, or more frequently as required by work progress, to review progress, discuss problems and their solutions and coordinate future work with all subcontractors .
- (4) Solicitation of Bids.
- (a) The Contractor shall prepare invitations for bids for all procurement of long lead items, materials and services, for subcontractor contracts and for site utilities. The Owner shall have the right to review invitation for bids and bid packages prior to distribution to bidders.
- (b) As part of such preparation, the Contractor shall review the Drawings and Specifications and drawings prepared by the Architect-Engineer. Ambiguities, conflicts or lack of clarity of language, use of illegally restrictive requirements, and any other defects in the Drawings and Specifications noted by the Contractor shall be brought to the attention of the Owner and Architect-Engineer in written form.
- (c) For each separate construction contract, the Contractor shall, unless waived by Owner, conduct a pre-bid conference with prospective bidders. Invited will be the Architect-Engineer and Owner representative. All meetings will be documented with minutes and attendance sign-in sheet. In the event questions are raised which require an interpretation of the bidding documents or otherwise indicate a need for clarification or correction of the invitation, the Contractor shall transmit these to the Architect-Engineer and upon receiving clarification or correction in writing shall prepare an addendum to the bidding document, and issue same to all of the prospective bidders.
- (d) The Contractor shall open and review all sealed bids and enter into contract with those lowest responsive bidders, previously determined to be qualified by the Contractor. The Contractor shall establish a pre-qualification procedure for applicable subcontract trades and shall provide a listing of a minimum of three contractors found to be qualified to bid for each bid package.

- (e) If approved by the Owner, the Construction Manager may negotiate with a potential subcontractor for performance of the work for any item listed on the estimate or GMP breakdown where it is deemed advantageous due to schedule or economic benefit.
- (5) Bonds. In accordance with the provisions of Section 13.4 Contractor shall provide to the Owner required Bonds.
- (6) Quality Control. The Contractor shall develop and maintain a program, acceptable to the Owner and Architect-Engineer, to assure quality control of the construction. The Contractor shall be responsible for and supervise the work of all subcontractors, providing instructions to each when their work does not conform to the requirements of the Drawings and Specifications and shall continue to exert its influence and control over each subcontractor to ensure that corrections are made in a timely manner so as to not affect the efficient progress of the work. Should a disagreement occur between the Contractor and the Architect-Engineer over the acceptability of the work, the Owner, at its sole discretion, shall have the right to determine the acceptability.
- (7) Subcontractor. The Contractor shall solely control the subcontractors. The Contractor shall negotiate all change orders, field orders and request for proposals, with all affected subcontractors and shall review the costs of those proposals and advise the Owner and Architect-Engineer of their validity and reasonableness, acting in the Owner's best interest, prior to requesting approval of each change order from the Owner. Before any work is begun on any change order, a written authorization from the Owner must be issued. However, when there is an imminent threat to health and safety, and Owner's concurrence is impractical, the Contractor shall act immediately to remove the threats to health and safety and shall subsequently fully inform Owner of all such action taken. The Contractor shall also carefully review all shop drawings and then forward the same to the Architect-Engineer for review and actions. The Architect-Engineer will transmit them back to the Contractor who will then issue the shop drawings to the affected subcontractor for fabrication and revision. The Contractor shall maintain a suspense control system to promote expeditious handling. The Contractor shall request the Architect-Engineer to make interpretations of the Drawings and Specifications requested of him by the subcontractors and shall maintain a suspense control system to promote timely response. The Contractor shall tell the Architect-Engineer which shop drawings or requests for clarification have the greatest urgency and need to be responded to first, the purpose being to enable the Architect-Engineer to prioritize requests coming from the Contractor. The Contractor shall advise the Owner and Architect-Engineer when timely response is not occurring on any of the above.
- (8) Permits. The Contractor shall secure all necessary building permits from the Permitting Authorities and all necessary utility connection permits, the cost of which will be considered a direct cost item and shall be considered a reimbursable cost item as outlined in Article 9.2.2. The Owner shall fully cooperate with the Contractor where necessary.
- (9) Job Site Requirements.
  - (a) The Contractor shall provide for each of the following activities as a part of his General Conditions & Services and Fee:
    - 1. Maintain a log of daily activities, including manpower records, weather, delays, major decisions, etc.

2. Maintain a roster of companies on the Project with names and telephone numbers of key personnel.
  3. Establish and enforce job rules governing parking, clean-up, use of facilities and worker discipline.
  4. Provide labor relations management for a harmonious, productive project.
  5. Provide and administer a safety program for the Project to meet OSHA requirements. Monitor for subcontractor compliance without relieving them of responsibilities to perform work in accordance with the best acceptable practice.
  6. Provide and administer a quality control program as developed under Article 2.4(6) hereinabove.
  7. Provide miscellaneous office supplies that support the construction efforts which are consumed by his own forces.
  8. Provide for travel to and from the home office to the Project site and Monroe County as the Project requires.
- (b) The Contractor shall provide personnel and equipment or shall arrange for separate subcontractors to provide each of the following as a direct cost item:
1. Printing and distribution of all required bidding documents and shop drawings, including the sets required by the Permitting Authority's inspectors.
- (10) Job Site Administration. The Contractor shall provide as part of his job site fee, job site administrative functions during construction to assure proper documentation, including but not limited to the following:
- (a) Job Meetings. Hold weekly progress and coordination meetings to provide for an easy flowing and timely completed Project. Implement procedures and assure timely submittals, expedite processing approvals and return of shop drawings, samples, etc. Coordinate and expedite critical ordering and delivery of materials, work sequences, inspection and testing, labor allocation, etc. Review and coordinate each subcontractor's work. Review and implement revisions to the Schedule. Monitor and promote safety requirements. In addition, a regular monthly Project status meeting will be held between the Architect, Owner, and Contractor.
- Use the job site meetings as a tool for preplanning of work and enforcing schedules and for establishing procedures, responsibilities, and identification of authority for all to clearly understand.
- Identify party or parties responsible for follow up on any problems, delay items, or questions, and record course for solution. Revisit each pending item at each subsequent meeting until resolution is achieved. Require all present to make any problems or delaying event known to those present for appropriate attention and resolution.
- (b) Shop Drawing Submittals/Approvals. Provide staff to check shop drawings and to implement procedures for submittal and transmittal to the Architect-Engineer of such drawings for action, and closely monitor their submittal and approval process.
- (c) Material and Equipment Expediting. Provide staff to closely monitor material and equipment

deliveries, critically important checking and follow-up procedures on supplier commitments of all subcontractors and maintain a material and equipment expediting log.

- (d) Payments to Subcontractors. Develop and implement a procedure for review, processing, and payment of applications by subcontractors for progress and final payments.
  - (e) Document Interpretation. Refer all questions for interpretation of the documents prepared by the Architect-Engineer to the Architect- Engineer in written form (RFI).
  - (f) Reports and Project Site Documents. Record the progress of the Project. Submit written progress reports to the Owner and the Architect-Engineer, including information on subcontractors' work, and the percentage of completion. Keep a daily log available to the Owner, the Architect-Engineer, and the Permitting Authority inspectors.
  - (g) Subcontractors Progress. Prepare periodic punch lists for subcontractor's work including unsatisfactory or incomplete items and schedules for their completion.
  - (h) Substantial Completion. Ascertain when the work or designated portions thereof are ready for the Architect-Engineer's substantial completion inspection. From the Architect-Engineer's list of incomplete or unsatisfactory items, prepare a schedule for their completion indicating completion dates for the Owner's review. If the Contractor wishes the Architect-Engineer to conduct a pre-substantial completion inspection in conjunction with the Contractor's own forces, the Architect-Engineer will prepare the pre-substantial punch list from which the Contractor will develop a completion schedule. The Architect-Engineer will issue a certificate of substantial completion when work on the Architect-Engineer's pre-substantial punch list has been accomplished.
  - (i) Final Completion. Monitor the subcontractor's performance on the completion of the Project and provide notice to the Owner and Architect-Engineer that the work is ready for final inspection. Secure and transmit to the Owner, through the Architect-Engineer, all required guarantees, affidavits, releases, bonds and waivers, manuals, record drawings, and maintenance books including the Final Completion form.
  - (j) Start-up. With the Owner's personnel, direct the check-out of utilities, operations, systems and equipment for readiness and assist in their initial start-up and testing by the subcontractors.
  - (k) Record Drawings. The Contractor shall monitor the progress of his own forces or his subcontractors on marked up field prints which at Project completion shall be sent to the Architect-Engineer and Owner.
- (11) Administrative Records. The Contractor will maintain at the job site, originals or copies of, on a current basis, files and records such as, but not limited to the following :

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

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

The Project records shall always be available to the Owner and Architect-Engineer for reference or review.

(12) Agent Occupancy.

The Contractor shall provide services during the pre-construction and construction phases, which will provide a smooth, successful, and timely Owner occupancy of the Project. The Contractor shall provide consultation and Project management to facilitate Owner occupancy and provide transitional services to get the work, as completed by the contractors, "online" in such conditions as well satisfy Owner operations requirements.

The Contractor shall conduct the preliminary punch list inspection with the Owner and Architect-Engineer and shall coordinate the completion of all punch list work to be done with the Owner occupancy requirements in mind. The Owner and/or Architect-Engineer may also prepare a punch list which shall also be timely completed by the Contractor.

The Contractor shall catalog operational and maintenance requirements of equipment to be operated by maintenance personnel and convey these to the Owner in such a manner as to promote their usability. The Contractor shall provide operations training, in equipment use, for building operators.

