

The Evaluation Committee, which consisted of Don Fisher, Deputy County Manager; Chief Penny Fleming, Sheriff's Department Administrative Services; Jerry McCollum, P.E., County Engineer; Frank Raymond, Fleet Manager; Speed Thomas, Facilities Maintenance Manager; Major Mike Tidwell, Director, Department of Corrections; and Scott Werley, Construction Manager evaluated the submittals.

The Evaluation Committee's evaluation was based on the following criteria;

Qualification and Experience

- Qualifications of the firm, proposed personnel and sub-contractors, if any
- Similar work experience
- References, past performance
- Project approach
- Past experience and construction to budget, ability to meet guaranteed maximum price (GMP)

Ability to Perform

- Quality Control Procedures
- Current and projected workload, ability and capacity of the Proposer to perform
- Location of the firm

The Guaranteed Maximum Price will be negotiated and be within the approved project budget. Services will begin when the agreement has been executed and a Notice To Proceed has been issued. The estimated budget for the project is \$28,000,000.00.

Administrative Services, Sheriff's Department and Fiscal Services / Purchasing and Contracts Division request that the Board rank the two firms and authorize staff to negotiate with the top ranked firm. Staff further requests the Board authorize the Chairman to execute AIA Document A201 - 1997, with the successful firm, as prepared by Kirwin-Norris, and reviewed by the County Attorney's Office.

**B.C.C. - SEMINOLE COUNTY, FL
RFP TABULATION SHEET**

ALL RFP'S ACCEPTED BY SEMINOLE COUNTY ARE SUBJECT TO THE COUNTY'S TERMS AND CONDITIONS AND ANY AND ALL ADDITIONAL TERMS AND CONDITIONS SUBMITTED BY THE PROPOSERS ARE REJECTED AND SHALL HAVE NO FORCE AND EFFECT. RFP DOCUMENTS FROM THE CONSULTANTS LISTED HEREIN ARE THE ONLY RFP'S RECEIVED TIMELY AS OF THE ABOVE OPENING DATE AND TIME. ALL OTHER RFP DOCUMENTS SUBMITTED IN RESPONSE TO THIS SOLICITATION, IF ANY, ARE HEREBY REJECTED AS LATE.

RFP NUMBER: RFP-0613-06/TLR

RFP TITLE: **Construction Manager at Risk (CM/GC)
Seminole County John E. Polk Correctional
Facility Expansion**

PAGE: 1 of 1

DUE DATE: June 7, 2006, 2:00 P.M.

INFORMATION PROVIDED IN RESPONSE	Response #1	Response #2
	Skanska/Wharton Smith 60 North Court Ave. Orlando, FL 32801 Matthew Breen, Sr. Vice President Phone: 407-839-2925 Fax: 407-872-0962	Turner Construction Co. 800 N. Magnolia Avenue, Suite 500 Orlando, FL 32803 Scott Skidelsky, Vice President/General Manager Phone: 407-210-2500 Fax: 407-210-2530

TABULATED BY AND POSTED ON:

T. Roberts, Sr. Contracts Analyst

06/08/06

EVALUATION CRITERIA:

Each criterion will be scored up to the percentage allotted (total 100%):
 Qualifications and Experience (80%); Ability To Perform (20%); Price (20%).

EVALUATION COMMITTEE MEETING:

Monday July 17, 2006 at 10:00 AM Eastern
 Purchasing & Contracts Division, 1101 E. 1st Street, Room 3223, Sanford, Florida 32771

SHORT-LISTED FIRMS:

TBA

BCC AGENDA DATE:

TBA

EVALUATION RANKINGS
RFP-0613-06/TLR
CM/GC AT RISK
JOHN E. POLK CORRECTIONAL FACILITY EXPANSION

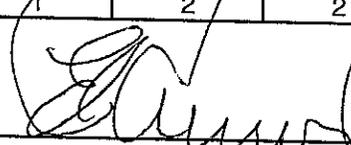
DATE
7/17/2006

Skanska/Wharton Smith
 Turner Construction Co.

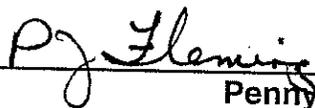
Don Fisher	Jerry McCollum	Speed Thomas	Scott Werley	Frank Raymond	Penny Fleming	Mike Tidwell	Total Points
2	1	2	1	1	1	2	10
1	2	1	2	2	2	1	11



Don Fisher



Speed Thomas



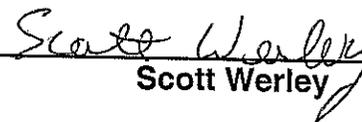
Penny Fleming



Mike Tidwell



Jerry McCollum



Scott Werley



Frank Raymond

EVALUATION FORM

RFP-0613-06/TLR – CM at Risk/GC Services for the Seminole County
John E. Polk Correctional Facility Expansion

SUBMITTAL COMPANY NAME: Turner Construction Co.

