

**Agreement Between  
The College of the Florida Keys and  
Construction Manager at Risk for Continuing Services**

THIS AGREEMENT BETWEEN THE COLLEGE OF THE FLORIDA KEYS AND CONSTRUCTION MANAGER AT RISK FOR CONTINUING SERVICES (the "Agreement") is made and entered into this 1<sup>st</sup> day of February, 2024, by and between THE COLLEGE OF THE FLORIDA KEYS, A FLORIDA COLLEGE SYSTEM INSTITUTION (hereinafter "Owner"), and AJAX BUILDING CORPORATION (hereinafter "Construction Manager").

WHEREAS, Owner intends to retain continuing construction management services for certain construction projects (each, a "Project"); and

WHEREAS, each of the Projects implemented under this Agreement are limited to repairs, modifications, alterations, site improvements and new construction; the amount of which shall not exceed \$4,000,000 as permitted by Florida Statutes.

NOW THEREFORE, for and in consideration of the covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Owner and Construction Manager agree as follows:

**Article 1**

The Construction Team and Extent of Agreement

- 1.1 The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the professionals providing architectural and/or engineering services on the projects ("Architect" or "Architect/Engineer") and exercise the Construction Manager's skill and judgement in furthering the interests of the Owner to furnish efficient construction administration, management services, and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents. The term "Work" means the construction and services required by the Contract Documents (as defined below), whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Construction Manager to fulfill the Contractor's obligations.
- 1.2 The Construction Manager, the Owner, and the Architect/Engineer (the "Construction Team") will work as a team through construction completion. The Construction Manager shall provide leadership to the Construction Team on all matters relating to construction. The Architect/Engineer will provide leadership to the Construction Team on all matters relating to design. When performing any services under this Agreement, the Construction Manager shall identify key personnel to be assigned to a Project. In the event any such personnel discontinue employment with the Construction Manager, Construction Manager shall promptly replace such personnel with individuals approved by the Owner, in writing, which approval shall not be unreasonably withheld.
- 1.3 The "Contract Documents" consist of this Agreement, the provisions of The College of the Florida Keys RFQ 2023-04, the Construction Manager's Response thereto, Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications and Purchase Order(s) issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price (GMP) proposal for each project, the Contract Documents will be amended to include the GMP proposal and revisions prepared by the Architect and furnished by the Owner. The Contract

Documents represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreement, either written or oral.

Where this Agreement is expressly in conflict with the GMP Proposal for a Project, this Agreement will prevail, except as otherwise expressly agreed to by Owner and Construction Manager in writing with respect to any specific term contained in the Agreement and any specific term contained in an individual GMP Proposal. Where this Agreement is silent, the GMP Proposal and the requirements of the Drawings and Specifications will prevail. If the GMP Proposal is expressly in conflict with the Drawings and Specifications, the GMP Proposal will prevail. This Agreement may be amended only by written instrument signed by the Owner and the Construction Manager.

- 1.4 The Construction Manager's Services under this Agreement which may include pre-construction and construction services for Continuing Projects (up to \$4,000,000 each), will be initiated by and described in a Purchase Order for each Project. The Purchase Order shall be considered part of the Contract Documents. The Construction Manager will submit a cost and schedule proposal for each Project based on the scope of services requested by the Owner. Should the Owner and the Construction Manager not reach a contract agreement on any Project, the Owner reserves the right, in its sole and absolute discretion, to cease negotiations for that Project and perform the Work by other means without affecting this Agreement or any other Project. Such cessation of negotiations or performance of such Work shall not be construed to be a breach of this Agreement.
  - 1.4.1 For each Project, the Construction Manager will commence the Work within ten (10) days after receipt from the Owner of the latest-executed Purchase Order or commence at other such date as specified in a duly-issued Notice to Proceed.
- 1.5 Unless otherwise authorized by the Owner, all Work shall be performed by the Construction Manager or Subcontracts held by the Construction Manager. The Construction Manager shall not bid on any of the Subcontractor Work. Construction Manager may perform Work with its own forces with prior written consent of the Owner and pricing for the Work will be developed and submitted to Owner with the GMP Proposal.

## **Article 2**

### Construction Manager's Pre-Construction Services

- 2.1 Pre-Construction Services for each Project include, without limitation, reviewing designs during development for feasibility of construction methods, availability of materials and labor and the like, providing detailed cost estimates of the cost of Work (the "Cost") developed by using estimating techniques which anticipate the various elements of a Project, advising on the separation of each Project into contracts for various categories of Work, developing a construction schedule and developing a Guaranteed Maximum Price (GMP), hereinafter defined, for the Work.
  - 2.1.1 Pre-construction services shall include:
    - (i) review of the applicable Construction Schedule(s);
    - (ii) an estimate of the total Project Construction Cost including fees for permits and licenses, if any, as well as modifications necessitated by local conditions and other information necessary for a full understanding of a Project, and the Construction Documents;
    - (iii) a review of the Construction Documents for clarity, adequacy of detail, consistency, accuracy and completeness;
    - (iv) identifying conflicts, omissions and overlaps in the proposed divisions of Work, evaluating the completeness of intended bid categories, and identifying unusual design details affecting construction cost and schedules;
    - (v) applying established value engineering principles and practices to reduce the Cost of a Project;
    - (vi) identifying factors with the potential to impact the Construction Schedule such as materials with long lead time, the availability of required labor, and other factors.

Where necessary, the Construction Manager shall make suggestions for acceptable alternatives;

- (vii) evaluating and making suggestions to optimize space utilization;
- (viii) recommending modifications or alternatives to the Construction Documents based on its evaluation and review;
- (ix) notifying in writing the Owner and other professional(s) engaged by the Owner of any variances between the Construction Documents and applicable laws, building codes, rules and regulations of which it is aware; and
- (x) notifying in writing the Owner and other professional(s) engaged by the Owner of any problems, conflicts, defects or deficiencies in the review Construction Documents of which it is aware or should be aware.

2.1.2 Compensation to the Construction Manager for all Pre-Construction Services will vary on a project-by-project basis, and, when determined necessary by the Owner, shall be established by way of negotiation.

2.1.3 Compensation to the Construction Manager for Pre-Construction Services may only be adjusted or modified by Change Order, and only if in advance of an executed GMP Amendment

### **Article 3**

#### **Owner's Responsibilities**

- 3.1 The Owner shall designate in writing a representative to act in its behalf for each Project. This representative will monitor the progress of the Work, serve as liaison with the Construction Manager and Architect/Engineer, receive and process communications and paperwork, and represent the Owner in day-to-day conduct of each Project. The Construction Manager will be notified in writing of any changes in Owner representation.
- 3.2 The Owner may retain or require the Architect/Engineer to retain, a threshold inspector, if required by Chapter 553, Florida Statutes.
- 3.3 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on a Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements, and relationships, flexibility and expandability, special equipment, systems, sustainability and site requirements.
- 3.4 During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services on the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.
- 3.5 The Owner shall furnish tests, inspections, and reports required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.
- 3.6 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of a Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both

public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

- 3.7 The Owner, when such services are requested, shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.
- 3.8 During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services.

#### **Article 4** Schedule

- 4.1 The number of days for performance of the Work shall be established as a critical component of the Owner-approved GMP Proposal for each Project. The Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of a Project schedule relating to the performance of the Architect's services. A Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities; and identify items that affect a Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered in advance of construction; and the occupancy requirements of the Owner.
- 4.2 In the event the Owner desires to accelerate the schedule for any portion of the Work, the Owner shall notify the Construction Manager in writing. Within seven (7) days following notification, the Construction Manager shall give the Owner a revised GMP for the acceleration which, if accepted by Owner, shall become a Change Order upon the Owner's execution thereof. In no event shall the Construction Manager be entitled to compensation in excess of the GMP except as revised by approved Change Orders. The Construction Manager shall keep accurate daily records of all costs of the required acceleration and make them available upon request for Owner's review.
- 4.3 The Owner shall have the right to occupy, or use, any portion of the Work ahead of schedule. If use or occupancy ahead of schedule affects the Cost of Work or schedule for the Work, the use or occupancy will be treated as a Change to the Work in accordance with Article 8 herein.

#### **Article 5** Guaranteed Maximum Price

- 5.1 Prior to performance of construction services, the Construction Manager shall prepare and deliver to the Owner, with a copy to the Architect/Engineer, a Guaranteed Maximum Price (GMP) Proposal. The GMP Proposal **shall not include** any Pre-Construction services incurred prior to the first day of construction as specified in a Notice to Proceed for a Project. The GMP Proposal prepared by the Construction Manager shall, at a minimum, clearly identify and include:
- (i) recital of the specific Construction Documents, including drawings, specifications, and all addenda thereto including any assumptions and clarifications applied by the Construction Manager;
  - (ii) Cost of the Work detailed by each subcontract, trade, or bid division;

- (iii) General Conditions Costs for the on-site services of the Construction Manager;
- (iv) Construction Manager's Contingency;
- (v) Construction Manager's Fee;
- (vi) an Allowance for Tax Savings from the Owner Direct Purchase Program;
- (vii) Insurance and Bonds as described in Article 11 of this Agreement;
- (viii) description of all other inclusions to, or exclusions from the GMP;
- (ix) a comprehensive construction schedule; and
- (x) a GMP Proposal Summary per SCHEDULE 1 of this Agreement or other form as prescribed per Project by Owner;
- (xi) a date by which the Owner must accept the Guaranteed Maximum Price;
- (xii) the Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner or Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

5.2 The Construction Manager acknowledges that the Construction Documents may be incomplete at the time the Construction Manager delivers the GMP Proposal to the Owner, and that the Construction Documents may not be completed until after commencement of the Work. The Construction Manager shall not be entitled to any Change Order or increase in the GMP as a result of completion or clarification of the Construction Documents that;

- (i) is required by the Construction Documents; or
  - (ii) is reasonably inferable from the incomplete documents;
- and
- (iii) is consistent with the Owner's Project goals and objectives;
  - (iv) is consistent with the general industry standards for completion of the Work;
  - (v) is not a substantial enlargement of the scope of Work;
  - (vi) substantially conforms to the nature, type, kind or quality of Work depicted in the incomplete documents.