The Contractor shall secure required guarantees and warranties, assemble and deliver same to the Owner in a manner that will facilitate their maximum enforcement and assure their meaningful implementation and deliver 30 days after Substantial Completion is issued.

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

(13) Warranty.

The Contractor warrants that all labor and materials conform to the Drawings and Specifications and that

all work has been performed in a competent and workmanlike manner and consistent with good building practices. The Contractor further warrants that all materials and equipment are new and of good quality and free from defects. With respect to the same work, the Contractor further agrees to correct all work found by the Owner to be defective in material and workmanship or not in conformance with the Drawings and Specifications for a period of one year from the Date of Substantial Completion or for such longer periods of time as may be set forth with respect to specific warranties contained in the trade sections of the Drawings and Specifications. The Contractor shall collect and deliver to the Owner any specific written warranties given by others as required by the Contract documents. Also, the Contractor shall conduct, jointly with the Owner and the Architect-Engineer, a warranty inspection nine (9) months after the date of Substantial Completion. Except for the warranties stated in this section 2.4.13, Contractor makes no other warranties expressed or implied and ANY IMPLIED OR STATUTORY WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY ARE EXPRESSLY DISCLAIMED.

2.5 **Grant Compliance.** Contractor warrants that all work done on the Project and under this Agreement shall comply (and shall ensure that all subcontractors comply) with all terms of the Grant and the Economic Development Administration, including, but not limited to, all applicable statutes, regulations, executive orders, Cost Principles and Audit Requirements for Federal Awards and Office of Management & Budget (OMB) circulars, which are provisions of the Uniform Administrative Requirements. At all times during the Project, Contractor shall ensure that the work on the Project, the necessary reporting and all other matters comply in all aspects with the terms of the Grant and the Economic Development Administration, including, but not limited to, the following documents attached in Schedule 2.5:

- 2.5.1 Contractor's Process and Procedure Manual for EDA Construction Projects
- 2.5.2 Summary of EDA Construction Standards
- 2.5.3 EDA Contracting Provisions for Construction Projects
- 2.5.4 EDA Standard Terms and Conditions for Construction Projects
- 2.5.5 Economic Development Administration Reporting Requirements
- 2.5.6 Economic Development Administration Quarterly Progress Reports
- 2.5.7 Economic Development Administration Executed Construction Contract Document Checklist
- 2.5.8 Economic Development Administration Checklist for Initial Disbursement

### **ARTICLE 3**

#### **OWNER'S RESPONSIBILITIES**

- 3.1 **Owner's Information.** Upon request, the Owner shall provide information regarding his requirements for the Project to the Contractor.
- 3.2 **Owner's Representative.** The Owner shall designate a representative who shall be fully acquainted with the Project and shall define the lines of Owner authority to approve Project construction budgets, and changes in Project. Contractor shall render decisions promptly and furnish information expeditiously. The Owner shall inform the Contractor if a change is made in the Owner representative.
- 3.3 **Architect-Engineer's Agreement.** The Architect-Engineer's services, duties and responsibilities are described in the Agreement between the Owner and the Architect-Engineer, a copy of which will be furnished to the Contractor. The Contractor shall be notified of any written modification affecting the responsibilities of the Architect-Engineer on the job.
- 3.4 **Site Survey and Reports.** The Owner shall provide to the Contractor and/or the Architect-Engineer all surveys in his possession describing the physical characteristics, soil reports, subsurface investigations, utility locations, easements and deed restrictions and legal descriptions.
- 3.5 **Approvals and Easements.** The Owner agrees to pay for the expense for any disputes relating to the ownership and use of the property which might arise during the course of construction.
- 3.6 **Drawings and Specifications.** The Contractor will be furnished a reproducible set of all copies of Drawings and

Specifications reasonably necessary and ready for printing.

- 3.7 Independent Testing. Services of independent testing laboratories and the necessary testing of materials to ensure conformance to contract requirement shall be done at Owner's expense.
- 3.8 Cost of Surveys & Reports. The services, information, surveys and reports required by paragraph 3.4 shall be furnished with reasonable promptness in accordance with the approved schedule at the Owner's expense.
- 3.9 Project Fault Defects. If the Owner becomes aware of any fault or defect in the Project or non-conformance with the Drawings and Specifications, Owner shall give prompt written notice thereof to the Contractor and Architect-Engineer.
- 3.10 Funding. The Owner shall furnish in accordance with the established schedule, reasonable evidence satisfactory to the Contractor that sufficient funds will be available and committed for the cost of each part of the Project. The Contractor shall not commence any work, unless authorized in writing by the Owner
- 3.11 Lines of Communication. The Owner and Architect-Engineer shall communicate with the subcontractors or suppliers only through the Contractor. The Owner and Architect-Engineer shall not attempt to direct the work of any subcontractor or interfere with work of the Contractor or any subcontractor .
- 3.12 Lines of Authority. The Owner shall establish and maintain lines of authority for his personnel and shall provide this definition to the Contractor and all other affected parties.
- 3.13 Permitting and Code Inspections. The Contractor recognizes and agrees to coordinate with the Permitting Authorities and the Owner shall assist in such coordination to the extent practicable.

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

Before Construction can begin, it will be necessary for the Contractor to obtain a Building/Development Permit(s). In addition, construction may be inspected for code compliance by inspectors working for the Permitting Authority. The building permitting and code inspection requirements shall be as described in Articles 4.1 through 4.2 hereinafter. Consideration for either public or private permit review and inspection agencies will be in accordance with F.S. 553.791.

- 4.1 Building Permits. The Contractor will be required to provide the following information to the Permitting Authority and obtain approval from the Permitting Authority prior to beginning construction:
- (1) Two (2) sets of documents, signed, sealed, and dated by the Architect-Engineer, with all addenda enclosed with each set. These documents may be sent to the Permitting Authority prior to sending the Building Permit Application.
- 4.2 Code Inspections. All projects require detailed code compliance inspection during construction in disciplines determined by the Permitting Authority. These disciplines normally include, but are not necessarily limited to, structural, mechanical, electrical, plumbing and general building.

The Contractor shall notify the appropriate inspector(s), or the Architect-Engineer's representative, no less than 24 hours in advance, that the work is ready for inspection and before the work is covered up. Work not inspected and approved prior to cover-up shall be uncovered for inspection, if or when directed by the Permitting Authority, at the Contractor's sole expense.

The Contractor shall have a written record of the Contractor's acceptance of periodic inspections made by the Contractor's forces. The Architect-Engineer shall also inspect such Work and sign off on a form provided by the Contractor.

All inspections shall be made for conformance with the applicable building codes.

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



**ARTICLE 5**  
**SUBCONTRACTORS**

- 5.1 Definition. A Subcontractor is a person or organization who has a direct contract with the Contractor to perform any work at the site. Nothing contained in this Agreement or in any Contract Document does or shall create any contractual relation between the Owner or Architect-Engineer and any subcontractor.
- 5.2 Proposals. Subject to Article 9 and, in accordance with Article 2.4(4), the Contractor shall request and receive proposals from subcontractors and suppliers and shall award those contracts to the lowest responsive bidder after the Contractor has reviewed each proposal and is satisfied that the subcontractor is qualified to perform the work.
- 5.3 Required Subcontractors' Qualifications and Subcontract Conditions.
- 5.3.1 Subcontractual Relations. By an appropriate written agreement, the Contractor shall require each subcontractor, to the extent of the work to be performed by the subcontractor, to be bound to the Contractor by the terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities which the Contractor by these Documents, assumes toward the Owner and the Architect-Engineer under the Contract Documents with respect to the Work to be performed by the subcontractor so that the subcontracting thereof will not prejudice such rights. The Contractor shall require each subcontractor to enter into similar agreements with his lower tier contractors.
- 5.3.2 Subcontractual Requirements. Contractor shall make available to each proposed subcontractor, prior to the execution of the subcontract, copies Of the Contract Documents to which the subcontractor will be bound by this Article 5.3. Each subcontractor shall similarly make copies of such Documents available to his subsubcontractors.
- (1) On all subcontracts where the bid exceeds \$100,000, the Contractor may require subcontractors to provide a 100% performance bond and a 100% labor and material payment bond or other acceptable security from a surety company authorized to do business in the State of Florida by the Department of Insurance. If the Contractor wishes to award subcontracts to contractors unable to supply this bonding, Contractor may request special authorization to do so. Upon providing justifiable background information, such authorization shall not be withheld unreasonably.
  - (2) Subcontract bidders must submit a completed experience questionnaire and financial statement on a form approved by the Contractor to the Contractor. The subcontractors' financial condition must demonstrate that adequate fixed and liquid assets and equipment are available to properly perform the subcontract.
  - (3) Workforce - The subcontractor must agree to perform no less than 15% of the Project construction work utilizing its own employees.
  - (4) Subcontractor experience - The subcontractor must have successfully completed no less than two projects of similar size and complexity to the Project within the last five years.
  - (5) Supervision -The subcontractor must agree to provide field (on-site) supervision through a named superintendent for each trade (general concrete forming and placement, masonry, mechanical, plumbing, electrical and roofing) included in the subcontract. In addition, the subcontractor shall assign and name a qualified employee for scheduling direction for its work. The supervisory employees of the subcontractor (including field superintendent, foreman and schedulers at all levels) must have been employed in a supervisory (leadership) capacity of substantially equivalent level on a similar project to the Project for at least two years within the last five years .