QUALIFICATION COMMITTEE MEMBER: Speed Thomas

EVALUATION CONSIDERATIONS

INSTRUCTIONS: Score each criterion up to the number of points allotted for each. The total number of points for all criterion will equal 100 points based on the following general guidelines:

- Outstanding, out-of-the-box, Innovative, Cost/Time Savings
 - Excellent, Very Good, Solid in all respects.
 - Good, No major weaknesses, Fully Acceptable as is
 - Marginal, Weak, Workable but needs clarifications
 - Unacceptable, Needs major help to be acceptable
- *Describe strengths, weaknesses and deficiencies to support your assessment.**

QUALIFICATIONS AND EXPERIENCE (80)

Qualifications of the firm, proposed personnel and Sub contractors, if any;
Similar work experience
References, Past Performances;
Project approach.
Past experience and construction to budget, ability to meet GMP

lots of Jail projects (25+) in local area.

Have \$30M work w/HKS.

Overall, quality & detail of information in proposal was sketchy at best.

Impression: Went big, we do lots of jails, just pick us Score 76
(0-80)

ABILITY TO PERFORM (20)

Quality Control Procedures
Current and Projected Workload, ability and capacity of the Proposer to perform
Location of the Firm

Local office in Orlando, very large ^{inter} national firm

Score 15
(0-20)

Ranking _____

Total Score (0-100) 91

EVALUATION FORM

RFP-0613-06/TLR – CM at Risk/GC Services for the Seminole County
John E. Polk Correctional Facility Expansion

SUBMITTAL COMPANY NAME: Skanska/Wharton Smith

QUALIFICATION COMMITTEE MEMBER: Speed Wharton

EVALUATION CONSIDERATIONS

INSTRUCTIONS: Score each criterion up to the number of points allotted for each. The total number of points for all criterion will equal 100 points based on the following general guidelines:

- Outstanding, out-of-the-box, Innovative, Cost/Time Savings
- Excellent, Very Good, Solid in all respects.
- Good, No major weaknesses, Fully Acceptable as is
- Marginal, Weak, Workable but needs clarifications
- Unacceptable, Needs major help to be acceptable

*Describe strengths, weaknesses and deficiencies to support your assessment.

QUALIFICATIONS AND EXPERIENCE (80)

Qualifications of the firm, proposed personnel and Sub contractors, if any;

Similar work experience

References, Past Performances;

Project approach.

Past experience and construction to budget, ability to meet GMP

Known team from W-5 (Palmer, Garrison & Hudson)
Excellent performance on PSD Remediation
Skanska - Home jail experience almost 10 yrs old.
US Continue JAX \$13M over GMP (owner?)

Score 72
(0-80)

ABILITY TO PERFORM (20)

Quality Control Procedures

Current and Projected Workload, ability and capacity of the Proposer to perform

Location of the Firm

good use of Mock-ups for Standardization of Assemblies
W-5 is local/SC, Skanska has office in Orlando
uses JDE for accounting - Can it interface w/SC System?

Score 18
(0-20)

Ranking _____

Total Score (0-100) 90

EVALUATION FORM

RFP-0613-06/TLR – CM at Risk/GC Services for the Seminole County John E. Polk Correctional Facility Expansion

SUBMITTAL COMPANY NAME: Turner Construction Co.

QUALIFICATION COMMITTEE MEMBER: Rosny Fleming

EVALUATION CONSIDERATIONS

INSTRUCTIONS: Score each criterion up to the number of points allotted for each. The total number of points for all criterion will equal 100 points based on the following general guidelines:

- Outstanding, out-of-the-box, Innovative, Cost/Time Savings
 - Excellent, Very Good, Solid in all respects.
 - Good, No major weaknesses, Fully Acceptable as is
 - Marginal, Weak, Workable but needs clarifications
 - Unacceptable, Needs major help to be acceptable
- *Describe strengths, weaknesses and deficiencies to support your assessment.**

QUALIFICATIONS AND EXPERIENCE (80)

Qualifications of the firm, proposed personnel and Sub contractors, if any;
Similar work experience
References, Past Performances;
Project approach.

Past experience and construction to budget, ability to meet GMP

Extensive jail/correctional justice project
Extensive qualifications - staff members
"Engineering News Record" ranks Turner as "Leading Builder"
using CM at risk delivery.