5.3 The Cost of the Work is the sum of all estimated Subcontracts and Purchase Orders comprising all Construction Specifications Institute (CSI) divisions, and as defined herein. The Cost of the Work for each Project includes and is limited to actual expenditures for the following costs:

5.3.1 The cost of materials, supplies and equipment incorporated in the Work or stored on site, including cost of transportation. If such materials, supplies and equipment cannot reasonably be stored on site, off site storage thereof may be included in the cost of the Work if approved in advance by the Owner. At the Owner's sole discretion, the Owner may directly make payment to a third party for materials, supplies and/or equipment stored off-site and in an insured and/or bonded location. Where reasonable, Owner may require materials, supplies and equipment to be stored on site, provided the location is insured and/or bonded.

5.3.2 Payments made by the Construction Manager to Subcontractors or Suppliers for their Work performed pursuant to Subcontracts or Purchase Orders with the Construction Manager.

5.3.3 Sales, use, gross receipts, or similar taxes related to the Work imposed by any governmental authority and for which the Construction Manager is liable.

5.3.4 If royalties or losses and damages, including reasonable cost of defense, are incurred which arise from a particular design, process or the product of a particular manufacturer or manufacturers specified by the Owner or Architect/Engineer, and the Construction Manager had no cause to reasonably believe there would be an infringement of patent rights, such royalties, losses and damages shall be paid by the Owner and the GMP shall be adjusted by Change Order to compensate the Construction Manager for increased

costs. If the Construction Manager reasonably believes that use of the particular design, process or product would infringe a patent(s) and fails to provide written notice to the Owner before using such design, process or product, then no royalties, losses or damages, including cost of defense, arising from use of such design, process or product shall be paid by the Owner and shall not be considered a Cost of the Work.

- 5.3.5 Legal costs reasonably, and properly, resulting from prosecution of the Work for the Owner provided, however, that they are not alleged to be the result of the Construction Manager's own negligence or malfeasance. Legal costs incurred in connection with disputes solely between the Construction Manager and Owner or incurred in connection with disputes solely between the Construction Manager and Subcontractors not pertaining to acts by the Owner or Architect/Engineer are the responsibility of the Construction Manager and shall not be included in the Cost of the Work.
  - 5.3.6 Cost to the Construction Manager of temporary electric power, lighting, water and heat required for the performance of the Work, or required to protect or repair the Work from weather damage.
  - 5.3.7 Cost to the Construction Manager of temporary safety-related protection including barricades and safety equipment, temporary roads and parking, dust control, pest control, installation and operation of temporary hoists, scaffolds, ladders and runways, and temporary project signs and costs of permits and fees pursuant to the General Conditions Costs.
  - 5.3.8 Cost of surveys, measurements and layout work reasonably required for the execution of the Work or the requirement of this Agreement.
  - 5.3.9 Cost of preparation of shop drawings, coordination plans, photographs, or as-built documents not included in Subcontracts.
  - 5.3.10 Rental charges of all necessary machinery and equipment, including hand tools used in the performance of the Work, whether rented from the Construction Manager or others, including installation, repairs and replacements, dismantling, removal, costs of lubrication, transportation and delivery costs thereof.
  - 5.3.11 Costs associated with setting up and demolishing tool sheds, project field offices, temporary fences, temporary roads, and temporary fire protection.
- 5.4 The General Conditions Costs will be established within the GMP Proposal to cover the on-site services of the Construction Manager during construction of each Project. Included in the General Conditions Costs are the following:
- 5.4.1 Wages plus applicable employer payroll taxes and such welfare and other benefits required to be paid for labor in the direct employ of the Construction Manager and who are performing work on a Project site under applicable collective bargaining agreements or under a salary or wage schedule agreed upon by the Owner and Construction Manager. General Conditions Costs shall not include other personnel costs included as any other part of the GMP Proposal.
  - 5.4.2 The cost of its field employees assigned to a Project or their approved replacements, including the cost of all pension contributions, hospitalizations, bonuses, vacations, medical insurance assessments or taxes for such items as unemployment compensation and social security, payroll insurance, and taxes attributable to wages and salaries and other company overhead expenses paid for said home office employees. The personnel to be assigned during the construction phase and their duties and responsibilities will be set forth in the GMP for each Project.

- 5.4.2.1 The cost of Construction Manager's home or branch office employees, proportionate to such employees' role in any given project, including the applicable Project manager and executive and consultants who are not at a Project site, including the cost of all pension contributions, hospitalizations, bonus, vacations, medical insurance assessments or taxes for such items as unemployment compensation and social security, payroll insurance, and any other taxes attributable to wages and salaries and other company overhead expenses for said home office employees. The level of participation of these personnel, and the cost of such personnel, will be negotiated on a project by project basis and memorialized in the GMP Amendment.
- 5.4.3 Building and operating permit fees, inspection and filing fees, sewer and water fees, and deposits lost for causes other than the Construction Manager's own negligence or malfeasance.
- 5.4.4 Cost of removal and disposal of all debris including clean-up and trash removal.
- 5.4.5 Cost incurred due to an emergency affecting the safety of persons and/or property.
- 5.4.6 Cost of the premiums for all insurance or bonds including Subcontractor bonds which the Construction Manager is required to procure for a Project, or other insurance or bonds subsequently deemed necessary by the Construction Manager, and agreed upon by the Owner, in writing. The bond requirements for a Project will be set forth in scope of services for a Project requested by the Owner and in accordance with this Agreement.
- 5.4.7 Cost of data processing services required on a Project site and necessary for the Construction Manager.
- 5.4.8 All costs for reproduction of documents.
- 5.4.9 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 performance of the Work.
- 5.4.10 All travel and per diem costs of the Construction Manager's employees and consultants as approved by Owner. All travel costs will be paid in accordance with the Owner's travel policy.
- 5.4.11 Home office minor expenses such as long distance calls, postage, office supplies, expressage, and similar items in connection with a Project.
- 5.4.12 All costs incurred during the guarantee period after Final Completion as an agreed upon allocation based on a Project GMP value.
- 5.4.13 All other costs directly and actually incurred in the performance of the Work and not included in any other portion of the GMP Proposal.
- 5.4.14 The cost for management and supervisory personnel assigned to a Project, whether stationed at the Project site or at the Construction Managers (CM) office (as allowed for in articles 5.4.1, 5.4.2 and 5.4.2.1 above) along with the items identified in articles 5.4.7, 5.4.11 and 5.4.12 above shall be prepared and included in the GMP amendment as a lump sum. The Owner and CM shall negotiate these items in advance of the submission of the GMP and the agreed upon sum shall appear as a line item in the GMP and paid as a cost of the work.

5.5 A Construction Manager's Contingency value shall be agreed to as part of the GMP amendment as part of the Cost of Work and shall be a fixed value within the GMP Proposal as a reasonable allowance to cover payments required for completion of the Work. This Construction Manager's Contingency may only be utilized with the Owner's prior written approval, which shall not be unreasonably withheld and for the following reasons:

- (i) errors or omissions in the Construction Manager's bidding and scoping processes;
- (ii) reasonable schedule recovery;
- (iii) means, methods, and materials reasonably inferred from the Construction Documents;
- (iv) Subcontractor non-performance or default;
- (v) Costs and expenses incurred by the Construction Manager, not included in the General Conditions Costs or the Cost of the Work but necessary to complete the Project in an expeditious manner consistent with the Contract Documents and the best interests of Owner.
- (vi) Necessary measures to improve the conditions of the work or rate of progress.
- (vii) Remedial work to correct conflicts in the contract documents.

5.5.1 This Contingency shall not be used to satisfy Liquidated Damages, if any. Upon completion of the bidding period and the verification that the full scope of work is included within the subcontractor bids, any cost savings resulting from favorable bids will be available for the Owner's use immediately following the bidding period. Changes to the GMP resulting from these savings are not available to the Construction Manager. At the end of each Project, any remaining Contingency shall be reflected in a Change Order and refunded to Owner.

5.6 A Construction Manager's Fee shall be established within the GMP Proposal to cover payments required for administration, office support and profit for the Construction Manager to complete the Project. By submittal of a GMP Proposal, the Construction Manager certifies that all factual unit costs supporting this Fee as specified in the GMP are accurate, complete and current at the time of submittal; and that any other factual unit costs that may be furnished by the Owner in the future to support any addition to this Fee that may be authorized will also be accurate and complete. The Construction Manager's Fee specified in this Agreement and any additional Fee that may be authorized by Change Order as described herein shall be adjusted to exclude any significant sums if the Owner determines such amounts were originally included due to inaccurate, incomplete, or non-current factual unit costs. Included in the Construction Manager's Fee are the following:

5.6.1 Overhead and profit, or general expenses of any kind, except as may be expressly included as Cost of the Work in this Agreement.