The subcontractor shall include a resume of experience for each employee identified by him to supervise and schedule his work.

- (6) All subcontracts shall provide:
- (a) Limitation of Remedy - No Damages for Delay. That the subcontractor's exclusive remedy for delays in the performance of the contract caused by events beyond its control, including delays claimed to be caused by the Owner or Architect-Engineer or attributable to the Owner or Architect-Engineer and including claims based on breach of contract or negligence, shall be an extension of its contract time.

In the event of a change in the work, the subcontractor's claim for adjustments in the contract sum are limited exclusively to its actual costs for such changes plus no more than 15% for overhead and profit and bond costs.

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

- (b) Each subcontract shall require that any claims by subcontractor for delay or additional cost must be submitted to the Contractor within the time and in the manner in which the Contractor must submit such claims to the Owner, and that failure to comply with the conditions for giving notice and submitting claims shall result in the waiver of such claims.
- (c) The subcontract will be exclusively with the Contractor and will contain the necessary provision to allow the Contractor to control the performance of the work.
- 5.4 Responsibilities for Acts and Omissions. The Contractor shall be responsible to the Owner for the acts and omissions of his employees and agents and his subcontractors or their sub-subcontractors, their agents and employees, and all other persons performing any of the work or supplying materials under a contract to the Contractor.
- 5.5 Subcontracts to be Provided. The Contractor shall include a copy of the subcontract, including the general supplementary conditions, in the Policy and Procedure Manual.

## **ARTICLE 6**

### **SCHEDULE, TIME OF COMMENCEMENT AND SUBSTANTIAL COMPLETION**

- 6.1 At the time the Guaranteed Maximum Price (GMP) is established, as provided for in Article 7, a Project substantial completion date, which shall be September 1, 2021, a Project final completion date and an Owner Occupancy date for completion of the Project in accordance with the master Project schedule and in substantial compliance with Exhibit B and for occupancy by the Owner, shall also be established by the Construction Team. The Contractor agrees to complete the construction in accordance within the agreed upon substantial completion date. The Contractor acknowledges that failure to complete the Project within the construction time set forth in the approved schedule will result in substantial damages to the Owner. The Contractor shall be assessed liquidated damages in the amount of \$1000.00, per calendar day for each day completion is extended beyond the agreed upon substantial completion date. The Owner and Contractor acknowledge and agree that (1) if the Project is not substantially complete by September 1, 2021, the Owner will suffer damages which are impossible to compute accurately at this time; (2) the Owner and Contractor have agreed on a daily liquidated damages rate as provided herein; (3) imposition of which shall be the sole remedy of the owner for Contractor delays in the Project (other than if the Contractor fails to comply with Grant requirements or Paragraph 2.5 above, which shall entitle Owner to sue Contractor for all damages and claims); and (4) the liquidated damages provided herein are for damages incurred by the College only, and are not a penalty.

- 6.2 The date of Substantial Completion of the Project or a designated portion thereof is the date when construction is sufficiently complete in accordance with the Drawings and Specifications so the Owner can occupy or utilize the Project or designated portions thereof for the use for which it is intended. Warranties called for by this Agreement or by the Drawings and Specifications shall commence on the Date of Substantial Completion of the Project or designated portion thereof.
- 6.3 Notwithstanding anything in the Agreement to the contrary, if the Contractor is delayed at any time in the commencement or progress of the Work by an act or negligence of the Owner or Architect-Engineer, or of an employee of either, or of a separate contractor employed by the Owner, or by changes ordered in the Work, or by adverse weather, including, but not limited to tropical depressions, tropical storms, or hurricanes, or by labor disputes, fire, war, terrorism, incidence of disease or other illness that reaches outbreak, epidemic, endemic and/or pandemic proportions or other causes affecting the area in which the Project is located and/or the Contractor's labor and/or supply chain, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's reasonable control or responsibility hereunder, or by delay authorized by the Contract Documents, or by the Owner pending mediation and arbitration, or by other causes that the Architect determines may justify delay, and such delay extends the completion date of the Project, then the construction time and Substantial Completion shall be extended by Change Order for such reasonable time and amounts as arise out of or relate to such cause as the Owner may determine.

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

- 7.1 At such time designated by the Owner, the Contractor will establish and submit in writing to the Owner for his approval, a Guaranteed Maximum Price, guaranteeing the maximum price to the Owner, for the construction cost of the Project or designated part thereof. Such Guaranteed Maximum Price shall only be subject to modification for changes in the Project as provided in Article 10. However, the actual price paid for the work by the Owner shall either be: (1) the actual cost of all subcontracts, supply contracts, general conditions fee and direct job costs, as defined under Article 9, plus the Contractor's fees, or (2) the GMP, whichever is the lesser when the work is finally complete.
- 7.2 The GMP will include those applicable taxes in the cost of the Project which are legally enacted at the time the GMP is established. Should any taxes be enacted after the GMP, then the GMP shall be increased by the same amount.
- 7.3 When the Project is bid and 100% of the Subcontracts have been executed, the contingency within the GMP shall be decreased in proportion to the percent of the work as it is completed. In other words, if 10% of the work has been completed and all Subcontracts have been executed, and the Owner requests that the contingency within the GMP be adjusted, then 10% of the contingency within the GMP will be removed from the GMP by change order. At such time that the contingency equals 10% of its original sum, no further funds will be deducted by change order until the Project is 100% complete and accepted.
- 7.4 At the time of submission of a Guaranteed Maximum Price, the Contractor will verify the time schedule for activities and work which were adopted by the Construction Team and used to determine the Contractor's cost of work. In addition to the cost of work, a GMP will include 3% of \$16,500,000 as the construction contingency which is included for the purpose of defraying the expenses due to unforeseen circumstances relating to construction. The Contractor will be required to furnish documentation evidencing expenditures charged to this contingency prior to the release of funds by the Owner and will not be unreasonably withheld. Documentation for use of the contingency shall be determined by the Construction Team, included in the Policy and Procedure Manual, and displayed monthly in the PMIS. If bids are received below the applicable line items in the GMP the surplus will be added to the contingency, until or unless released pursuant to Article 7.3. If bids are received above the applicable line item in the GMP the deficiency will be taken from contingency; however, such events shall not because to increase the GMP.

If any bid package consistent with the Drawings and Specifications for which the lowest price submitted by a Subcontractor is in excess of the amount allocated by the Contractor for such bid package, (unless Owner

through Change order changes the Scope of Work and the Guaranteed Maximum Price, one of the following shall occur: (1) the price of the bid package shall be negotiated, subject to Owner's approval, with the lowest responsive bidder, or (2) re-bid to the end that such bid package becomes equal to, or less than Contractor estimate for that package, or (3) at Contractor's option, the Contractor may perform the work under a separate arrangement in order to protect the Guaranteed Maximum Price; or (4) at the Owner's sole option to achieve such price equality, Owner may require Architect-Engineer to make certain changes in the Drawings and Specifications as are necessary to bring that particular package into line, consistent with Owner's program and the Project's financial feasibility.

Delays resulting from re-bid caused by any action, inaction, or negligence by the Contractor shall not be grounds for extension of substantial completion.

**ARTICLE 8**  
**CONTRACTOR'S FEE**

8.1 In consideration of the performance of the contract, the Owner agrees to pay the Contractor, as compensation for his services, fees, as set forth in Subparagraphs 8.1.1, 8.1.2 and 8.1.3 and set forth on the fee analysis Schedule 8.1.

8.1.1 Pre-Construction Fee. For the performance of the services set for under paragraphs 2.1.3(1), 2.3(1) and 2.3(2) and for profit and overhead related to these services, a total fixed fee of \$111,808. The Pre-Construction Fee shall become due thirty days following the acceptance by Owner of the GMP.

The Contractor's personnel to be assigned during this phase and their duties and responsibilities to this Project and the duration of their assignments are shown on Exhibit C.

8.1.2 Construction Phase General Conditions Fee. For the performance of the services set forth in the Drawings and Specifications for the construction of the Project a total fixed fee of \$927,626 which is part of the GMP, will be paid to the Contractor in the following manner:

- (1) An initial payment of \$57,977.00 (for mobilization) will become due and payable thirty (30) days following written issuance of Notice to Proceed by the Owner.
- (2) The balance of the Construction Phase General Conditions Fee (\$869,649), shall be paid proportionally to the ratio of the cost of work in place as defined in article 8.1.3 and shall be invoiced and paid monthly to the Contractor.

If the design and construction is authorized only for a part of the Project, the fee paid shall be proportionate to the amount of work authorized by the Owner .

(3) Costs and Expenses Included in Fee. The following are included in the Contractor's fee for services during the Construction Phase:

- (a) Salaries or other compensation of the Contractor 's employees at his principal office and branch office.

The Contractor's personnel to be assigned during the construction phase, their duties and responsibilities to this project and the duration of their assignments are shown on Exhibit C.

- (b) General operating expenses related to this Project of the Contractor's principal and branch offices.
- (c) The costs of all data processing staff.

- (d) Salaries or other compensation of the Contractor ' s employees at the job site. The Contractor's personnel to be assigned to the site during the Construction Phase under the job site management and supervision fee, their duties and responsibilities and the duration of their assignment are shown on Exhibit C.
- (e) General operating expenses incurred in the management and supervision of the Project, except as expressly included in Article 9.
- (f) Those services set forth in Article 2.4(9)(a).
- (g) Job office supplies - includes paper, pencils, paper clips, file folders, staples, etc., and janitorial supplies (photocopy or blue print paper not included).
- (h) Relocation expenses for Contractors personnel.