Score 68
(0-80)

ABILITY TO PERFORM (20)

Quality Control Procedures
Current and Projected Workload, ability and capacity of the Proposer to perform
Location of the Firm

Delaware location - nationwide firm
Did not list available time personnel will devote to project
or current workload

Score 15
(0-20)

Ranking _____

Total Score (0-100) 83

EVALUATION FORM

RFP-0613-06/TLR – CM at Risk/GC Services for the Seminole County
John E. Polk Correctional Facility Expansion

SUBMITTAL COMPANY NAME: Skanska/Wharton Smith

QUALIFICATION COMMITTEE MEMBER: Renny Fleming

EVALUATION CONSIDERATIONS

INSTRUCTIONS: Score each criterion up to the number of points allotted for each. The total number of points for all criterion will equal 100 points based on the following general guidelines:

- Outstanding, out-of-the-box, Innovative, Cost/Time Savings
- Excellent, Very Good, Solid in all respects.
- Good, No major weaknesses, Fully Acceptable as is
- Marginal, Weak, Workable but needs clarifications
- Unacceptable, Needs major help to be acceptable

*Describe strengths, weaknesses and deficiencies to support your assessment.

QUALIFICATIONS AND EXPERIENCE (80)

Qualifications of the firm, proposed personnel and Sub contractors, if any;
Similar work experience
References, Past Performances;
Project approach.

Past experience and construction to budget, ability to meet GMP

33 projects w/ HKS: 7 similar jail projects / law enforcement complex / US Courthouse

Joint Partner - Wharton-Smith. W/S was contractor for SO/DIS Building remediation project - SCSO had excellent working relationship w/ Wharton-Smith reps.

Listed Sanford Riverwalk project by Wharton-Smith; recent problems noted by news media regarding sea wall after one year of construction they organized proposal

Score 70
(0-80)

ABILITY TO PERFORM (20)

Quality Control Procedures
Current and Projected Workload, ability and capacity of the Proposer to perform
Location of the Firm

Location - Orlando
Appears to have staff available to meet workload of our project.
Have workload matrix and percentage cost number
could devote to project

Score 18
(0-20)

Ranking _____

Total Score (0-100) 88

EVALUATION FORM

RFP-0613-06/TLR – CM at Risk/GC Services for the Seminole County
John E. Polk Correctional Facility Expansion

SUBMITTAL COMPANY NAME: Turner Construction Co.

QUALIFICATION COMMITTEE MEMBER: Don Fisher

EVALUATION CONSIDERATIONS

INSTRUCTIONS: Score each criterion up to the number of points allotted for each. The total number of points for all criterion will equal 100 points based on the following general guidelines:

- Outstanding, out-of-the-box, Innovative, Cost/Time Savings
- Excellent, Very Good, Solid in all respects.
- Good, No major weaknesses, Fully Acceptable as is
- Marginal, Weak, Workable but needs clarifications
- Unacceptable, Needs major help to be acceptable

***Describe strengths, weaknesses and deficiencies to support your assessment.**

QUALIFICATIONS AND EXPERIENCE (80)

Qualifications of the firm, proposed personnel and Sub contractors, if any;

Similar work experience

References, Past Performances;

Project approach.

Past experience and construction to budget, ability to meet GMP

A lot of current relevant projects, although mostly in Georgia.
Several of the past experience is very similar to John Polk
Expansion Project. Key personnel have some John experience.

Score 75
(0-80)

ABILITY TO PERFORM (20)

Quality Control Procedures

Current and Projected Workload, ability and capacity of the Proposer to perform

Location of the Firm

Not much discussion on business approach to conflict
resolution, more AD HOC. Good scheduling tool - very good approach
to scheduling/cost control. Good budget control necessary. Local: Orlando

Score 16
(0-20)

Ranking 1

Total Score (0-100) 91

EVALUATION FORM

RFP-0613-06/TLR – CM at Risk/GC Services for the Seminole County John E. Polk Correctional Facility Expansion

SUBMITTAL COMPANY NAME: Skanska/Wharton Smith

QUALIFICATION COMMITTEE MEMBER: Don ESTER

EVALUATION CONSIDERATIONS

INSTRUCTIONS: Score each criterion up to the number of points allotted for each. The total number of points for all criterion will equal 100 points based on the following general guidelines:

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 - Unacceptable, Needs major help to be acceptable
- *Describe strengths, weaknesses and deficiencies to support your assessment.**

QUALIFICATIONS AND EXPERIENCE (80)

Qualifications of the firm, proposed personnel and Sub contractors, if any;
Similar work experience
References, Past Performances;
Project approach.

Past experience and construction to budget, ability to meet GMP

Several INSTITUTIONAL FACILITIES acting as CM - GC. Most relevant is FLORIDA VA HEALTH FACILITY for a JAIL (ACTING AS CM). Jail experience in SE. for several projects as GC. Sr Project Manager and Project Engineer HAVE good experience, THE REST OF THE TEAM IS very LIGHT.