5.6.2 General operating or corporate allocation of expenses for the Construction Manager's principal and branch offices other than the field office.

5.6.3 The cost of estimating services which may be required following the issuance of a Notice to Proceed in locations other than the Project site.

5.6.4 Adjustments in fee will be made only as approved in Change Orders due to Changes in the Work shall be made as described herein.

5.6.5 The Construction Manager shall Administer the construction as provided herein:

5.6.5.1 The Construction Manager shall be responsible for complying with the advertising and competitive bidding procedures applicable to construction projects, including but not limited to, invitations to bid or requests for proposal when applicable, for all procurement of items, materials and services, and subcontract packages over \$65,000.

The Construction Manager should make a genuine effort to stimulate subcontractor interest in a Project and maximize the participation of potentially qualified subcontractors in the bidding process. At all times Owner shall have access to and the right to require copies of all correspondence, records, files, and other bid documents (including all bid responses) with respect to the bidding process. Further, the Construction Manager shall notify the Owner of the date, time, and place of all bid openings, and the Owner shall have the right to attend any and all such bid openings. All bid openings shall be conducted in Monroe County, Florida.

As various bid packages are prepared for bidding, the Construction Manager shall submit to the Owner and Architect/Engineer in a manner suitable to the Owner a list of potential bidders for their review and approval. The Construction Manager shall be responsible for promoting and encouraging bid competition.

The Construction Manager shall carry out an active program of stimulating the interest of qualified subcontractors in bidding on the Work and familiarizing those bidders with the requirements of a Project. The Construction Manager shall conduct an information meeting for prospective subcontractors in conjunction with the Owner not less than thirty (30) days prior to the solicitation of bids.

The Construction Manager shall, unless waived in writing by the Owner, conduct a pre-bid conference with prospective bidders and a pre-award conference with the apparent successful bidder. Architect/Engineer and Owner shall be invited to all such meetings. In the event questions are raised that require an interpretation of the bidding documents or otherwise indicate a need for clarification or correction of the invitation, the Construction Manager shall transmit these to the Architect/Engineer in writing, and upon receiving clarification or correction in writing from the Owner or Architect/Engineer shall issue an addendum to the bidding documents to all the prospective bidders.

Notwithstanding the provision above requiring the award of subcontracts to the lowest responsive and responsible bidder, the Construction Manager may award a subcontract to someone other than the lowest responsive and responsible bidder, provided the Construction Manager has first received the Owner's express written consent to such award. The Owner's consent to any such award will be at the Owner's sole discretion. Whenever the Construction Manager wishes to award a subcontract to someone who is not the lowest responsive and responsible bidder, the Construction Manager must notify the Owner in writing, setting out in detail the reasons and justifications for the suggested award.

- 5.6.5.2 When procuring subcontract packages under a competitive sealed bid process, and when directed by Owner, Construction Manager shall develop procedures, acceptable to the Owner, for the pre-qualification of Subcontractors, including but not limited to procedures for receiving and reviewing qualification and licensure status. Bids shall be opened at the location, date and time established in the bid advertisement and the Owner's Representative for a Project must be present to observe the opening of bids unless excused in writing. The Construction Manager may require bidders to submit bid bonds or other bid security acceptable to the Construction Manager as a prerequisite to bidding on the Work. Construction Manager shall analyze and evaluate the results of the various bids and their relationship to budgeted and estimated amounts, and prepare for review with the Owner and Architect/Engineer a bid tabulation analysis and such other support data as necessary to properly compare the various bids and their responsiveness to the designed scope of Work. Specifically, review the scope of Work with apparent low and best bidders and attempt to achieve savings through negotiation whenever practical. The Construction Manager shall maintain records of all pre-award interviews with apparent low bidders.

- 5.6.5.3 Prepare and submit written recommendations to the Owner and Architect/Engineer for the award of Subcontracts by the Construction Manager for all subcontract packages, whether pursuant to a competitive sealed bid process or otherwise. The Construction Manager shall promptly award and execute Subcontracts with approved Subcontractors and provide the Owner with copies of all fully executed Subcontracts, insurance certificates and, if required, bonds.
- 5.6.5.4 Manage, schedule and coordinate the Work, including the work of the Subcontractors, and coordinate the Work with the activities and responsibilities of the Owner, Architect/Engineer and Construction Manager in order to complete each Project in accordance with the Owner's objectives of cost, time and quality; Develop and maintain a program, acceptable to the Owner and Architect/Engineer, to assure quality control of the construction; Supervise the work of all subcontractors providing instructions to each when its work does not conform to the requirements of the Drawings and Specifications and continue to manage each Subcontractor to ensure that corrections are made in a timely manner so as to not affect the efficient progress of the Work. Should disagreement occur between the Construction Manager and the Architect/Engineer over acceptability of the Work and conformance with the requirements of the Drawings and Specifications, the Owner shall be final judge of performance and acceptability.
- 5.6.5.5 Maintain exclusively for each Project as agreed upon in an approved GMP Proposal, the level of staff to coordinate and direct the Work and progress of the Subcontractors. All of the Construction Manager's on site management and supervisory personnel shall not be removed or replaced without the Owner's prior written consent, which consent shall not be unreasonably withheld. The Owner shall have the reasonable right, at will, to direct the Construction Manager to remove or replace any on site personnel. In such event, the Construction Manager shall promptly replace such personnel, without consideration of additional compensation for the replacement.
- 5.6.5.6 Establish on site organization and lines of authority in order to carry out the overall plans of the Construction Team. Identify a staff member to represent the Construction Manager with authority to daily negotiate Change Orders and contract modifications on behalf of the Construction Manager. Make available executive personnel as necessary to execute Change Orders or other contract modifications on behalf of the Construction Manager so as not to delay the progress of the Work.
- 5.6.5.7 When deemed necessary, establish procedures for coordination between the Owner, Architect/Engineer, Subcontractors and Construction Manager with respect to all aspects of the Work. Implement such procedures, incorporate them into a Project resource manual, and distribute manuals to the Construction Team. In addition, the Construction Manager shall, in a timely manner, perform the obligations set forth in Section 5.6.5.8 through 5.6.5.25, below:
- 5.6.5.8 Require of the various Subcontractors such coordination drawings as may be necessary to properly coordinate the Work among the Subcontractors.
- 5.6.5.9 Coordinate with the Architect/Engineer to establish and implement procedures for tracking and expediting the processing of shop drawings and samples.
- 5.6.5.10 Schedule, conduct and publish the notes and minutes of all weekly progress meetings with Subcontractors to review such matters as job procedures, construction progress, schedule, shop drawing status and other information as necessary. Provide prior notice to Owner and Architect/Engineer of all such meetings. Attend Team meetings scheduled by the Owner or Architect/Engineer.

- 5.6.5.11 Review the schedule for each Project with the various Subcontractors and review, or expand the level of detail to incorporate specific Subcontractor input consistent with the overall completion requirements. Regularly monitor and update the Project schedule and various sub-networks as construction progresses. Identify potential variances between the scheduled and probable completion dates. Review each Project schedule for Work not started, or incomplete, and make adjustments in the schedule to meet the approved completion date. Provide summary reports of such activities and document all changes in each Project schedule. Include regular Project schedule updates and reporting as part of the monthly progress report outlined in Subparagraph 5.6.5.23, herein. Display each current Project schedule in the off-site office and review each schedule at weekly progress meetings.
- 5.6.5.12 Determine the adequacy of the Subcontractors' personnel and equipment, and the availability of materials and supplies to meet the schedule. In consultation with the Owner and Architect/Engineer, take necessary corrective actions when the requirements of a Subcontract or Subcontract schedule are not being met.
- 5.6.5.13 Whenever Owner-Furnished Contractor-Installed (OFCI) materials or equipment are shipped to a sub-project site, the Construction Manager shall notify the Owner and shall be responsible for their acceptance, proper storage, and incorporation into the Work provided the scope of the Owner-Furnished Contractor-Installed work is included within the GMP.
- 5.6.5.14 Develop and maintain an effective system of project cost control which is satisfactory to the Owner. Revise and refine each initially approved project budget, incorporate approved changes as they occur, and develop cash flow reports and forecasts as needed. Identify variances between actual and budgeted or estimated costs and advise Owner and Architect/Engineer whenever projected costs are expected to exceed budgets or estimates. Cost control reports shall be included as part of the monthly progress reports outlined in Subparagraph 5.6.5.23, herein.
- 5.6.5.15 The Construction Manager shall maintain a system of accounting consistent with Generally Accepted Accounting Principles. The Construction Manager's Project Records shall be maintained as prescribed hereinabove for the minimum period required by Federal Law and Florida Statutes, and shall be made available to the Owner at mutually convenient times.
- 5.6.5.16 Construction Manager's records which shall include but not be limited to accounting records, payroll time sheets, written policies and procedures, computer records, disks and software, videos, photographs, subcontract files (including proposals of successful and unsuccessful bidders), original estimating worksheets, correspondence, change order files (including documentation covering negotiated settlements), and any other supporting evidence necessary to substantiate charges related to this agreement, shall be open to inspection and subject to audit by the Owner or its authorized representative to the extent necessary to adequately permit evaluation and verification of any invoices, payments or claims submitted by the Construction Manager or any of his payees pursuant to the execution of the agreement. Such records subject to examination shall also include, but not be limited to, those records necessary to evaluate and verify direct and indirect costs (including overhead allocations) as they may apply to costs associated with this agreement.
- 5.6.5.17 Develop and implement a system for the preparation, review and processing of Change Orders in accordance with this Agreement. Without assuming any of the Architect/Engineer's responsibilities for design, recommend necessary or desirable changes to the Owner and the Architect/Engineer, review requests for changes and

submit recommendations to the Owner and Architect/Engineer. All Change Orders shall be supported by a written cost proposal from the Subcontractor or Construction Manager, as applicable, showing: quantities and sizes of materials; unit costs; labor; profit and overhead; and a narrative justification. The Architect/Engineer and the Construction Manager shall sign all Change Orders and submit the same to the Owner for approval and processing.