8.1.3 Overhead and Profit Fee for Construction Phase. For overhead, profit and general expenses of any kind, except as may be expressly included in Article 9, for services provided during and related to the construction phase, the fixed fee shall be seven percent (7%) of the total GMP and shall be paid proportionally to the ratio of the cost of the work in place, including stored materials and less retainage, as it bears on the latest estimate of the total construction cost or to the GMP or to the Owner's Construction Budget, whichever is less. The balance of the fee shall be paid when construction of the Project is finally completed, inspected and approved by the Owner. If construction is authorized only for a part of the Project, the fee paid shall be proportionate to the amount of work authorized by the Owner. The contractor's exclusive remedy for any adjustments in the Overhead and Profit for construction phase is provided in Article 8.1.3(1) and 8.1.4.

- (1) The Contractor shall not be due any additional Overhead and Profit Fee on increases in the Guaranteed Maximum Price (GMP) that do not exceed \$500,000. Should the GMP be increased for scope of the work changes by more than \$500,000 under the terms of Article 10, due to no fault of the Contractor, the Contractor's additional Overhead and Profit for the Construction Phase general Conditions Fee shall not exceed seven percent (7%) of that portion of the accumulative increases in the GMP by more than \$500,000. The Contractor shall not reduce the Overhead and Profit Fee for deductive changes in the work such as value engineering, cost savings substitution, deductive alternatives, or the like, that were generated through his efforts.

8.1.4 Contractor's Exclusive Remedy. In the event the construction Substantial or Final Completion date is extended, regardless of whether delay is caused by any act or neglect of the Owner or the Architect-Engineer, or attributable to the Owner or the Architect-Engineer, the Contractor's sole and exclusive remedy is an extension of the construction completion date and payment of additional general conditions and Overhead and Profit fees as outlined herein.

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

9.1 Definition. The term Cost of the Project (or Project Costs) include and shall mean expenses necessarily incurred in the Project during the construction Phase for Construction services and which are paid by the Contractor which are not included in the Construction Phase Fee, The Owner agrees to pay the Contractor for the Cost of the Project as defined in Article 9 up to the amount of the Guaranteed Maximum Price as set forth in the GMP agreed to by the parties, subject to modification as provided in Article 10. Such payment shall be in addition to the Contractor's fees stipulated in Article 8.

9.2 Direct Cost Items.

- (1) Wages paid for labor (as opposed to wages paid to management or supervisory personnel) in

the direct employ of the Contractor in the performance of his work under Agreement, times a multiple of 1.45 to cover fringe benefits.

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

No costs shall be paid by the Owner to the Contractor for any expenses made necessary to correct defective workmanship or to correct any work not in conformance with the Drawings and Specifications or to correct any deficiency or damage caused by negligent acts by the Contractor.

- (9) Minor expenses at the site, such as telegrams, long distance telephone calls, telephone service, expressage, postage, and similar petty cash items in connection with the Project to be billed at cost.
- (10) Costs for trash and debris control and removal from the site.
- (11) Cost incurred due to an emergency affecting the safety of persons and property.
- (12) Legal costs reasonable and properly resulting from prosecution of the Project for the Owner, including handling claims for changes by Subcontractors and Vendors, subject to the following limitations:
  - (a) The Owner approved incurring such costs in advance, which approval shall not be unreasonably denied; and
  - (b) The legal costs were not incurred as a result of the Contractor's own negligence or default.

This paragraph does not provide for payment of legal costs incurred in preparing or asserting claim or requests, by Contractor itself, for change orders or in enforcing the obligations of this

Agreement.

- (13) All costs directly incurred in the performance of the Project for the benefit of the Project and not included in the Contractor's fees as set forth in Article 8.
- (14) If requested by the owner, the Contractor will perform all or a portion of the General Conditions for the cost of the work.
- (15) If approved by the Owner, the Contractor, when qualified, may perform all or a portion of the work for any items listed on the estimate or GMP breakdown where it is deemed advantageous due to schedule or economic benefit for the direct cost of the work.
- (16) Transportation outside of Monroe County for those personnel employed directly for the Project, not including relocation expenses. Such transportation must be approved in advance by the Owner and may be in accordance with the Contractor's standard personnel policy but not exceeding the limits established by Florida Statutes 112.061.
- (17) Costs of all reproductions used for bidding or information purposes required by the Project to directly benefit the Project.
- (18) Costs for watchman and security services for the Project.
- (19) Costs for efficient logistical control of the site, including horizontal and vertical transportation of materials and personnel. Also, costs for adequate storage and parking space.
- (20) Costs for such temporary facilities during construction, as approved by the Owner, including temporary water, heat, power, sanitary facilities, telephones, radios, and computers with software.
- (21) Costs for any jobsite items not referenced herein, not normally provided by the subcontractors, which will be provided by the Contractor as required to complete the work.
- (22) A schedule of values will be submitted at time of GMP.

9.2.1 Direct Purchase by Owner.

Each Subcontractor shall include Florida State and other applicable sales taxes for all material, supplies and equipment included in its bid. Criteria for which purchases will be stipulated for direct purchases by Owner will be established in the P&P manual.

The Owner may, if not prohibited by law, exercise a right to purchase directly various construction materials, supplies and equipment over \$5,000 that may be a part of the subcontract. If so, the Owner will, via its purchase orders, purchase materials and assist the Contractor in the preparation of such purchase orders. The materials shall be purchased from the vendor suppliers selected by the Subcontractor, for the prices negotiated by the Subcontractor. The Contractor will prepare all purchase orders for the Owner and will coordinate the purchase of the materials in a timely manner so as not to negatively impact on the performance of the construction activity of the Project.

The subcontract amount shall be reduced by the net, undiscounted amount of these purchase orders, plus all sales taxes. Issuance of the purchase orders by the Owner shall not relieve the Subcontractor or Contractor of any of its responsibilities regarding material purchases, or installation, except for the payments for the materials so purchased. The Contractor shall remain fully responsible for coordination, correct quantities ordered, submittals, protection, storage, scheduling, shipping, security, expediting, receiving, installation, cleaning and all applicable warranties.

**ARTICLE 10**

## CHANGE IN THE PROJECT

- 10.1 Change Orders. The Owner, without invalidating this Agreement, may order changes in the Project within the general scope of this Agreement consisting of additions, deletions, or other revisions, with the GMP and the Construction Completion Date being adjusted accordingly. All changes in the Project not covered by an authorized contingency shall be authorized by Change Order signed by the Owner before the change is implemented.
- 10.1.1 A Change order is a written order to the Contractor signed by the Owner issued after the execution of this Agreement, authorizing a Change in the Project and/or an adjustment in the construction authorization, the Contractor's fees, or the Construction Completion date.
- 10.1.2 The increase or decrease in the Guaranteed Maximum Price resulting from a change in the Project shall be determined in one or more of the following ways:
- (1) By mutual acceptance of a lump sum properly itemized and supported by enough substantiating data to permit evaluation by the Architect-Engineer and Owner;
  - (2) By unit prices stated in the Agreement or subsequently agreed upon;
  - (3) By cost as defined in Article 9 and a mutually acceptable fixed or percentage fee; or
  - (4) By the method provided in Subparagraph 10.1.3.
- 10.1.3 If none of the methods set forth in Clauses 10.1.2(1), (2), and (3) are agreed upon, the Contractor, provided it receives a written order signed by the Owner, shall promptly proceed with the Work involved. The cost of such work shall then be determined on the basis of the reasonable expenditures and savings of those performing the Work attributed to the change. However, in the event a Change Order is issued under these conditions, the Owner through the Architect-Engineer will establish an estimated cost of the work and the Contractor shall not perform any work whose cost exceeds that estimate without prior written approval by the Owner. In such case, and also under Article 10.1.2 above, the Contractor shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data of the increase in the cost of the Project as outlined in Article 9. The amount of the decrease in the Guaranteed Maximum Price to be allowed by the Contractor to the Owner for any deletion or change which results in a net decrease in cost will be the amount of the actual net decrease.
- 10.1.4 If unit prices are stated in the Agreement or subsequently agreed upon, and if the quantities originally contemplated are so changed in a proposed Change Order that application of the agreed unit prices to the quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices and Guaranteed Maximum Price shall be equitably adjusted.
- 10.1.5 Should concealed conditions encountered in the performance of the Work below the surface of the ground or should concealed or unknown conditions in an existing structure be at a variance with the conditions indicated by the Drawings and Specifications, or Owner furnished information or should unknown physical conditions below the surface of the ground or should concealed conditions in an existing structure of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Agreement, be encountered, the Guaranteed Maximum Price and the Construction Completion date shall be equitably adjusted by Change Order upon a request for Change Order in accordance with Article 10.2.
- (1) In the event the Contractor encounters on the site material reasonably believed to be hazardous, petroleum or petroleum related products, or other hazardous or toxic substances the Contractor shall immediately stop Work in the area affected and report the condition to the Owner and the Architect-Engineer in writing. The work in the affected area shall not thereafter be resumed except by written agreement of the Owner and the Contractor in fact



the material or substance has not been rendered harmless. The Work in the affected area shall be resumed when the site has been rendered harmless, by written agreement of the Owner and Contractor, or in accordance with the final determination by the Architect-Engineer.