Score 76
(0-80)

ABILITY TO PERFORM (20)

Quality Control Procedures
Current and Projected Workload, ability and capacity of the Proposer to perform
Location of the Firm

Reporting procedures are good. Very good GC. Good scheduling approach. Good cost control measures. Local: Seminole County of Orlando.

Score 16
(0-20)

Ranking 2

Total Score (0-100) 92

EVALUATION FORM

RFP-0613-06/TLR – CM at Risk/GC Services for the Seminole County
John E. Polk Correctional Facility Expansion

SUBMITTAL COMPANY NAME: Skanska/Wharton Smith

QUALIFICATION COMMITTEE MEMBER: Frank Raymond

EVALUATION CONSIDERATIONS

INSTRUCTIONS: Score each criterion up to the number of points allotted for each. The total number of points for all criterion will equal 100 points based on the following general guidelines:

- Outstanding, out-of-the-box, Innovative, Cost/Time Savings
 - Excellent, Very Good, Solid in all respects.
 - Good, No major weaknesses, Fully Acceptable as is
 - Marginal, Weak, Workable but needs clarifications
 - Unacceptable, Needs major help to be acceptable
- *Describe strengths, weaknesses and deficiencies to support your assessment.**

QUALIFICATIONS AND EXPERIENCE (80)

Qualifications of the firm, proposed personnel and Sub contractors, if any;
Similar work experience
References, Past Performances;
Project approach.

Past experience and construction to budget, ability to meet GMP

Somewhat concerned about L10 - i.e. who is in charge, Skanska or Wharton-Smith? Did not like resolution of conflict in another County Jail. L10 system works good for Contractor, but same?

Score 65
(0-80)

ABILITY TO PERFORM (20)

Quality Control Procedures
Current and Projected Workload, ability and capacity of the Proposer to perform
Location of the Firm

Does not speak directly to availability for our project
local energy.

Score 17
(0-20)

Ranking 1

Total Score (0-100) 82

EVALUATION FORM

RFP-0613-06/TLR – CM at Risk/GC Services for the Seminole County
John E. Polk Correctional Facility Expansion

SUBMITTAL COMPANY NAME: Turner Construction Co.

QUALIFICATION COMMITTEE MEMBER: Frank Reynolds

EVALUATION CONSIDERATIONS

INSTRUCTIONS: Score each criterion up to the number of points allotted for each. The total number of points for all criterion will equal 100 points based on the following general guidelines:

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 - Excellent, Very Good, Solid in all respects.
 - Good, No major weaknesses, Fully Acceptable as is
 - Marginal, Weak, Workable but needs clarifications
 - Unacceptable, Needs major help to be acceptable
- *Describe strengths, weaknesses and deficiencies to support your assessment.

QUALIFICATIONS AND EXPERIENCE (80)

Qualifications of the firm, proposed personnel and Sub contractors, if any;
Similar work experience
References, Past Performances;
Project approach.

Past experience and construction to budget, ability to meet GMP

Quite a lot of past experience - Not much information provided, very generic

Score 60
(0-80)

ABILITY TO PERFORM (20)

Quality Control Procedures
Current and Projected Workload, ability and capacity of the Proposer to perform
Location of the Firm

local enough, (Projected Workload?)

Score 10
(0-20)

Ranking 2

Total Score (0-100) 70

EVALUATION FORM

RFP-0613-06/TLR -- CM at Risk/GC Services for the Seminole County
John E. Polk Correctional Facility Expansion

SUBMITTAL COMPANY NAME: Skanska/Wharton Smith

QUALIFICATION COMMITTEE MEMBER: Scott Werley

EVALUATION CONSIDERATIONS

INSTRUCTIONS: Score each criterion up to the number of points allotted for each. The total number of points for all criterion will equal 100 points based on the following general guidelines:

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 - Excellent, Very Good, Solid in all respects.
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QUALIFICATIONS AND EXPERIENCE (80)

Qualifications of the firm, proposed personnel and Sub contractors, if any;
Similar work experience
References, Past Performances;
Project approach.

Past experience and construction to budget, ability to meet GMP

Levell - S, McLaughlin - S, Gilbert - S, St. Clair - S, Burns - S - All w/ Correctional Exp.
Duval Co., Youth Detention - Atlanta, Agate Co, etc. Jax US Courthouse
Exp. w/ HKS, Speed Thomas, Frank Mertz (Ritz), Tim Guth (OC), Tom McAnicholas, Tom Conway
Conflict Resolution, use J.D. Edwards, PMIS, Schedule Control
Cost Modeling, VB, Estimate, GMP development

Score 72
(0-80)

ABILITY TO PERFORM (20)

Quality Control Procedures
Current and Projected Workload, ability and capacity of the Proposer to perform
Location of the Firm

Subcontractors, QA/QC procedure
Chicago Mount, PMIS, WorkSpace Plan (bids) - GMP projects listed
Skanska - Orlando, Wharton-Smith - Lake Mary

Score 18
(0-20)

Ranking 1

Total Score (0-100) 90

EVALUATION FORM

RFP-0613-06/TLR – CM at Risk/GC Services for the Seminole County
John E. Polk Correctional Facility Expansion

SUBMITTAL COMPANY NAME: Turner Construction Co.