- 5.6.5.18 When requested by the Owner or Architect/Engineer, promptly prepare and submit estimates of probable cost for changes proposed in the Work including similar estimates from Subcontractors. If directed by the Owner, promptly secure formal written Change Order proposals from such Subcontractors.
- 5.6.5.19 Initiate, maintain and supervise effective safety programs and require similar programs of the Subcontractors. The OSHA guidelines shall serve as the basis for the construction safety program.
- 5.6.5.20 Promptly notify the Owner, in writing, upon receiving notice of filing of any charge of non-compliance from OSHA, or any other governmental authority having jurisdiction over a Project, or upon receiving notification that a federal or state inspector shall visit or is visiting each Project site.
- 5.6.5.21 At meetings with Subcontractors, conduct a review of job safety and accident prevention, and prepare minutes of such meetings and make them available to the Owner on request.
- 5.6.5.22 Make security provisions for each Project acceptable to the Owner to protect a Project site and materials stored off site against theft, vandalism, fire and accidents, etc., as necessary. Lock or otherwise secure at the site any mobile equipment, operable equipment and hazardous parts of new construction when unattended.
- 5.6.5.23 Record the progress of a Project. Submit written progress reports no less than monthly to the Owner and the Architect/Engineer, including information on the Subcontractors' Work, the percentage of completion, current estimating, computerized updated monthly Critical Path Method Scheduling and project accounting reports, including estimated time to completion and estimated cost to complete. Keep daily log available to the Owner and the Architect/Engineer. Report and record such additional information related to construction as may be requested by the Owner.
- 5.6.5.24 Be responsible for engaging appropriate and licensed contractors as necessary for the removal, encapsulation, transportation and disposal of any hazardous material, including, without limitation, any asbestos-related products as may be required in connection with the Work. Hazardous materials, as described by federal guidelines, brought to the site by Construction Manager or Subcontractors, shall remain their responsibility for proper disposal. Any hazardous material not specifically shown on the Drawings and Specifications, surveys provided to the Construction Manager or other documents in the Construction Manager's possession shall be considered an unanticipated condition and may be made the responsibility of the Construction Manager in a Change Order increasing the GMP for any additional costs incurred.
- 5.6.5.25 Be responsible for engaging appropriate and licensed contractors as necessary to assure that any asbestos abatement required in connection with the Work is properly performed.
- 5.6.6 The Construction Manager's Fee in the GMP will be negotiated on a project-by-project basis.

- 5.7 An Allowance for Tax Savings shall be established within the GMP to recognize the estimated cost savings to be accrued from utilization of an Owner Direct Purchase Program. Included within the GMP will only be those taxes which are legally enacted at the time the GMP is approved by the Owner.
- 5.7.1 Construction Manager shall submit a direct tax savings purchase plan that, upon acceptance by Owner, will be part of the GMP. It is specifically understood and agreed that this program is intended to inure to the benefit of the Owner for tax savings purposes only and shall in no way be construed to inure to the detriment of the Construction Manager.
- 5.7.2 Notwithstanding anything herein to the contrary, because Owner is exempt from sales tax and wishes to generate sales tax savings for a Project, Owner reserves the right to make direct purchases of various construction materials and equipment included in the Work. Construction Manager shall prepare purchase orders requests for vendors selected by Construction Manager, for execution by Owner, on forms provided by Owner. Construction Manager shall allow two weeks for execution of all such purchase orders by Owner. Construction Manager represents and warrants that it will use its best efforts to cooperate with Owner in implementing this sales tax savings program in order to maximize cost savings for a Project. Within thirty (30) calendar days after execution of the Purchase Order, Construction Manager will provide an estimate for the entire anticipated amount of Owner Direct Purchases, inclusive of sales taxes. Prior to the final payment, a final reconciliation of the Owner Direct Purchases against the Contract Amount will be performed and such deductive Change Order applied to the Allowance within the GMP will be prepared for the Owner's review and approval. With respect to all direct purchases by Owner, Construction Manager shall remain responsible for coordinating, ordering, inspecting, accepting delivery, storing, handling, installing, warranting and quality control for all direct purchases. Notwithstanding anything herein to the contrary, the parties expressly acknowledge and agree that any materials or equipment directly purchased by Owner pursuant this Paragraph shall be included within and covered to the same extent as all other warranties provided by Construction Manager pursuant to the terms of the Contract Documents. Owner shall assign to Construction Manager any and all warranties and rights Owner may have from any manufacturer or supplier of any such direct purchases by Owner.
- 5.8 All cost savings for the not-to-exceed value of the GMP shall be returned to the Owner as part of the savings established when final accounting is submitted upon Final Completion of the Work, except as otherwise provided herein or agreed to by the Owner and Construction Manager. "Cost savings" is the difference between the final GMP and:
- (i) the documented Construction Manager's Fee;
  - (ii) the expended portions of the contingency, and;
  - (iii) the General Conditions Cost as defined in Article 5.4, and;
  - (iv) the actual expenditures representing the Cost of the Work as defined in Article 5.3 herein.
- 5.9 Adjustments to the GMP will be made only through approved Change Orders as described in this Agreement.

## **Article 6**

### Changes in the Work

- 6.1 A Change Order is a written order to the Construction Manager signed by the Owner issued after the execution of this Agreement, authorizing a change in a Project resulting in a necessary adjustment to the GMP Proposal, date of Substantial Completion, date of Final Completion or Owner Occupancy date. Each adjustment in the contract resulting from a Change Order shall clearly separate the amount attributable to the Cost of a Project and Project schedule. "Substantial

Completion” is the time at which the Work has progressed to the point where the Work is sufficiently complete in accordance with the Contract Documents, all licenses, permits, close-outs and approvals including the certificate of occupancy and all those required by all Governmental Authorities have been obtained, so that the Project can be utilized for the purposes for which it is intended. The terms "Substantially Complete" and "Substantially Completed" as applied to all or part of the Work refer to the Substantial Completion thereof.

- 6.2 The Owner, without invalidating this Agreement or a GMP Proposal, may order Changes in a Project within the general scope of Work consisting of additions, deletions or other revisions, and the Construction Completion Date, being adjusted accordingly. All changes in a Project shall be authorized by Change Order signed by the Owner before the change is implemented.
- 6.3 The increase or decrease in the GMP Proposal or Purchase Order amount resulting from a change in a Project shall be determined in one or more of the following ways:
  - 6.3.1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
  - 6.3.2 Unit prices stated in the GMP Proposal, Purchase Order or subsequently agreed upon;
  - 6.3.3 Cost to be determined in a manner agreed upon by the parties and mutually acceptable fixed or percentage fee.
- 6.4 If none of the methods set forth in Paragraph 6.3 is agreed upon, the Construction Manager, provided he receives a written order signed by the Owner, shall promptly proceed with the Work involved. The cost of such work shall then be determined on the basis of the reasonable expenditures and savings of those performing the Work attributed to the change. However, in the event a Change Order is issued under these conditions, the Architect will establish an estimated Cost of the Work and the Construction Manager shall not perform any work whose cost exceeds that estimate without prior written approval by the Owner. In such case, the Construction Manager shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data of the increase in the Cost of a Project or GMP Proposal. The amount of decrease in the GMP Proposal or Purchase Order to be allowed by the Construction Manager to the Owner for any deletion or change which results in a net decrease in cost will be the amount of the actual net decrease.
- 6.5 If unit prices are stated in the approved GMP Proposal or Purchase Order and if the stated quantities are revised, then the Construction Manager may submit a proposed Change Order for the Cost of Work.
- 6.6 Should concealed conditions encountered in the performance of the Work below the surface of the ground or should concealed or unknown conditions in an existing structure be at variance with the conditions indicated by the Drawings, Specifications, Owner furnished information, or reasonable investigations by the Construction Manager, or should unknown physical conditions below the surface of the ground or should concealed or unknown conditions in an existing structure of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided by the Construction Manager be encountered, the GMP Proposal or Purchase Order and, if necessary, a Project completion date(s) shall be equitably adjusted by Change Order.
- 6.7 If Owner and Construction Manager are unable to agree on a value related to a Change Order for a requested change, Construction Manager shall, nevertheless, promptly perform the change as directed by the Owner in a written Construction Change Directive. In that event, the applicable GMP Proposal or Purchase Order and, if necessary, a Project completion date(s) shall be adjusted as directed by Owner. If Construction Manager disagrees with Owner's adjustment determination,

Construction Manager must make a claim pursuant to this Agreement or else be deemed to have waived any claim it might otherwise have had on that matter.