- (2) The Contractor shall not be required under the terms of the Contract to perform without its consent any Work relating to hazardous materials, petroleum or petroleum related products, or other hazardous or toxic substances.

10.2 Claims for Additional Cost or Time.

The Contractor shall submit a change order for all claims for additional cost or time.

If the Contractor is delayed at any time in the commencement or progress of the Work by an act or negligence of the Owner or Architect-Engineer, or of an employee of either, or of a separate contractor employed by the Owner, or by changes ordered in the Work, or by adverse weather, including, but not limited to tropical depressions, tropical storms, or hurricanes, or by labor disputes, fire, war, terrorism, incidence of disease or other illness that reaches outbreak, epidemic, endemic and/or pandemic proportions or other causes affecting the area in which the Project is located and/or the Contractor's labor and/or supply chain, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's reasonable control or responsibility hereunder, or by delay authorized by the Contract Documents, or by the Owner pending mediation and arbitration, or by other causes that the Architect determines may justify delay, and such delay extends the completion date of the Project, then the construction time and Substantial Completion shall be extended by Change Order for such reasonable time and amounts as arise out of or relate to such cause as the Owner may determine..

Only delays which are determined to extend the critical path for the schedule for constructing the Project will result in a time extension.

10.3 Minor Changes in the Project.

The Architect-Engineer shall have authority to order minor changes in the Project not involving a change in cost or an extension of the Construction Completion Date and not inconsistent with the intent of the Drawings and Specifications and the Contractor shall abide by and perform such minor changes. Such changes shall be effected by written order. Documentation of changes shall be determined by the Construction Team, included in the Policy and Procedure Manual and displayed monthly in the PMIS. Such changes shall be approved by the Owner and Architect-Engineer.

10.4 Emergencies.

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

**ARTICLE 11**  
**DISCOUNTS**

- 11.1 All discounts for prompt payment shall accrue to the Owner to the extent the Cost of the Project is paid directly by the Owner, or from a fund made available by the Owner to the Contractor for such payments . To the extent the Cost of the Project is paid with funds of the Contractor, all cash discounts shall accrue to the Contractor. All trade discounts, rebates and refunds, and all returns from sale of surplus materials and equipment, shall be credited to the Cost of the Project. All penalties incurred due to fault of the Contractor for late payment of cost of the Project will be paid by the Contractor.

**ARTICLE 12 PAYMENTS TO THE**

## CONTRACTOR

- 12.1 Statements. The Contractor shall submit to the Owner a sworn statement, along with the cost reports required under Article 2.1.5, showing in detail all monies paid out, costs accumulated or cost incurred on account of the Cost of the Project during the previous period and the amount of the Contractor's fees due as provided in Article 8. This data shall be attached to the partial pay request form. The Owner shall make payments to the Contractor as provided in Florida's Local Government Prompt Payment Act, Chapter 218, Part VII, Florida Statutes. Notwithstanding anything in this Agreement to the contrary, in the event Contractor has not been paid for Contractor's completed Work reflected in such sworn statement for more than thirty (30) business days after Owner's receipt of such sworn statement and partial pay request, Contractor shall be entitled to and may slow, suspend, or stop the Work, and such action on the part of the Contractor which arises from Owner's nonpayment shall under no circumstances give rise to the indemnity obligation contained in Section 13.1(2).
- 12.2 Retainage After Substantial Completion of the Project. Upon Substantial Completion of the Project, and upon invoice from the Contractor, the Owner shall release all retainage withheld as provided in Florida's Local Government Prompt Payment Act, Chapter 218, Part VII, Florida Statutes, EXCEPT that if any work remains uncompleted, the Owner shall retain an amount equal to 200% of the estimated cost to complete such work. Upon Final Completion of the Project, and upon invoice from the Contractor, the owner shall release all retainage withheld as provided in Florida's Local Government Prompt Payment Act, Chapter 218, Part VII, Florida Statutes.
- 12.3 Payments to Subcontractors. The Contractor shall make payments to subcontractors as provided in Florida's Local Government Prompt Payment Act, Chapter 218, Part VII, Florida Statutes. "Final payment may be made to certain select subcontractors whose work is satisfactorily completed prior to the total completion of the Project but only upon approval of the Owner.
- 12.4 Payment for Materials and Equipment. Payments will be made for material and equipment not incorporated in the work but delivered and suitably stored at the site (or another location, subject to prior approval and acceptance by the Owner on each occasion).

## ARTICLE 13 INSURANCE, BONDS, INDEMNITY AND WAIVER OF SUBROGATION

- 13.1 Indemnity.
- (1) The Contractor agrees to indemnify, hold harmless, and defend the Owner, Owner's representatives, and Architect-Engineer from and against any and all claims for bodily injury and property damage (other than property insured under paragraph 13.2(3)) caused directly or indirectly by the Contractor's operations under this Agreement.
  - (2) Notwithstanding any minimum insurance requirements prescribed elsewhere in this Agreement, Contractor shall defend, indemnify and hold Owner and Owner's employees harmless from and against (i) any claims, actions or causes of action, (ii) any litigation, administrative proceedings, appellate proceedings, or other proceedings relating to any type of injury (including death), damage, fine, or penalty, and (iii) any costs, losses or expenses that may be asserted against, initiated with respect to, or sustained by, any indemnified party by reason of, or in connection with (A) any activity of Contractor or any of its employees, agents, contractors or other invitees during the term of this Agreement, (B) the negligence or recklessness, intentional wrongful misconduct, errors or other wrongful act or omission of Contractor or any of its employees, agents, subcontractors or other invitees, or (C) Contractor's material default (unless Contractor provides a cure or continues to provide a cure) in respect of any of the obligations that it undertakes under the terms of this Agreement, except to the extent all of the claims, actions, causes of action, litigation, proceedings, costs or expenses arise from the intentional or sole negligent acts or omissions of Owner or

any of its employees, agents, contractors, or invitees (other than Contractor). The monetary limitation of liability under this contract shall be not less than \$1 million per occurrence pursuant to F. S. 725.06. Insofar as the claims, actions, causes of action, litigation, proceedings, costs or expenses relate to events or circumstances that occur during the term of this Agreement, this section will survive the expiration of the term of this Agreement or any earlier termination of this Agreement..

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

### 13.2 Contractor's Insurance.

- (1) The Contractor shall not commence any construction work in connection with this Agreement until Contractor has obtained all of the following types of insurance and such insurance has been approved by the Owner, nor shall the Contractor allow any subcontractor to commence work on his subcontract until all similar insurance required of the subcontractor has been so obtained and approved. All insurance policies shall be with insurers qualified and doing business in Florida.
- (2) Worker's Compensation Insurance. The Contractor shall take out and maintain during the life of this Agreement Worker's Compensation Insurance for all his employees connected with the work of this Project and, in case any work is sublet, the Contractor shall require the subcontractor similarly to provide Worker's Compensation Insurance for all of the latter's employee unless such employees are covered by the protection afforded by the Contractor. Such insurance shall comply with the Florida Worker's Compensation Law. In case any class of employees engaged in hazardous work under this Agreement at the site of the Project is not protected under the Worker's Compensation statute, the Contractor shall provide adequate insurance, satisfactory to the Owner, for the protection of employees not otherwise protected.
- (3) Contractor's Public Liability and Property Damage Insurance. The Contractor shall take out and maintain during the life of this Agreement Comprehensive General Liability and Comprehensive Automobile Liability Insurance as shall protect him from claims for damage for personal injury, including accidental death, as well as claims for property damages which may arise from operating under this Agreement whether such operations are by himself or by anyone directly or indirectly employed by him, and the Amount of such insurance shall be minimum limits as follows:
  - (a) Contractor's Comprehensive \$1,000,000 General Liability Coverage. Each Bodily injury and Property Occurrence, Damage Combined Single Limit.
  - (b) Automobile Liability Coverage, \$500,000 Bodily Injury and Property Damage. Each Occurrence, Combined Single Limit.
  - (c) Excess Liability, Umbrella Form \$3,000,000. Each Occurrence, Combined Single Limit.The Insurance clause for both BODILY INJURY AND PROPERTY DAMAGE shall be amended to provide coverage on an occurrence basis.
- (4) Contractor's Public Liability and Property Damage Insurance. The Contractor shall require each of its subcontractors to procure and maintain during the life of this subcontract, insurance of the type specified above or insure the activities of his subcontractors in his policy, as specified above.
  - (a) Indemnification Rider.