QUALIFICATION COMMITTEE MEMBER: Scott Wesley

EVALUATION CONSIDERATIONS

INSTRUCTIONS: Score each criterion up to the number of points allotted for each. The total number of points for all criterion will equal 100 points based on the following general guidelines:

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- *Describe strengths, weaknesses and deficiencies to support your assessment.**

QUALIFICATIONS AND EXPERIENCE (80)

Qualifications of the firm, proposed personnel and Sub contractors, if any;

Similar work experience

References, Past Performances;

Project approach.

Past experience and construction to budget, ability to meet GMP

Vernice Atkins, Reeves (Hernando), Brendt (Hernando & DeSoto) Hayden, Michele Tendon - RSBC, JD

Hernando Co., DeSoto Co., GA projects.

Worked w/ABS

Milwaukee, Proj Log, Resource Allocation Control System

Budget control & Cost Tracking, financial systems for owner

Score 70
(0-80)

ABILITY TO PERFORM (20)

Quality Control Procedures

Current and Projected Workload, ability and capacity of the Proposer to perform

Location of the Firm

RACS - No Quality Control Details

100 personnel, no info on current workload

Orlando

Score 10
(0-20)

Ranking 2

Total Score (0-100) 80

EVALUATION FORM

RFP-0613-06/TLR – CM at Risk/GC Services for the Seminole County
John E. Polk Correctional Facility Expansion

SUBMITTAL COMPANY NAME: Skanska/Wharton Smith

QUALIFICATION COMMITTEE MEMBER: Mike Tidwell

EVALUATION CONSIDERATIONS

INSTRUCTIONS: Score each criterion up to the number of points allotted for each. The total number of points for all criterion will equal 100 points based on the following general guidelines:

- Outstanding, out-of-the-box, Innovative, Cost/Time Savings
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 - Marginal, Weak, Workable but needs clarifications
 - Unacceptable, Needs major help to be acceptable
- *Describe strengths, weaknesses and deficiencies to support your assessment.**

QUALIFICATIONS AND EXPERIENCE (80)

Qualifications of the firm, proposed personnel and Sub contractors, if any;

Similar work experience

References, Past Performances;

Project approach.

Past experience and construction to budget, ability to meet GMP

Newly formed partnership for this project. Limited jail construction management experience. Past performance with correctional facilities appears to be good. Project approach and conflict resolution appear to be "top of the mill."

Score 65
(0-80)

ABILITY TO PERFORM (20)

Quality Control Procedures

Current and Projected Workload, ability and capacity of the Proposer to perform

Location of the Firm

Location of firm is good. They appear to have the ability to handle the project workload.

Score 20
(0-20)

Ranking 2

Total Score (0-100) 85

EVALUATION FORM

RFP-0613-06/TLR – CM at Risk/GC Services for the Seminole County
John E. Polk Correctional Facility Expansion

SUBMITTAL COMPANY NAME: Turner Construction Co.

QUALIFICATION COMMITTEE MEMBER: Mike Tidwell

EVALUATION CONSIDERATIONS

INSTRUCTIONS: Score each criterion up to the number of points allotted for each. The total number of points for all criterion will equal 100 points based on the following general guidelines:

- Outstanding, out-of-the-box, Innovative, Cost/Time Savings
- Excellent, Very Good, Solid in all respects.
- Good, No major weaknesses, Fully Acceptable as is
- Marginal, Weak, Workable but needs clarifications
- Unacceptable, Needs major help to be acceptable

***Describe strengths, weaknesses and deficiencies to support your assessment.**

QUALIFICATIONS AND EXPERIENCE (80)

Qualifications of the firm, proposed personnel and Sub contractors, if any;
Similar work experience
References, Past Performances;
Project approach.

Past experience and construction to budget, ability to meet GMP

Information states company has 5+ recent jail projects. If correct this is extensive jail experience. The team appears to have worked together extensively. Company has large resident staff in position to handle project. Company has displayed ability to be successful with this type project.

Score 75
(0-80)

ABILITY TO PERFORM (20)

Quality Control Procedures

Current and Projected Workload, ability and capacity of the Proposer to perform

Location of the Firm .