- 6.8 If the Construction Manager is delayed at any time in the commencement of or the progress of the Work in accordance with the Contract Schedule by any act or neglect of the Owner or the Architect or of any delay due to any permitting agency or by any separate Construction Manager employed by the Owner or by any changes ordered in the Work as a result of labor disputes, fire, or unusual delay in transportation, unavoidable casualties or any causes beyond the Construction Manager's control or by delay authorized by the Owner pending resolution of disputes, and such delay extends the completion date, the Substantial Completion shall be extended by Change Order for such reasonable time as Architect may determine. Any increase or decrease in the GMP Proposal or Purchase Order amount resulting from such delay shall be made in accordance with Article 6.3 of this Agreement.
- 6.9 Only delays which are determined to extend the critical path for the schedule for the commencement and/or the continuation of construction of a Project will result in a time extension. Neither the Owner nor the Construction Manager shall be considered to own the schedule float time.
- 6.10 Architect will have authority to order minor changes in a Project not involving an adjustment in the cost or schedule and not inconsistent with the intent of the Drawings and Specifications. Such changes shall be effected by written order of the Architect. Documentation of changes shall be prepared by the Construction Manager to the satisfaction of and approval by the Owner.
- 6.11 In any emergency affecting the safety of persons or property, the Construction Manager shall act at his discretion to prevent threatened damage, injury or loss. Any change in the GMP Proposal or Purchase Order and, if necessary, a Project completion date(s) claimed by the Construction Manager on account of emergency work shall be determined as provided in this Article.
- 6.12 Any and all claims for an adjustment to cost or time for each Project shall be made by request for a Change Order submitted as provided herein.

## **Article 7**

### Payments to Construction Manager

- 7.1 In consideration of the performance of this Agreement, the Owner agrees to pay the Construction Manager, as compensation for its services, the amounts set forth in the GMP Proposal or Purchase Order for each Project, as may be adjusted by Change Order.
- 7.2 The Owner shall pay, and the Construction Manager shall accept, as full payment for the services provided, only the sum of the GMP Proposal or Purchase Order which sum shall not exceed the GMP as may be adjusted by Change Order:
- 7.3 Upon issuance of a Purchase Order or Notice to Proceed, the Construction Manager guarantees that the sum of the actual components of the GMP Proposal shall not exceed the amount set forth in the agreed upon GMP, as adjusted by Change Order(s). All costs or expenses that would cause this sum to exceed the GMP shall be borne by the Construction Manager unless adjusted by Owner approved Change Order(s).
- 7.4 Based upon the Pay Request AIA G702 and Schedule of Values per AIA G703 submitted by the Construction Manager to the Architect and Certificates of Payment, the Owner shall make progress payments on account of each Project Purchase Order to the Construction Manager as provided below and elsewhere in the Contract Documents:
- 7.4.1 The period covered by each Pay Request shall be one calendar month ending on the last day of the month.

- 7.4.2 Construction Managers providing goods and services to the Owner should be aware of the following time frames. Upon receipt, the Owner has twenty (20) calendar days to inspect and approve the goods and services. Payment is due 25 business days after the date on which the payment request or invoice is stamped as received as provided in Florida Statute 216.74. Pay Requests which have to be returned to a Construction Manager because of Construction Manager's preparation errors will result in a delay in the payment to allow for the correction of such error. The Pay Requests payment requirements do not start until a properly completed Pay Request is certified by the Architect and received by the Owner. If Owner believes any such Pay Request is not properly completed, Owner shall communicate same to Architect in writing within five (5) days after receipt of such Pay Request. If Architect determines the Pay Request to have been properly completed, the Pay Request payment requirements start on the date the Pay Request was received by the Owner. If Architect determines the Pay Request to be improperly completed, Architect shall collaborate with Construction Manager to obtain a corrected/revised Pay Request. In such event, the Pay Request payment requirements for such Pay Request do not start until receipt by Owner of the corrected/revised Pay Request which has been certified by the Architect
- 7.4.3 Ten percent (10%) retainage shall be held on all payments until the Work under each Purchase Order is fifty percent (50%) complete. At 50% completion, the Owner may, at his sole and absolute discretion, approve a request by Construction Manager for a reduction in retainage from 10% to no less than 5%.
- 7.4.4 Final payment constituting the unpaid balance of the Cost of each Project and the Construction Manager's Fee, shall be due and payable, in accordance with Article 7.4.2, after the applicable Project has received its certificate of occupancy, the Owner has accepted occupancy of said Project, provided that the Project be then finally completed and the Project has been finally performed and Substantial Completion has been obtained. However, if there should remain minor work to be completed, and Owner consents, the Construction Manager and the Architect shall list those items prior to receiving final payment and the Owner may retain a sum equal to 200% of the estimated cost of completing any unfinished work and portion of the Construction Manager's retainage, provided that said unfinished items are listed separately and the estimated cost of completing any unfinished items are likewise listed separately. Thereafter, the Owner shall pay to the Construction Manager, monthly, the amount retained for each incomplete item after each of said items is completed. Before issuance of final payment without any retainage, the Construction Manager shall submit satisfactory evidence that all payrolls, material bills, release of liens, and other indebtedness connected with the Project have been paid or otherwise satisfied, warranty information is complete, as-built markups have been submitted and instruction for the Owner's operating and maintenance personnel is complete.
- 7.5 Construction Manager shall pay each Subcontractor as provided below and elsewhere in the Contract Documents:
- 7.5.1 When the Construction Manager receives payment from the Owner for labor, services or materials furnished by subcontractors and suppliers hired by the Construction Manager for the Project, the Construction Manager shall remit payment due to those subcontractors and suppliers, less the value of any item contested, within 10 calendar days after the Construction Manager's receipt of payment from the Owner.
- 7.5.2 When the subcontractor receives payment from the Construction Manager for labor, services or materials furnished by subcontractors and suppliers hired by the subcontractor for the Project, the subcontractor shall remit payment due to those subcontractors and

suppliers, less the value of any item contested, within 10 calendar days after the subcontractor's receipt of payment.

- 7.5.3 Final payment may be made to certain selected subcontractors whose work is satisfactorily completed prior to the total completion of the Project but only upon written approval of the Owner.
- 7.5.4 Subcontractors, in accordance with the next billing cycle after satisfactory completion of their work on the Project, can invoice the Construction Manager for the remainder of unpaid work. The subcontractor shall include a conditional release of lien and all appropriate warranties and closeout documentation with this final payment invoice to the Construction Manager. The Construction Manager must include this subcontractor payment request in the next Request for Payment in the pay application cycle to the Architect following receipt of the subcontractor invoice, if deemed to be complete and in compliance with this section.
- 7.5.5 The Construction Manager shall not withhold payments to subcontractors if such payments have been made to the Construction Manager. Should this occur for any reason, the Construction Manager shall immediately return such monies to the Owner, adjusting pay requests and bookkeeping as required.
- 7.5.6 These provisions shall not be construed to create a contractual relationship of any kind (1) between the Architect and Construction Manager, (2) between the Owner and a subcontractor or sub-subcontractor (et.al.), (3) between the Owner and Architect, or (4) between any persons or entities other than the Owner and Construction Manager.
- 7.5.7 Inasmuch as failure to Substantially Complete the Work within the time fixed in the GMP Proposal or Purchase Order issued for the Work will result in injury to the Owner, and as damages arising from such failure cannot be calculated with any degree of certainty, it is agreed that if the Work is not Substantially completed within the time provided in the GMP Proposal or Purchase Order, or within such further time, if any, as shall be allowed for time extensions as approved by Change Order(s), the Construction Manager shall pay to the Owner as liquidated damages for such delays, and not as a penalty, a sum based on the impact of the delay on the Owner. The liquidated damages for each Project regarding Substantial Completion are hereby established at \$750.00 per calendar day for each day substantial completion is extended beyond the agreed substantial completion date. Owner and Construction Manager agree that (1) if the Work contemplated herein is not substantially complete by the agreed date, the Owner will suffer damages which are impossible to compute with certainty at this time; (2) the Owner and Construction Manager have agreed on a liquidated damages rate as provided herein; (3) imposition of which shall be the sole remedy of the Owner for delays; and (4) the liquidated damages provided herein are for damages incurred by Owner only, and are not a penalty.

## **Article 8**

### **Discounts**

- 8.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included the amount to be paid, less such discount, in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.
- 8.2 Amounts that accrue to the Owner in accordance with the provisions of Section 8.1 shall be credited to the Owner as a deduction from the Cost of the Work.

**Article 9**  
Period of Service

- 9.1 This Agreement shall remain in force until terminated by Owner or Construction Manager in accordance with Article 12 of this Agreement.

**Article 10**

THIS ARTICLE INTENTIONALLY LEFT BLANK

**Article 11**  
Insurance and Bonds

11.1 Indemnity:

11.1.1 The Construction Manager agrees to indemnify and hold the Owner, and the District Board of Trustees harmless from all claims for bodily injury, death, and/or property damage (other than the Work itself and other property insured under Paragraph 11.2) that may arise from the negligent acts or omissions of the Construction Manager, the Construction Manager's subcontractors, agents and suppliers for each Project under this Agreement.

11.1.2 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 Construction Manager and hold them harmless from all claims for bodily injury and property damage that may arise from contractor's operations. Such provisions shall be in a form satisfactory to the Construction Manager.

11.1.3 Loss Deductible Paragraph: The Owner shall be exempt from, and in no way liable for, any sums of money which may represent a deductible in any insurance policy. The payment of all deductibles shall be the sole responsibility of the Construction Manager and/or subcontractor providing such insurance.