- (1) To cover to the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Owner's Representatives, and the Architect-Engineer and their agents and employees from and against any and all claims for damages, losses and expenses, including but not limited to reasonable attorney's fees, arising out of or resulting from Contractor's performance of the work, provided that any such claim, damage, loss or expense (1) is attributable to bodily injury, sickness, disease or death, or to injury to, damage or destruction of personal or real property, and (2) caused in whole or in part by any act or omission of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right to obligation of indemnity which would otherwise exist as to any party or person described in this Article.
  - (2) In any and all claims against the Owner or the Architect-Engineer or any of their agents or employees of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligations under this Paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any subcontractor under workers' or workmen's compensation costs, disability benefit acts or other employee benefit acts.
  - (3) The obligations of the Contract under this Article 13.2(4) shall not extend to the liability of Architect-Engineer, his agents or employees, (1) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, Drawings and Specifications, or (2) the giving of or the failure to give directions or instruction by Architect-Engineer, his agents or employees providing such giving or failure to give is the primary cause of the injury or damage.
  - (4) The Contractor hereby acknowledges receipt of ten dollars and other good and valuable consideration from the Owner and acknowledges receipt of ten dollars and other good and valuable consideration from the Architect-Engineer in exchange for giving the Owner and Architect-Engineer, respectively, the indemnification provided above in Article 13.2.4.
- (b) Builder's Risk Coverage. Unless provided by owner, the Contractor shall take out and maintain during the life of this Agreement a "Builder's Risk Policy" completed value form, issued to provide coverage on an "all risk" basis including theft. This coverage shall not be lapsed or canceled because of partial occupancy by the Owner prior to acceptance of the Project.
- (c) Certificate of Insurance. The Owner shall be furnished proof of Coverage of Insurance as follows:

Certificate of Insurance form will be furnished to the Owner along with the Contract Documents. These shall be completed and signed by the authorized Resident agent. This Certificate shall be dated, signed and shall include the following;

- (1) The name of the insured Contractor, the specific job by name and job number, the name of the insurer, the number of the policy, its effective date, and its termination date.
- (2) Statement that the Insurer will mail notice to the Owner and a copy to the Architect-Engineer at least thirty (30) days prior to any material changes in provisions or

cancellation of the policy.

- (3) Certificate of insurance shall be in the form as approved by the Insurance Standards Office and such Certificate shall clearly state all the coverage required in this Section.

13.3 Waiver of Subrogation. The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub- subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire or other perils to the extent covered by property insurance obtained pursuant to this Paragraph 13 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly , and whether or not the person or entity had an insurable interest in the property damaged.

13.4 Bonds. Within ten (10) business days after the GMP is agreed to by Owner and Contractor, Contractor shall provide Owner with performance and payment bonds ("Bonds"), in substantially the same form as attached as Schedule 13.4, in the amount of 100% of the total sum of the GMP. The Bonds must comply with the following provisions and must be otherwise acceptable to the Owner:

- (1) The Bonds must be underwritten by a surety company ("Surety") which has a currently valid Certificate of Authority ("Certificate") issued by the State of Florida, Department of Insurance, authorizing it to write surety bonds in the State of Florida.
- (2) The Surety shall have currently valid Certificate issued by the United States Department of Treasury under Sections 9304 to 9308 of Title 31 of the United States Code.
- (3) The Surety shall be in full compliance with the provisions of the Florida Insurance Code.
- (4) The Surety shall have at least twice the minimum surplus and capital required by the Florida Insurance Code at the time the invitation to bid is issued and shall have a Rating of at least A:Class VIII.
- (5) The Bonds must be fully performable in Florida, with service and venue in Monroe County, Florida.

If the Surety for any bond furnished by Contractor 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, Contractor shall, within five (5) calendar days thereafter, substitute another bond and Surety, both of which shall be subject to the minimum requirements noted above and Owner's approval.

In accordance with the requirements of Section 255.05(1)(a), Florida Statutes, Contractor shall record within 5 days in the Public Records of Monroe County, Florida, a copy of the Bonds. Contractor shall deliver within 10 days to Owner evidence, reasonably acceptable to Owner, of the recording of said Bonds. The delivery of such evidence is a condition precedent to the Owner's obligation to make any progress payments to Contractor hereunder.

#### **ARTICLE 14** **TERMINATION OF THE AGREEMENT AND OWNER'S RIGHT** **TO PERFORM CONTRACTOR'S OBLIGATION**

14.1 Termination by the Contractor. If the Project is stopped for a period of thirty (30) days under an order of any court or other public authority having jurisdiction or as a result of an act of government, such as a declaration of a national emergency making materials unavailable, through no act or fault of the Contractor, or if the Project should be stopped for a period of sixty (60) days by the Contractor, for the Owner's failure to make payments thereon, then the Contractor may, upon seven (7) days written notice in advance to the Owner, terminate the contract and request payment for all work executed and the Contractor's fees earned to date and for any proven loss sustained, as of the date of termination, upon any materials, equipment, tools, construction equipment, and machinery, including reasonable profit and termination expenses incurred by the Contractor.

14.2 Owner's Right to Perform Contractor's Obligations and Termination by Owner for Cause.

- (1) If the Contractor fails to timely perform any of his obligations under this Agreement including any obligation the Contractor assumes to perform work with his own forces, the Owner may, after seven (7) days written notice during which period the Contractor fails to perform such obligation, make good such deficiencies and perform such actions. The GMP, or the actual cost of the Project, whichever is less, shall be reduced by the cost to the Owner of making good such deficiencies and the Contractor's construction Phase Fee and General Conditions Fee shall be reduced by an amount required to manage the making good of such deficiencies.
- (2) If the Contractor is adjudged bankrupt, or makes a general assignment for the benefit of his creditors or if a receiver is appointed on account of his insolvency, or if Contractor persistently or repeatedly refuses or fails, except in case for which extension of time is provided, to supply enough properly skilled workmen or proper materials, or fails, without being excused, to maintain an established schedule (failure to maintain schedule shall be defined as any activity on the critical path that fails 45 days or more behind schedule) which has been adopted by the Construction Team, or fails to make prompt payment to subcontractors for materials or labor, or disregards laws, rules, ordinances, regulations, or orders of any public authority having jurisdiction, or otherwise is guilty of substantial violations of a provision of the Agreement, then the Owner may, without prejudice to any other right or remedy, and after giving the Contractor and his surety, if any, seven (7) days written notice, and during which period Contractor fails to cure the violation, terminate the employment of the Contractor and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor, and may finish the Project by whatever method the Owner may deem expedient. In such case, the Contractor shall not be entitled to receive any further payment until the Project is finished nor shall Contractor be relieved from its obligations assumed under Article 7. Reasonable termination expenses and costs incurred by the Owner may be deducted from any payments left owing the Contractor.

14.3 Termination by Owner Without Cause.

- (1) If the Owner terminates this Agreement other than pursuant to Article 14.2(2) or Article 14.3(2), Owner shall reimburse the Contractor for any unpaid cost of the Project due him under Article 9, plus that part of the unpaid balance of the Construction Phase Fee in an amount as will increase the payment on account of his fee to a sum which bears the same ratio to the Construction Phase Fee as the cost of the Project at the time of termination bears to the Guaranteed Maximum Price, if established, otherwise to the Owner's Construction Budget. In case of such termination of Agreement the Owner shall further assume and become liable for obligations, commitments and unsettled contractual claims that the Contractor has previously undertaken or incurred in good faith in connection with said Project to the extent same are accepted by Owner. The Contractor shall, as a condition of receiving the payments referred to in this Article 14, execute and deliver all such papers and take all such steps including the legal assignment of Contractor's contractual rights, as the Owner may require for the purpose of fully vesting in Owner the rights and benefits of the Contractor under such obligations or commitments.
- (2) After the establishment of the Guaranteed Maximum Price or at the completion of the Pre-Construction Phase, if the final cost estimates or lack of funding make the Project no longer feasible from the standpoint of the Owner, the Owner may terminate this agreement any pay the Contractor his proportionate fee due in accordance with Article 8.1 plus any costs incurred pursuant to Articles 9 and 10.

**ARTICLE 15**

**ASSIGNMENT AND GOVERNING LAW**

- 15.1 Neither the Owner nor the Contractor can assign their respective interests in this agreement without the express written consent of the other except as to the assignment of proceeds.

15.2 This Agreement shall be governed by the Laws of the State of Florida.

**ARTICLE 16**  
**NOTICE OF CLAIM: WAIVER OF REMEDIES**

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

- (1) All claims must be submitted as a Request for Change Order in the manner as provided herein ;
- (2) The Contractor must submit a Notice of Claim to Owner and to the Architect-Engineer within 20 days of when the Contractor was or should have been aware of the occurrence of the event giving rise to the claim; and
- (3) Within twenty (20) days of submitting its Notice of Claim, the Contractor shall submit to the Owner its Request for Change Order, which shall include a written statement of all details of the claim, including a description of the work affected.

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

16.2 After receipt of a Request for Change Order, the Owner, in consultation with the Architect-Engineer, shall deliver to the Contractor within 20 days, after receipt of request, its written response to the claim.

16.3 .In the event the Owner and Contractor are unable to agree on the terms of a change order, the Owner shall have the option to instruct the Contractor to proceed with the work. In that event, the Owner shall agree to pay for those parts of the work, the scope and price of which are not in dispute. The balance of the disputed items in the order to proceed will be resolved after completion of the work.

16.4 Under no circumstances shall Owner be entitled to claims, damages, or losses against Contractor arising out of or related to this Agreement for tuition expenses, losses associated with student attendance, loss of use, loss of income, lost profit, or loss of management or employee productivity.

Under no circumstances shall Contractor be entitled to claims, damages, or losses against Owner arising out of or related to this Agreement for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

**ARTICLE 17**  
**MISCELLANEOUS**

17.1 Interest. ANY MONIES NOT PAID WHEN DUE TO EITHER PARTY UNDER THIS AGREEMENT SHALL BEAR INTEREST AT THE STATUTORY RATE.

17.2 Harmony. Contractor is advised and hereby agrees that the Contractor will exert every reasonable and diligent effort to assure that all labor employed by Contractor and his subcontractors for work on the Project shall work in harmony with and be compatible with all other labor being used by building and construction contractors now or hereafter on the site of the Project.