Company indicates strong ability to handle project. Company's overall project approach is excellent

Score 20
(0-20)

Ranking 1

Total Score (0-100) 95

EVALUATION FORM

RFP-0613-06/TLR – CM at Risk/GC Services for the Seminole County
John E. Polk Correctional Facility Expansion

SUBMITTAL COMPANY NAME: Skanska/Wharton Smith

QUALIFICATION COMMITTEE MEMBER: Jerry McCollum

EVALUATION CONSIDERATIONS

INSTRUCTIONS: Score each criterion up to the number of points allotted for each. The total number of points for all criterion will equal 100 points based on the following general guidelines:

- Outstanding, out-of-the-box, Innovative, Cost/Time Savings
 - Excellent, Very Good, Solid in all respects.
 - Good, No major weaknesses, Fully Acceptable as is
 - Marginal, Weak, Workable but needs clarifications
 - Unacceptable, Needs major help to be acceptable
- *Describe strengths, weaknesses and deficiencies to support your assessment.**

QUALIFICATIONS AND EXPERIENCE (80)

Qualifications of the firm, proposed personnel and Sub contractors, if any;

- Similar work experience

- References, Past Performances;

- Project approach.

- Past experience and construction to budget, ability to meet GMP

Numerous similar project, Excellent
staff. Very good understanding of
project & extremely detailed

Very good (0.85) +

Score 68
(0-80)

ABILITY TO PERFORM (20)

- Quality Control Procedures

- Current and Projected Workload, ability and capacity of the Proposer to perform.

- Location of the Firm

Can do work / local / very good

very good (0.8)

Score 16
(0-20)

Ranking _____

Total Score (0-100) 84

EVALUATION FORM

RFP-0613-06/TLR – CM at Risk/GC Services for the Seminole County John E. Polk Correctional Facility Expansion

SUBMITTAL COMPANY NAME: Turner Construction Co.

QUALIFICATION COMMITTEE MEMBER: Jerry McCallan

EVALUATION CONSIDERATIONS

INSTRUCTIONS: Score each criterion up to the number of points allotted for each. The total number of points for all criterion will equal 100 points based on the following general guidelines:

- Outstanding, out-of-the-box, Innovative, Cost/Time Savings
 - Excellent, Very Good, Solid in all respects.
 - Good, No major weaknesses, Fully Acceptable as is
 - Marginal, Weak, Workable but needs clarifications
 - Unacceptable, Needs major help to be acceptable
- *Describe strengths, weaknesses and deficiencies to support your assessment.**

QUALIFICATIONS AND EXPERIENCE (80)

Qualifications of the firm, proposed personnel and Sub contractors, if any;
Similar work experience
References, Past Performances;
Project approach.
Past experience and construction to budget, ability to meet GMP

Very good exp. Mostly out of state on jails
Little general in some areas
Very Good (80)

Score 64
(0-80)

ABILITY TO PERFORM (20)

Quality Control Procedures
Current and Projected Workload, ability and capacity of the Proposer to perform
Location of the Firm

Can do work / Local / Very good
Very (16)

Score 16
(0-20)

Ranking _____

Total Score (0-100) 80



AIA[®] Document A201[™] – 1997

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address):

John E. Polk Correctional Facility Expansion

THE OWNER:

(Name and address):

Seminole County, Florida
a political subdivision of the State of Florida
Seminole County Services Building
1101 E. First Street
Sanford, Florida 32771

THE ARCHITECT:

(Name and address):

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ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences.

Consultation with an attorney is encouraged with respect to its completion or modification.

This document has been approved and endorsed by The Associated General Contractors of America



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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 BASIC DEFINITIONS

§ 1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents consist of the Agreement between Owner and Contractor (hereinafter the Agreement), Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect.

§ 1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Architect and Contractor, (2) between the Owner and a Subcontractor or Sub-subcontractor, (3) between the Owner and Architect or (4) between any persons or entities other than the Owner and Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

§ 1.1.3 THE WORK

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.3.1 FIFTY (50) PERCENT COMPLETION. The term "Fifty-Percent completion" means the point at which Construction Manager has performed and Owner has expended 50% of the Contract price.

§ 1.1.4 THE PROJECT

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner or by separate contractors.

§ 1.1.5 THE DRAWINGS

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

§ 1.1.6 THE SPECIFICATIONS

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 THE PROJECT MANUAL

The Project Manual is a volume assembled for the Work which may include the bidding requirements, sample forms, Conditions of the Contract and Specifications.

§ 1.1.8 PROVIDE. The term "Provide" as used in the Contract Documents, includes furnishing all labor, supervision, tools, materials, supplies, equipment, shop drawings, product data and samples, together with performance of the Work, or production of an item or system usable in the completed Project.

§ 1.1.9 ADDENDA. Addenda are written or graphic instruments issued prior to award of the Contract which modify or interpret the bid documents, including the Drawings and Specifications, by additions, deletions, clarifications, or corrections.