11.2 Construction Manager's Insurance:

11.2.1 The Construction Manager shall not commence any construction work in connection with this Agreement until the Construction Manager has obtained all of the following types of insurance with coverage, limits, and terms delineated in this Agreement and such insurance has been approved by the Owner, nor shall the Construction Manager allow any subcontractor to commence work on its subcontract until all similar insurance required of the subcontractor with coverages and limits customarily determined by the Construction Manager has been obtained. All insurance policies shall be with insurers qualified to do business in Florida.

11.2.2 Worker's Compensation Insurance: Throughout the performance of any Project under this Agreement, the Construction Manager shall secure and maintain Worker's Compensation insurance for all of the Construction Manager's employees connected with each Project and, in case any work is sublet, the Construction Manager shall require the subcontractor similarly to provide Worker's Compensation Insurance for all of the latter's employees unless such employees are covered by the protection afforded by the Construction Manager. All 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 a Project is not protected under the Worker's Compensation statute, the Construction Manager shall provide adequate insurance, satisfactory to the Owner, for the protection of employees not otherwise protected. Coverage shall include Employer's Liability at minimum limits of \$1,000,000/\$1,000,000/\$1,000,000.

- 11.2.3 Construction Manager's Commercial General Liability and Property Damage Insurance: Throughout the performance of any Project under this Agreement, the Construction Manager shall take out and maintain Comprehensive General Liability and Comprehensive Automobile Liability Insurance which shall protect the Construction Manager from claims for damage for bodily injury, including accidental death, as well as claims for property damages including insurance which shall cover adjoining properties for damages which may arise from operating under this Agreement whether such operations are by the Construction Manager or by anyone directly or indirectly employed by the Construction Manager, and the amount of such insurance shall be minimum limits as follows:
- 11.2.3.1 Insured's shall maintain Commercial General Liability (CGL) with a limit of \$1,000,000 each occurrence, combined single limit, and commercial umbrella insurance with a limit of not less than \$2,000,000 each occurrence, combined single limit, subject to aggregate limits where applicable. CGL insurance shall be written on standard ISO occurrence form (or a substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract including the tort liability of another assumed in a business contract.
  - 11.2.3.2 Automobile Liability Coverage, Bodily Injury & Property Damage - \$1,000,000 Each Occurrence, Combined Single Limit. Coverage shall include Non-Owned and Hired Car coverage.
  - 11.2.3.3 Insurance Paragraph for both BODILY INJURY AND PROPERTY DAMAGE shall be amended to provide coverage on an occurrence basis.
  - 11.2.3.4 If Commercial General Liability policy excludes pollution, respondent(s) Pollution Liability policy is required with a \$1,000,000 per occurrence and annual aggregate limit.
- 11.2.4 Subcontractor's Commercial General Liability and Property Damage Insurance: The Construction Manager shall require each of his subcontractors to procure and maintain during the life of a subcontract, insurance of the type and amount specified above or insure the activities of its subcontractors within the policy held by the Construction Manager, as specified above. Construction Manager shall provide Certificates of Insurance for subcontractors to Owner upon Owner's request.
- 11.2.5 Protective Liability Insurance: The Construction Manager shall procure and furnish an Owner's Protective Liability Policy with a limit of \$1,000,000 each occurrence, \$3,000,000 aggregate.
- 11.2.6 The Construction Manager's liability policy shall provide "XCU" (Explosion, Collapse and Underground Damage) coverage for those classifications in which they are included.
- 11.2.7 Professional Liability for Primary Consultants and Design/Build Liability: When operations or activities under the contract involve any type of design work, professional liability coverage shall be maintained by respondent(s) covering wrongful acts, errors or omissions of respondent(s) with a \$4,000,000 per occurrence and \$4,000,000 aggregate limits. Respondent(s) must keep the policy in force for three years after project completion.
- 11.2.8 Broad Form Property Damage Coverage, Products & Completed Operations Coverage: The Construction Manager's Liability Policy shall include Broad Form Property Damage Coverage, Products and Completed Operations Coverage.

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

11.2.10 Indemnification Rider:

11.2.10.1 The Construction Manager agrees, to the fullest extent permitted by law, to indemnify and hold Owner harmless from any damage, liability or cost (including reasonable attorney's fees and costs of defense) to the extent caused by the Construction Manager's negligent acts, errors or omissions in the performance of professional services under this Agreement and those of his or her sub-contractors or anyone for whom the Construction Manager is legally liable.

In accordance with Section 725.06, *Florida Statutes*, adequate consideration has been provided to the Construction Manager for this obligation, the receipt and sufficiency of which is hereby specifically acknowledged. Nothing herein shall be deemed to affect the rights, privileges, and immunities of Owner as set forth in Section 768.28, *Florida Statutes*. In claims against any person or entity indemnified under this section by an employee of the Construction Manager or its agents or Consultants, Subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Subsection shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for or its agents or subcontractors, under Workers' Compensation acts, disability benefits acts, or other employee benefit acts. Such obligation shall not be construed to negate, abridge or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party of the person described in this paragraph.

11.2.10.2 The obligations of the Construction Manager under this Article 11.2.10 shall not extend to the liability of Architect, its agents or employees, arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications, or (2) the giving of or the failure to give directions or instruction by the Architect, its agents or employees providing such giving or failure to give is the primary cause of the injury or damage.

11.2.10.3 The Construction Manager hereby acknowledges receipt of ten dollars and other good and valuable consideration from the Owner and the College of the Florida Keys Board of Trustees and acknowledges receipt of ten dollars and other good and valuable consideration from the Architect in exchange for giving the Owner and College of the Florida Keys Board of Trustees and Architect, respectively, the indemnification provided above in Article 11.2.10.

11.2.11 Builders Risk or Installation Floater Insurance: Construction Manager shall obtain, or cause respondent(s) to purchase, and maintain in effect a completed value builder's risk policy issued by a carrier approved in Florida carrier in an amount equal to the full-completed value of the project. Such insurance shall be issued on an all-risk form including wind, flood, earthquake, and soft costs. Respondent(s) shall be responsible for any deductible amounts. The Owner shall be named as additional insured and loss payee.

The Owner shall be exempt from, and in no way liable for, any sums of money which may represent a deductible in any insurance policy required of the respondent(s). The payment of such deductible shall be the sole responsibility of the Construction Manager and/or subcontractor providing such insurance.

A copy of the policy shall be filed with the Owner, with the signed construction contract. This insurance shall include the interests of the Owner, the Construction Manager, and subcontractors in the work and shall insure against the perils of fire and extended coverage and shall include "all risk" insurance for physical loss or damage including, without duplication of coverage, theft, vandalism, and malicious mischief. If not covered under the all risk insurance or otherwise provided in the contract documents, the Construction Manager shall effect and maintain similar property insurance on portions of the work stored off the site or in transit when such portions of the work are to be included in an application for payment. Coverage of perils of fire, vandalism, malicious mischief, and those included in extended coverage in the amount of one hundred (100%) percent of the values at risk.

11.2.12 Umbrella or Excess Liability: \$4,000,000 per occurrence/\$4,000,000 aggregate limit.

11.2.13 Certificate of Insurance: The Owner shall be furnished proof of coverage of Insurance. Certificate of Insurance form will be furnished to the Owner along with Contract Documents. These shall be completed and signed by the authorized Florida Resident Agent, and returned to the office of the Director of Facilities, The College of the Florida Keys. This Certificate shall be dated and show:

11.2.13.1 The name of the insured Construction Manager, the specific job by name and job number, the name or the insurer, the number of the policy, its effective date, and its termination date.

11.2.13.2 Statement that an authorized representative of the insurer will mail notice to the Owner and a copy to the Architect at least thirty (30) days prior to cancellation of the policy listing the District Board of Trustees as additional insured.

11.2.13.3 Certificate of Insurance shall be in the form as approved by Insurance Standards Office (ISO) and such Certificate shall clearly state all the coverage required in this Agreement.

11.2.13.4 All insurance policies required by this Agreement shall include the following provisions and conditions by endorsement to the policies and certificates shall reflect same:

- (a) All insurance policies, other than the Workers Compensation policy, provided by shall name The College of the Florida Keys, as that name is defined below, as an additional insured and each policy shall contain a severability of interests provision reasonably acceptable to Owner.
- (b) The term "College of the Florida Keys" shall include the College of the Florida Keys Board of Trustees, a body corporate, the College of the Florida Keys System and all Authorities, Boards, Bureaus, Commissions, Divisions, Departments and offices thereof and individual members and employees thereof in their official capacity, and/or while acting on behalf of the College of the Florida Keys Board of Trustees.
- (c) Companies issuing the insurance policy or policies shall have no recourse against Owner for payment of premiums or assessments for any deductibles. Such payments shall be the sole responsibility of Construction Manager and at the sole risk of Construction Manager.
- (d) All insurance coverages of Construction Manager shall be primary to any insurance carried by Owner applicable to this Agreement, and the "Other Insurance" provisions of any policies obtained by Construction Manager shall not apply to any insurance carried by Owner.
- (e) If an "ACCORD" Certificate of Liability Insurance form is used by the Construction Manager, the words "endeavor to" and "... however, failure to mail such notice shall impose no obligation or liability of any kind upon the

firm, its agents or representatives” in the “cancellation” paragraph of the form shall be deleted.