Contractor further agrees that this provision will be included in all subcontracts of the subcontractors as well as the Contractor's own contract; provided, however , that this provision shall not be interpreted or enforced so as to deny or abridge, on account of membership or non-membership in any labor union or labor organization, the

right of any person to work as guaranteed by Article 1, Section 6 of the Florida Constitution.

- 17.3 Apprentices - If the Contractor employs apprentices on the Project, the behavior of the Contractor shall be governed by the provision of Chapter 44, Florida Statutes, and by applicable standard and policies governing apprentice programs and agreements established by the Division of Labor of the State of Florida Department of Labor and Employment Security. The Contractor will include a provision similar to the foregoing sentence in each subcontract.
- 17.4 Invoices Submitted Under Article 9. Invoices submitted under Article 9.2.2. shall be submitted in detail enough for a proper pre-audit and post-audit thereof. Invoices for travel expenses under Article 9.2.2(16) shall be submitted in accordance with procedures specified in Section 112.061 of the Florida Statutes governing payments.
- 17.5 Contractor's Project Records. The Contractor's Project records shall be maintained as prescribed hereinabove for the minimum period required by Federal Law and shall be made available to the Owner or his authorized representative at mutually convenient times.

Incorporated herein and expressly made a part of this agreement by reference is the response to the Request for Proposal for Contractor services submitted by Contractor and the parties acknowledge that the representations, warranties, and assurances contained therein by Contractor have been expressly relied upon by the Owner in approving, entering into, and executing this Agreement.

- 17.6 Exhibits and Schedules. All exhibits and schedules attached hereto are incorporated herein and made a part of this Agreement by this reference.
- 17.7 Public Entity Crime Information Statement. A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.
- 17.8 Notices. Whenever either party desires or is required to give notice unto the other, it must be given by written notice, and either delivered personally or overnighted to the addresses below, or such other address as is designated in writing by a party to this Agreement. Notice shall be deemed to have been given (a) upon receipt by recipient if personally delivered or (b) after delivery to a recognized courier, delivery service such as Federal Express. Notwithstanding the foregoing, notice shall be effective if given by e-mail SO LONG as an original follows pursuant to either 13(a) or (b) above.

Owner: The College of the Florida Keys  
5901 W. College Road  
Key West, FL 33040  
Attn: Kathleen Daniel  
Email: [Kathleen.daniel@fkcc.edu](mailto:Kathleen.daniel@fkcc.edu)

With copy to: B.W. Sprague Consulting Services, Inc.  
102 W. Targa Ct  
Tampa, FL 33606  
Attn: Bill Sprague  
Email: [bwsprague@bellsouth.net](mailto:bwsprague@bellsouth.net)

With copy to: Smith Hawks, PL  
138 Simonton Street  
Key West, FL 33040



Attn: Bryan Hawks  
Email: [bryan@smithhawks.com](mailto:bryan@smithhawks.com)

Contractor Thornton Construction Company, Inc.  
13290 NW 42nd Ave.  
Opa-Locka, FL 33054  
Attn: Freddy Lopez-Mobilia  
Email: [ddiaz@thornton-inc.com](mailto:ddiaz@thornton-inc.com)

With copy to: Peckar & Abramson, P.C.  
One S.E. Third Avenue, Suite 3100  
Miami, Florida 33131  
Attn: Warren E. Friedman, Esq.  
Email: [WFriedman@pecklaw.com](mailto:WFriedman@pecklaw.com)

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

**OWNER:**

**THE COLLEGE OF THE FLORIDA KEYS**

**By:** \_\_\_\_\_  
**Name:**  
**Title:**

**Date:** \_\_\_\_\_

**CONTRACTOR:**

**THORNTON CONSTRUCTION COMPANY, INC.**

**By:** \_\_\_\_\_  
**Name:**  
**Title:**

**Date:** \_\_\_\_\_

**EXHIBIT A**

**CONSTRUCTION TEAM ASSIGNED REPRESENTATIVES**

College of the Florida Keys

B.W. SPRAGUE CONSULTING SERVICES

Bill Sprague Owner's Rep.

Architect-Engineer

K2M DESIGN

Devon Ayers

Construction Manager

THORNTON CONSTRUCTION COMPANY, INC.

President: Thomas Thornton  
Executive VP: Dagoberto Diaz  
VP of Operations: Felipe Laserna  
Project Executive: Freddy Lopez-Mobilia  
Chief Estimator: Floyd Smiley  
Director Safety Officer: Larry Leiman  
Project Administrator/Accountant: Lisa Sabatier  
Project Manager: TBD  
Project Engineer/Assistant Project Manager: TBD  
Project Coordinator: TBD  
Project Superintendent: Jerry Rivera  
Assistant Project Superintendent: TBD  
BIM Manager: Peeraya Inyim  
Scheduler: Karina Muricy

**EXHIBIT B**

**CONSTRUCTION BUDGET/PROJECT SCHEDULE**

**TO BE REVISED/INSERTED WHEN GMP APPROVED BY OWNER**

ITEM DESCRIPTION

CONSTRUCTION BUDGET

CONSTRUCTION MANAGER'S PRECONSTRUCTION PHASE FEE : **\$111,808 (See attached analysis)**

CONSTRUCTION MANAGER'S CONSTRUCTION PHASE FEE: **\$927,626 (See attached analysis)**

CONSTRUCTION MANAGER'S OVERHEAD & PROFIT: **7% of Construction Cost**

CONSTRUCTION BUDGET BALANCE: **TBD**

OWNER'S TOTAL CONSTRUCTION BUDGET: **TBD**

**EXHIBIT C**

**CONTRACTOR'S PERSONNEL**

**OFF-SITE**

**Individual**

**Title**

Freddy Lopez-Mobilia  
Floyd Smiley  
TBD  
TBD  
TBD  
Jerry Rivera  
TBD

Project Executive  
Chief Estimator  
Project Manager  
Project Engineer/Assistant Project Manager  
Project Coordinator  
Project Superintendent  
Assistant Project Superintendent

**ON-SITE**

**Individual**

**Title**

Larry Leiman  
Lisa Sabatier  
Peeraya Inyim  
Karina Muricy

Director Safety Officer (Consultant)  
Project Administrator/Accountant  
BIM Manager  
Scheduler

SCHEDULE 2.5  
GRANT DOCUMENTS

SCHEDULE 2.5.1 Contractor's Process and Procedure Manual for EDA Construction Projects

SCHEDULE 2.5.2 Summary of EDA Construction Standards



SCHEDULE 2.5.3 EDA Contracting Provisions for Construction Projects

SCHEDULE 2.5.4 EDA Standard Terms and Conditions for Construction Projects

SCHEDULE 2.5.5 Economic Development Administration Reporting Requirements

SCHEDULE 2.5.6 Economic Development Administration Quarterly Progress Reports

SCHEDULE 2.5.7 Economic Development Administration Executed Construction Contract  
Document Checklist

SCHEDULE 2.5.8 Economic Development Administration Checklist for Initial Disbursement

SCHEDULE 8.1  
Fee Analysis

CONSTRUCTION MANAGER'S PRECONSTRUCTION PHASE FEE ANALYSIS:

Preconstruction Services Cost Analysis									
Project: CFK-Upper Keys	Rates \$/hr.	DD hours	DD total \$	50% hours	50% total \$	100%/GMP hours	100%/GMP total \$	Preconst. hours	Preconst. Total \$
Project Exec.	\$ 89.66	15	\$ 1,344.90	20	\$ 1,793.20	40	\$ 3,586.40	75	\$ 6,724.50
Project Manager/Superintendent	\$ 72.36	30	\$ 2,170.80	30	\$ 2,170.80	80	\$ 5,788.80	140	\$ 10,130.40
BIM Manager	\$ 72.36	10	\$ 723.60	60	\$ 4,341.60	120	\$ 8,683.20	190	\$ 13,748.40
Sr. Estimator	\$ 80.00	60	\$ 4,800.00	80	\$ 6,400.00	120	\$ 9,600.00	260	\$ 20,800.00
Estimators	\$ 72.36	90	\$ 6,512.40	120	\$ 8,683.20	130	\$ 9,406.80	340	\$ 24,602.40
Total Direct Labor		205	\$ 15,551.70	310	\$ 23,388.80	490	\$ 37,065.20	1005	\$ 76,005.70
Multiplier			1.45		1.45		1.45		1.45
Total Labor Cost			\$ 22,549.97		\$ 33,913.76		\$ 53,744.54		\$ 110,208.27
Travel			\$ -		\$ -		\$ -		\$ -
Printing					\$ 500.00		\$ 800.00		\$ 1,600.00
<b>Project Total:</b>									<b>\$ 111,808.27</b>

CONSTRUCTION MANAGER'S CONSTRUCTION PHASE FEE ANALYSIS:

COLLEGE OF THE FLORIDA KEYS, UPPER KEYS CENTER										
B	C	E		F		G		H		I
GENERAL CONDITIONS	QUANTITY	LABOR		MATERIAL		EQUIPMENT		OTHER		THORNTON CONSTRUCTION ESTIMATED COST
		UNIT COST	LABOR COST	UNIT COST	MATERIAL COST	UNIT COST	EQUIPMENT COST	UNIT COST	OTHER COST	
<b>CONSTRUCTION MANAGEMENT</b>										
10% PROJECT EXECUTIVE	7 WK	5200.40	36,254	0.00	-	0.00	-	0.00	-	\$ 36,254
100% SR. PROJECT MANAGER	70 WK	4196.80	292,577	0.00	-	0.00	-	0.00	-	\$ 292,577
100% ASSISTANT PROJECT MANAGER	70 WK	2880.40	200,805	0.00	-	0.00	-	0.00	-	\$ 200,805
100% SR. SUPERINTENDENT	70 WK	4196.80	292,577	0.00	-	0.00	-	0.00	-	\$ 292,577
38% ASSISTANT SUPERINTENDENT	26 WK	2997.60	79,411	0.00	-	0.00	-	0.00	-	\$ 79,411
20% PROJECT ACCOUNTANT	14 WK	1865.60	26,012	0.00	-	0.00	-	0.00	-	\$ 26,012
<b>Total:</b>										<b>\$ 927,636</b>