§ 1.1.10 KNOWLEDGE. The terms "knowledge", "recognize", and "discover", their respective derivatives and similar terms in the Contract Documents, as used in reference to the Construction Manager, shall be interpreted to mean that the Construction Manager knows (or should have reasonably known), recognizes (or should have reasonably recognized), and discovers (or should have reasonably discovered) in exercising the care, skill, and diligence required by the Contract Documents. Analogously, the expression "reasonably inferable" and similar terms in the Contract Documents shall be interpreted to mean

reasonably inferable by a contractor familiar with the Project and exercising the care, skill, and diligence required of the Contractor by the Contract Documents.

§ 1.1.11 PERSISTENTLY. The phrase "persistently fails" and other similar expressions as used in reference to the Contractor, shall be interpreted to mean any combination of acts and omissions which cause the Owner or the Architect to reasonably conclude that the Construction Manager will not complete the Work within the Contract Time, for the Contract Sum, or in substantial compliance with the requirements of the Contract Documents.

§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words which have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.3 CAPITALIZATION

§ 1.3.1 Terms capitalized in these General Conditions include those which are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 INTERPRETATION

§ 1.4.1 In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.5 EXECUTION OF CONTRACT DOCUMENTS

§ 1.5.1 The Contract Documents shall be signed by the Owner and Contractor. If either the Owner or Contractor or both do not sign all the Contract Documents, the Architect shall identify such unsigned Documents upon request.

§ 1.5.2 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

§ 1.5.2.1 Examination of the site shall include determination of the nature and scope of the work and all difficulties that accompany its execution.

§ 1.5.2.2 Claims for additional labor, equipment, materials, or costs, resulting from difficulties which should have reasonably been noted with the exercise of due diligence during the examination of the site will not be allowed.

§ 1.5.2.3 Correlate all dimensions shown on the Drawings for existing work and for new work which is meant to connect to it. Verify existing dimensions by actual measurement of existing work. Report in writing to the Architect all discrepancies between the requirement of the Contract Documents and existing conditions.

§ 1.5.2.4 The Construction Manager and each Subcontractor shall evaluate and satisfy themselves as to the conditions and limitations under which the Work is to be performed, including, without limitation, (1) the location, condition, layout, and nature of the Project site and surrounding areas, (2) generally prevailing climatic conditions, (3) anticipated labor supply and costs, (4) availability and cost of materials, tools, and equipment, and (5) other similar issues. Upon mobilization, the Construction Manager shall assume responsibility or liability for the physical condition or safety of the Project site or any improvements located on the Project site. Should the Construction Manager encounter unknown conditions at the Project beyond the Construction Manager's control, then the Construction Manager shall immediately notify the Owner of such conditions. The Construction Manager shall be

solely responsible for providing a safe place for the performance of the Work. The Owner shall not be required to make any adjustment in either the Contract Sum or Contract Time in connection with any failure by the Contractor or any Subcontractor to comply with the requirements of this paragraph 1.5.2.4.

§ 1.6 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

§ 1.6.1 The Drawings, Specifications and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants are Instruments of Service through which the Work to be executed by the Contractor is described. The Contractor may retain one record set. Neither the Contractor nor any Subcontractor, Sub-subcontractor or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications and other documents prepared by the Architect or the Architect's consultants. All copies of Instruments of Service, except the Contractor's record set, shall be returned or suitably accounted for to the Owner, on request, upon completion of the Work. The Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants, and copies thereof furnished to the Contractor, are for use solely with respect to this Project. They are not to be used by the Contractor or any Subcontractor, Sub-subcontractor or material or equipment supplier on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner. The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants appropriate to and for use in the execution of their Work under the Contract Documents.

ARTICLE 2 OWNER

§ 2.1 GENERAL

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Owner" refers to the Board of County Commissioners (interchangeable with Seminole County).

§ 2.1.2 INTENTIONALLY LEFT BLANK

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 INTENTIONALLY LEFT BLANK

§ 2.2.2 Except for permits and fees, including those required under Section 3.7.1, which are the responsibility of the Contractor under the Contract Documents, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.2.3 The Owner shall furnish surveys describing physical characteristics, legal limitations and approximate utility locations for the site of the Project, and a legal description of the site. The Owner does not warrant the accuracy of any such information.

§ 2.2.4 Upon reasonable request of the Contractor, information or services required of the Owner by the Contract Documents shall be furnished by the Owner with reasonable promptness. Any other information or services relevant to the Contractor's performance of the Work under the Owner's control shall be furnished by the Owner after receipt from the Contractor of a written request for such information or services.

§ 2.2.5 The Contractor will be furnished free of charge an electronic disk containing a copy of the Drawings and Project Manuals.