### 11.3 Bonds:

- 11.3.1 The Owner shall have the right to require the Construction Manager to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of approval for a Project's GMP Proposal.
- 11.3.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under this Agreement Contract, the Construction Manager shall promptly furnish a copy of the bonds to the Executive Vice President and CFO.
- 11.3.3 In accordance with the provisions of Section 255.05, Florida Statutes, the Construction Manager shall provide to the Owner, a 100% Performance Bond and a 100% Labor and Material Payment Bond each in an amount not less than the total construction cost as defined in the approved GMP Proposal and inclusive of the Construction Manager's Fees.
- 11.3.4 To be acceptable to Owner as Surety for Performance Bonds and Labor and Material Payment Bonds, a Surety Company shall comply with the following provisions:
  - 11.3.4.1 The Surety Company shall have a currently valid Certificate of Authority, issued by the State of Florida, Department of Insurance, authorizing it to write surety bonds in the State of Florida.
  - 11.3.4.2 The Surety Company shall have currently valid Certificate of Authority issued by the United States Department of Treasury under Sections 9304 to 9308 of Title 31 of the United States Code.
  - 11.3.4.3 The Surety Company shall be in full compliance with the provisions of the Florida Insurance Code.
  - 11.3.4.4 The Surety Company shall have at least twice the minimum surplus and capital required by the Florida Insurance Code at the time the GMP Proposal is delivered to the Owner.
  - 11.3.4.5 If the Contract Award Amount exceeds \$500,000 the Surety Company shall also have a policy Holder Rating of "A" or better and a Financial Rating of Class IV or better. The Surety shall provide a letter on company letterhead stating that they have the above ratings to comply with the provisions of this sub-section.
- 11.3.5 The Surety Company shall not expose itself to any loss of any one risk in the amount exceeding ten (10) percent of its surplus to policyholders, provided:
  - 11.3.5.1 Any risk or portion or any risk being reinsured shall be deducted in determining the limitation of the risk as prescribed in this section. These minimum requirements shall apply to the reinsuring carrier providing authorization or approval by the State of Florida, Department of Insurance, to do business in this state, have been met.

- 11.3.5.2 In the case of the surety insurance company, in addition to the deduction for reinsurance, the amount assumed by any co-surety, the value of any security deposited, pledged or held subject to the consent of the surety and for the protection of the surety shall be deducted.

## **Article 12**

### Termination of this Agreement

#### 12.1 Termination by the Construction Manager:

12.1.1 If any Project is stopped for a period of thirty (30) calendar days under an order of any public authority having jurisdiction or as a result of an act of government, such as a declaration of a national emergency making materials unavailable, through no act or fault of the Construction Manager, or if the Project should be stopped for a period of sixty (60) calendar days by the Construction Manager, for the Owner's failure to make payment thereon, then the Construction Manager may, upon seven calendar days written notice to the Owner, request payment for all Work executed, the Construction Manager's Fees earned to date, and for any proven loss sustained upon any materials, equipment, tools, construction equipment, and machinery, including reasonable profit, damages and terminal expenses incurred by the Construction Manager.

#### 12.2 Owner's Right to Perform Construction Manager's Obligations and Termination by Owner for Cause:

12.2.1 If the Construction Manager fails to perform any of the Construction Manager obligations under this Agreement including any obligation the Construction Manager assumes to perform Work with its own forces, the Owner may, after seven (7) calendar days written notice, during which period the Construction Manager fails to perform such obligation, make good such deficiencies. The actual Cost of the Project shall be reduced by the cost to the Owner of making good such deficiencies and the Construction Manager's Construction Fee shall be reduced by any amount required to manage the making good of such deficiencies.

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

12.2.3 Construction Manager shall comply with Florida public records laws, including but not limited to Chapter 119, Florida Statutes and Section 24 of Article I of the Constitution of Florida (collectively, the "Public Records Laws") and shall allow and permit reasonable access to, and inspection of, all documents, records, papers, letters or other "public record" materials in its possession or under its control which are subject to the provisions of Chapter 119, Florida Statutes, and made or received by Construction Manager in conjunction with this Agreement and related to Agreement performance. Failure of Construction Manager to abide by the terms of this provision shall be deemed a material breach of this Agreement and Owner may terminate this Agreement with no additional payments due to Construction Manager and may enforce the terms of this provision in the form of a court proceeding and shall, as a prevailing party, be entitled to reimbursement of all attorney's fees and costs associated with that proceeding. This provision shall survive any termination or expiration of the Agreement. Construction Manager is encouraged to consult with its advisors about Florida Public Records Law in order to comply with this provision.

12.3 Termination/Suspension by Owner Without Cause:

12.3.1 If the Owner terminates or suspends this Agreement other than pursuant to Article 12.2.2 or Article 12.2.3, the Owner shall reimburse the Construction Manager on a basis per Project for any unpaid Cost of the Project due the Construction Manager earned through the date of termination, plus any and all reasonable termination costs incurred by the Construction Manager plus that part of any unpaid balance of the Construction Management Fee in an amount as will increase the payment on account of its Fee to a sum which bears the same ratio to the Construction Management Fee as the Cost of the Project at the time of termination bears to the GMP Proposal or Purchase Order. The Owner shall also pay to the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment retained by the Owner. In case of such termination of this Agreement during the performance of a Project, the Owner shall further assume and become liable for obligations, commitments and unsettled contractual claims that the Construction Manager has previously undertaken or incurred in good faith in connection with said Project. The Construction Manager shall, as a condition of receiving the payments referred to in this Article 12, execute and deliver all such papers and take all steps including the legal assignment of its contractual rights, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such obligations or commitments shall not be entitled to any other or further recovery against OWNER, including, but not limited to, anticipated fees or profit on work not required to be performed.

**Article 13**

Assignment and Governing Law

13.1 Neither the Owner nor the Construction Manager shall assign its interest in this Agreement without the written consent of the other except as to the assignment of proceeds.

13.2 This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. Venue for any action regarding this Agreement shall be in Monroe County, Florida.

**Article 14**

Notice of Claim. Waiver of Remedies, No Damages for Delay

14.1 The Owner's liability to the Construction Manager 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:

- 14.1.1 All claims must be submitted as Request for Change Order in the manner as provided herein;
  - 14.1.2 The Construction Manager must submit a Notice of Claim to Owner and to the Architect, if applicable, within 21 days of when the Construction Manager was or should have been aware of the occurrence of the event giving rise to the claim; and
  - 14.1.3 Within 10 days of submitting its Notice of Claim, the Construction Manager shall submit to the Owner its Request for Change Order, which shall include a written statement of all details of the claim, including a description of the work affected.
  - 14.1.4 The Construction Manager agrees that the Owner shall not be liable for any claim that the Construction Manager fails to submit as a Request for Change Order as provided in this paragraph.
- 14.2 Owner's Written Determination of Claim: After receipt of a Request for Change Order, the Owner, in consultation with the Architect, shall deliver to the Construction Manager its written determination of the claim as expeditiously as reasonably possible to not delay Work. The Owner's written decision shall be the final Owner action unless the Construction Manager invokes the dispute resolution provided for in Article 14.4.
- 14.3 Delays in Performance of Construction: For the Project work performed under this Agreement, and in addition to the adjustments provided for elsewhere in this Agreement, the Construction Manager's sole and exclusive remedy for delays in performance of the construction caused by events beyond its control, including delays claimed to be caused by or attributable to the Owner or the Architect, including claims based on breach of contract or negligence, shall be a claim submitted in compliance with Article 14.1 above, for an extension of the scheduled construction completion date and payment of additional General Conditions Costs and Construction Management Fees for each Project as provided in this Agreement. The Construction Manager expressly agrees that the foregoing constitute its sole and exclusive remedies for delays and changes in such work, and that no other remedies for claim for increase in the contract price, delays, changes in the work, damages, losses or additional compensation are available to Construction Manager.
- 14.4 Mediation: Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to presuit mediation as a condition precedent to legal or equitable proceedings by either party. Presuit mediation is a condition precedent to litigation. The obligation to mediate is a material and essential provision of this Agreement. If such matter relates to or is the subject to a lien arising of the Construction Manager's services, the Construction Manager may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation.
- 14.4.1 Unless otherwise agreed to in writing, the Construction Manager shall carry on the work of each Project and maintain its progress during any mediation or litigation, and Owner shall continue to make payments to the Construction Manager in accordance with the GMP Proposal or Purchase Order. Owner and Construction Manager shall endeavor to resolve claims, disputes and other matters in question between them by mediation, which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Request for mediation shall be filed in writing with the other party to this Agreement within reasonable time after the claim, dispute, or other matter in question has been written, but in no event after the expiration of the applicable statute of limitations. The parties shall endeavor in good faith to mutually agree upon an acceptable mediator. In the event the parties have not agreed upon a mediator within thirty (30) calendar days of the request for mediation,

the Southeast Office of the American Arbitration Association, upon the written request of either party, shall appoint a mediator from its panel of approved mediators.

- 14.4.2 The parties shall equally share the mediator's fee and any filing fees. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof. In the event presuit mediation is unsuccessful, all claims, disputes, or other matters in question shall be resolved in the Circuit Court of Monroe County, Florida.
- 14.4.3 The parties expressly, knowingly, voluntarily, and intentionally waive any right to a jury trial with respect to any litigation based on, or arising out of, or in connection with the approved GMP Proposal, Purchase Order, this Agreement, any representations, oral or written with respect hereof, and any claims or counterclaims hereunder.
- 14.4.4 The parties expressly agree that each party shall be solely responsible for their own attorneys' fees and costs incurred in any negotiation, mediation, or litigation related to or arising out of this Agreement, provided the prevailing party shall be entitled to recover from the non-prevailing party its reasonable attorneys' fees and court costs, at all levels, including at trial, in arbitration, on appeal, in bankruptcy and in post-judgment proceedings.