SCHEDULE 13.4  
Bond Forms

PAYMENT BOND

AIA<sup>®</sup> Document A312™ - 2010

**CONTRACTOR:**

*(Name, legal status and address)*

THORNTON CONSTRUCTION  
COMPANY, INC.  
13290 NW 42 Avenue  
Opa Locka, Florida 33054

**SURETY:**

*(Name, legal status and principal  
place of business)*

FEDERAL INSURANCE COMPANY  
15 Mountain View Road  
Warren, NJ 07059

**OWNER:**

*(Name, legal status and address)*

THE COLLEGE OF THE FLORIDA KEYS  
5901 W. College Road  
Key West, Florida 33040

**CONSTRUCTION CONTRACT**

Date:

Amount: \$

Description:

*(Name and location)*

The College of the Florida Keys  
Key Largo Campus  
106040 Overseas Highway  
Key Largo, FL 33070

**BOND**

Date:

*(Not earlier than Construction Contract Date)*

Amount: \$

**CONTRACTOR AS PRINCIPAL**

Company: *(Corporate Seal)*

**SURETY**

Company: *(Corporate Seal)*

Signature: \_\_\_\_\_

Name and Title: Thomas Thornton

Title: President

Signature: \_\_\_\_\_

Name and Title: Will Griffin

Title: Attorney-In-Fact

*(Any additional signatures appear on the last page of this Payment Bond.)*

*(FOR INFORMATION ONLY — Name, address and telephone)*

**AGENT or BROKER:**

Will Griffin  
American Global  
2121 SW 3<sup>rd</sup> Avenue, 5<sup>th</sup> Floor  
Miami, FL 33129

**OWNER'S REPRESENTATIVE:**

*(Architect, Engineer or other party:)*

§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.

§ 2 If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any

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person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Section 13) of claims, demands, liens or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety.

§ 4 When the Owner has satisfied the conditions in Section 3, the Surety shall promptly and at the Surety's expense defend, indemnify and hold harmless the Owner against a duly tendered claim, demand, lien or suit.

§ 5 The Surety's obligations to a Claimant under this Bond shall arise after the following:

§ 5.1 Claimants, who do not have a direct contract with the Contractor,

- .1 have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
- .2 have sent a Claim to the Surety (at the address described in Section 13).

§ 5.2 Claimants, who are employed by or have a direct contract with the Contractor, have sent a Claim to the Surety (at the address described in Section 13).

§ 6 If a notice of non-payment required by Section 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Section 5.1.1.

§ 7 When a Claimant has satisfied the conditions of Sections 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:

§ 7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and

§ 7.2 Pay or arrange for payment of any undisputed amounts.

§ 7.3 The Surety's failure to discharge its obligations under Section 7.1 or Section 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Section 7.1 or Section 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.

§ 8 The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Section 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

§ 9 Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

§ 10 The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to, or give notice on behalf of, Claimants or otherwise have any obligations to Claimants under this Bond.

§ 11 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

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§ 12 No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Section 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 13 Notice and Claims to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.

§ 14 This Bond has been furnished to comply with Section 255.05, Florida Statutes. Any provision in this Bond conflicting with Section 255.05, Florida Statutes shall be deemed deleted ~~herefrom~~ and provisions conforming to Section 255.05, Florida Statutes shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

§ 15 Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.

#### § 16 Definitions

§ 16.1 Claim. A written statement by the Claimant including at a minimum:

- .1 the name of the Claimant;
- .2 the name of the person for whom the labor was done, or materials or equipment furnished;
- .3 a copy of the agreement or purchase order pursuant to which labor, materials or equipment was furnished for use in the performance of the Construction Contract;
- .4 a brief description of the labor, materials or equipment furnished;
- .5 the date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
- .6 the total amount earned by the Claimant for labor, materials or equipment furnished as of the date of the Claim;
- .7 the total amount of previous payments received by the Claimant; and
- .8 the total amount due and unpaid to the Claimant for labor, materials or equipment furnished as of the date of the Claim.

§ 16.2 Claimant. An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under Chapter 255, Florida Statutes against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

§ 16.3 Construction Contract. The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.

§ 16.4 Owner Default. Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 16.5 Contract Documents. All the documents that comprise the agreement between the Owner and Contractor.

*(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)*

**CONTRACTOR AS PRINCIPAL**

Company: \_\_\_\_\_  
*(Corporate Seal)*

Signature: \_\_\_\_\_  
Name and Title: « »« »  
Address: « »

**SURETY**

Company: \_\_\_\_\_  
*(Corporate Seal)*

Signature: \_\_\_\_\_  
Name and Title: « »« »  
Address: « »

PERFORMANCE BOND

AIA Document A312™ - 2010

*Performance Bond*

**CONTRACTOR:**  
*(Name, legal status and address)*

THORNTON CONSTRUCTION  
COMPANY, INC.  
13290 NW 42 Avenue  
Opa Locka, Florida 33054

**SURETY:**  
*(Name, legal status and principal  
place of business)*

FEDERAL INSURANCE COMPANY  
15 Mountain View Road  
Warren, NJ

**OWNER:**  
*(Name, legal status and address)*

THE COLLEGE OF THE FLORIDA KEYS  
5901 W. College Road  
Key West, Florida 33040

**CONSTRUCTION CONTRACT**

Date:  
Amount: \$

Description:  
*(Name and location)*  
The College of the Florida Keys  
Key Largo Campus  
106040 Overseas Highway  
Key Largo, FL 33070

**BOND**  
Date:  
*(Not earlier than Construction Contract Date)*

Amount: \$

**CONTRACTOR AS PRINCIPAL**  
Company: *(Corporate Seal)*

**SURETY**  
Company: *(Corporate Seal)*

Signature: \_\_\_\_\_  
Name and Title: Thomas Thornton  
President

Signature: \_\_\_\_\_  
Name and Title: Will Griffin  
Attorney-In-Fact

*(Any additional signatures appear on the last page of this Performance Bond.)*

*(FOR INFORMATION ONLY — Name, address and telephone)*

**AGENT or BROKER:**  
Will Griffin  
American Global LLC  
2121 SW 3<sup>rd</sup> Avenue, 5<sup>th</sup> Floor  
Miami, FL 33129

**OWNER'S REPRESENTATIVE:**  
*(Architect, Engineer or other party:)*

**ADDITIONS AND DELETIONS:**  
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An Additions and Deletions Report that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

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§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance, through Substantial Completion, of the Construction Contract, which is incorporated herein by reference.

§ 2 If the Contractor substantially performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Section 3.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond shall arise after

- .1 the Owner first provides written notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety and/or Contractor may, within fifteen (15) business days after receipt of the Owner's notice, request such a conference. If the Surety and/or Contractor timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Section 3.1 shall be held within thirty (30) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default;
- .2 the Owner declares a Contractor Default, terminates the Construction Contract in accordance with its terms and this Bond and notifies the Surety; and
- .3 the Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.

§ 4 When the Owner has satisfied the conditions of Section 3, the Surety shall, following an investigation, and at the Surety's expense take one of the following actions:

§ 4.1 Arrange for the Contractor to perform and complete the Construction Contract;

§ 4.2 Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;

§ 4.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Section 6 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or

§ 4.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:

- .1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or
- .2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial (but such notification and citation to reasons shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire).

§ 5 If the Surety does not proceed as provided in Section 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond thirty days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Section 4.4, and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

§ 6 If the Surety elects to act under Section 4.1, 4.2 or 4.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract and further limited as set forth in this Bond, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the

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Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication, for

- .1 the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract; and
- .2 liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

§ 7 If the Surety elects to act under Section 4.1, 4.3 or 4.4, the Surety's liability is limited to the Penal Sum of this Bond.

§ 8 The Surety shall not be liable to the Owner or others for obligations of the Contractor, warranties, claims, or issues that may arise after Substantial Completion, as defined under the Construction Contract, or for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of such obligations, warranties, claims, or issues that may arise after Substantial Completion or any obligations unrelated to the Construction Contract. To be clear, the Surety shall not be liable to the Owner for performance, obligations, claims, or issues that arise after Substantial Completion, including, but not limited to warranties and latent defects, and the Surety's obligations hereunder end and are void upon Substantial Completion, as defined in the Construction Contract. No right of action shall accrue on this Bond to any person or entity other than the Owner. The Surety shall not be liable to the Owner or other for consequential damages, delay damages, or attorney fees.

§ 9 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 10 Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 11 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears.

§ 12 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted ~~herefrom~~ and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

#### § 13 Definitions

§ 13.1 Balance of the Contract Price. The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

§ 13.2 Construction Contract. The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.

§ 13.3 Contractor Default. Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.

§ 13.4 Owner Default. Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 13.5 Contract Documents. All the documents that comprise the agreement between the Owner and Contractor.

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