## **Article 15**

### **Miscellaneous Provisions**

- 15.1 Interest: Any monies not paid when due to either party under this Agreement shall not bear interest except as may be required by Section 218.70, Florida Statutes.
- 15.2 Harmony: Construction Manager is advised and hereby agrees that he will exert every reasonable and diligent effort to assure that all labor employed by the Construction Manager and his Subcontractors for work on each 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.
- Construction Manager further agrees that this provision will be included in all subcontracts of the Subcontractors as well as the Construction Manager's own contract; provided, however, that this provision shall not be interpreted or enforced so as to deny or abridge, on account of membership or non-membership in any labor union or labor organization, the right of any person to work as guaranteed by Article 1, Section 6 of the Florida Constitution.
- 15.3 Apprentices: The Construction Manager is encouraged to employ apprentices. If the Construction Manager employs apprentices on any Project, the behavior of the Construction Manager and the Owner shall be governed by the provisions of Chapter 446, Florida Statutes, and by applicable standards and policies governing apprentice programs and agreements established by the Division of Labor of the State of Florida Department of Labor and Employment Security. The Construction Manager will include a provision similar to the foregoing sentence in each subcontract.
- 15.4 Invoices Submitted: Invoices submitted shall be submitted in detail sufficient for a proper pre-audit and post-audit thereof.
- 15.5 Construction Manager's Project Records: The Construction Manager'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.
- 15.6 Construction Manager's Payment Rights: Construction Managers providing goods and services to the Owner shall be aware of the following time frames. Upon receipt from Construction Manager, the Owner has twenty (20) calendar days to inspect and approve the goods and services. Payment

is due 25 business days after the date on which the payment request or invoice is stamped as received as provided in Florida Statute 216.74. Pay Requests which have to be returned to a Construction Manager because of Construction Manager's preparation errors will result in a delay in the payment. The Pay Requests payment requirements do not start until a properly completed Pay Request is certified by the Architect and received by the Owner.

- 15.7 Contingent Fees: The Construction Manager warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Construction Manager, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the Construction Manager, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement.
- 15.8 Truth in Negotiation Certificate: The Construction Manager understands and agrees that execution of this Agreement by the Construction Manager shall be deemed to be simultaneous execution of a truth-in-negotiation certificate under this provision to the same extent as if such certificate had been executed apart from this Agreement. Pursuant to such certificate, the Construction Manager hereby states that the wage rates and other factual unit costs supporting any compensation hereunder are accurate, complete and current at the time of contracting. Further, the Construction Manager agrees that the compensation hereunder shall be adjusted to exclude any significant sums where the Owner determines the contract price was increased due to inaccurate, incomplete or non-current wage rates and other factual unit costs, provided that any and all such adjustments shall be made within one (1) year following the completion date of any Project or work performed under this Agreement.
- 15.9 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 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." Construction Manager represents that neither Construction Manager nor any of its sub-consultants or subcontractors is listed on the "Convicted Vendor List" as such term is defined in Section 287.133, Florida Statutes, and that Construction Manager's entry into this Agreement will not violate the terms of Section 287, Florida Statutes. Construction Manager will promptly notify Owner if Construction Manager obtains actual knowledge that any sub-consultant or subcontractor is formally charged with an act defined as a "public entity crime" or has been placed on the Convicted Vendor List.
- 15.10 Auditing Rights: The Owner reserves the right to audit the Construction Manager's and any subcontractor's (relating to change orders or reimbursable work) records, as such records relate to the construction of any Project. This auditing right shall survive the termination of this Agreement.
- 15.11 Independent Contractor: Nothing in this Agreement shall be construed as creating an employer/employee or agency relationship between Owner and Construction Manager. Construction Manager shall have no authority to enter into any contracts binding upon Owner, nor to create any obligations on the part of Owner, except as shall be specifically authorized in writing by Owner.
- 15.12 Owner's performance and obligation to pay under this Agreement is contingent upon annual appropriation by the Legislature. Construction Manager acknowledges and agrees that nothing contained herein shall be construed or interpreted as (i) denying to Owner any remedy or defense available to it under the laws of the State of Florida; (ii) the consent of the Owner or the State of

Florida or their agents and agencies to be sued; or (iii) a waiver of sovereign immunity of the Owner or of the State of Florida beyond the limited waiver provided in section 768.28, Florida Statutes.

- 15.13 Equal Employment Opportunity Nondiscrimination/MWBE/LDB: In performing all services to be provided hereunder, Construction Manager shall not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. Construction Manager shall take affirmative action to ensure that applicants for employment are employed and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to, the following: (i) employment, upgrading, demotion or transfer; (ii) recruitment or recruitment advertising; (iii) layoff or termination; (iv) rates of pay or other forms of compensation; and (v) selection for training, including apprenticeship. Construction Manager shall post in conspicuous places, available to employees and applicants for employment notices setting forth the terms of this Equal Employment Opportunity/Nondiscrimination/MWBE/LDB Clause and stating that all qualified candidates will receive consideration for employment without regard to race, color, religion, sex, or national origin. Construction Manager shall comply with the Owner's current MWBE and LDB policies and procedures.
- 15.14 Incorporation By Reference: The provisions of The College of the Florida Keys Request for Qualifications (RFQ) and the Construction Manager's Response thereto are hereby incorporated into this Agreement by this reference as fully as if they were set out herein.
- 15.15 Order of Precedence: Where conflict exists within or between the contract documents or between contract documents and either applicable industry standards or applicable codes, ordinances or other legal requirements, the more stringent requirements apply; otherwise, the Order of Precedence shall be used: this Agreement, Exhibits, Addendum, and the Request for Qualifications.
- 15.16 Entire Agreement: This Agreement, with its incorporated documents, exhibits, schedules and attachments, contains the entire Agreement of the parties. It supersedes all previous written or oral agreements between the parties. No modification, addition or deletion of this Agreement shall be valid unless the same be in writing and signed by the parties hereto.
- 15.17 Severability: Each of the provisions of this Agreement shall be enforceable independently of any other provision of this Agreement and independent of any other claim or cause of action. If any Paragraph or provision herein shall be adjudged invalid or unenforceable by a court of competent jurisdiction or by operation of any applicable law, it shall not affect the validity of any other Paragraph or provision, which shall remain in full force and effect.
- 15.18 Waiver: The failure of any party at any time to require performance by the other party of any provision hereof shall not affect in any way the full right to require such performance at any time thereafter, nor shall the waiver by any party of a breach of any provision hereof be taken or held to be a waiver of the provision itself.
- 15.19 Counterparts: This Agreement may be executed in counterparts, and each counterpart whether original, photocopy, or facsimile copy, or any amalgamation thereof shall be deemed to be a binding original of this Agreement.
- 15.20 Construction: This Agreement has been reached through mutual negotiation and shall be deemed to have been drafted by both parties and shall not be construed in favor of one party over the other by reason of drafting. This Agreement shall be construed and interpreted pursuant to the laws of the State of Florida.
- 15.21 The effective date of this Agreement shall be the date this Agreement is fully executed by both parties.

**Article 16**  
Background Checks. E-Verify and Safety

- 16.01 The Construction Manager shall require all personnel working on the project site to undergo a FDLE background check for felony crimes for assault against another person or any crimes against minors. Those personnel found to have been convicted of these crimes shall not be permitted to work on the site. Background checks shall be performed prior to allowing workers to start work. Those personnel obtaining clearance shall be issued an identification badge. Subcontractors will be informed of this requirement prior to contracting for the work. Workers who have received Level 2 clearance from another Agency or political subdivision of Florida shall not be required to undergo further screening.
- 16.02 The Construction Manager shall comply with all federal, state, and local laws, ordinances and codes applicable to the work due under this Agreement. Owner is an E-Verify employer. Construction Manager must be enrolled in E-Verify with the federal Department of Homeland Security at the time of performance of services under this Agreement. Construction Manager must provide proof of enrollment as a professional in E-Verify at the time of the Owner's award of this Agreement to Construction Manager. If not, then Construction Manager may terminate this Agreement immediately upon notice to Construction Manager for any violation of this provision. After enrollment in E-Verify, Construction Manager shall use E-Verify to initiate verification of employment eligibility of all new hires, including consultants, agents, or representatives of Construction Manager who are assigned to the Project or intended to perform work or services under this Agreement. Construction Manager shall complete the E-Verify of Construction Manager's new hires within three (3) business days after the date of hire. Owner will not give a preference to a vendor based on the vendor's social, political, or ideological beliefs, and will not request document to or considering a vendor's social, political or ideological beliefs when determining if the vendor is a responsible vendor.
- 16.03 Construction Manager agrees, for both itself and all of its sub-consultants and subcontractors, to comply with all of Owner's rules and regulations with respect to safety and security at the Owner's facilities, including Owner's drug program, as said rules and regulations may be modified and amended by Owner from time to time. Construction Manager certifies that no person or sub-consultant will be assigned to work on any work pursuant to this Agreement that poses any threat or risk of harm to the health, safety or welfare of any student, employee, guest, vendor or property of Owner. Further, Construction Manager agrees to hold harmless Owner and its officials and employees from any and all claims, suits, damages, costs, or attorney fees incurred as a result of any harm done to any student, employee, guest, vendor or property of Owner by Construction Manager's employees or sub-consultants assigned to do work pursuant to this Agreement.

EXECUTED by Owner and Construction Manager as of the day and year first above written.

Ajax Building Corporation

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

**The College of The Florida Keys, a Florida  
College System Institution**

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