§ 2.3 OWNER'S RIGHT TO STOP THE WORK

§ 2.3.1 If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or persistently fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

§ 2.4.1 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a three (3) workingday period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may after such three (3) working day period, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

ARTICLE 3 CONTRACTOR

§ 3.1 GENERAL

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons other than the Contractor.

§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§ 3.2.1 Since the Contract Documents are complementary, before starting each portion of the Work, the Contractor shall carefully study and compare the various Drawings and other Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work and verify field conditions and shall observe any conditions at the site affecting it, and shall at once report to the Architect errors, inconsistencies, or omissions discovered as a request for information in such form as the Architect may require. The Contractor shall not be liable to the Owner or Architect for damage resulting from errors, inconsistencies, or omissions in the Contract Documents unless the Contractors recognized or should have recognized such error, inconsistency, or omission and knowingly failed to report it to the Architect. If the Contractor performs any construction activity knowing it involves a recognized error, inconsistency or omission in the Contract Documents without such notice to the Architect, the Contractor shall assume appropriate responsibility for such performance and shall bear an appropriate amount of the attributable costs for correction.

§ 3.2.2 Any design errors or omissions noted by the Contractor during this review shall be reported promptly to the Architect, but it is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional unless otherwise specifically provided in the Contract Documents. The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations, but any nonconformity discovered by or made known to the Contractor shall be reported promptly to the Architect.

§ 3.2.3 If the Contractor believes that additional cost or time is involved because of clarifications or instructions issued by the Architect in response to the Contractor's notices or requests for information pursuant to Sections 3.2.1 and 3.2.2, the Contractor shall make Claims as provided in Sections 4.3.6 and 4.3.7. If the Contractor fails to perform the obligations of Sections 3.2.1 and 3.2.2, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations.

§ 3.2.4 The Contractor shall satisfy itself as to the accuracy of all grades, elevations, dimensions, and locations. In all cases of interconnection of its Work with existing or other Work, it shall verify at the site all dimensions relating to such existing or other Work. Any errors due to the Contractor's failure to so verify all such grades, elevations, locations or dimensions shall be promptly corrected by the Contractor without any additional cost to the Owner or adjustment of Contract Time.

§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for or on behalf of the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of all Work performed under this Contract to determine that such portions are in proper condition to receive subsequent Work.

§ 3.3.4 The Contractor shall not be relieved of its obligation to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections, or approvals required or performed by persons other than the Contractor.

§ 3.4 LABOR AND MATERIALS

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 The Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

§ 3.5 WARRANTY

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform to the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. All warranties, including equipment warranties, shall commence upon project substantial completion. The Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the OWNER, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.6 TAXES

§ 3.6.1 Subject to the Owner's Tax Savings Agreement, the Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor which are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 3.7 PERMITS, FEES AND NOTICES

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit and other permits and governmental fees, licenses and inspections necessary for proper execution and

completion of the Work which are customarily secured after execution of the Contract and which are legally required when bids are received or negotiations concluded.

§ 3.7.2 The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 It is not the Contractor's responsibility to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations. The Contractor shall construct the project in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations. Further, if the Contractor observes that portions of the Contract Documents are at variance therewith, the Contractor shall promptly notify the Architect and Owner in writing, and necessary changes shall be accomplished by appropriate Modification.

§ 3.7.4 If the Contractor performs Work which it knew or reasonably should have known to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without such notice to the Architect and Owner, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.8 ALLOWANCES

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents:

- .1** allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2** Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances;
- .3** whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner in sufficient time to avoid delay in the Work.

§ 3.9 SUPERINTENDENT

§ 3.9.1 The Contractor shall employ a competent project manager, superintendent, assistant superintendent(s) and field office personnel at the project during the progress of the Work. The project manager shall represent the Contractor and all communications given to the project manager shall be as binding as if given to the Contractor. Communications shall be confirmed in writing. The Superintendent or Project Manager will be present at the site at all times that work is conducted at the project site. The Contractor shall not employ a superintendent to whom the Owner reasonably objects.

§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 The Contractor, within twenty-one (21) days or as otherwise agreed to by the Owner after the execution of Amendment #1, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

§ 3.10.2 The Contractor shall prepare as provided herein and keep current, for the Architect's approval, a schedule of submittals which is coordinated with the Contractor's construction schedule and allows the Architect reasonable time to review submittals. The Schedule shall indicate adequate time for approval of submittal data, purchase and delivery of materials, equipment testing and acceptance.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect. The schedule shall be revised to reflect modifications by change order when such changes effect the overall schedule and approved changes in the schedule. The schedule shall be displayed in the Contractors' field office and progress shall be posted on the schedule.

§ 3.10.4 The progress schedule shall be submitted as follows:

§ 3.10.4.1 Within ten (10) days after notice to proceed, or as otherwise agreed to by the Owner, the Contractor shall prepare a preliminary progress schedule in six (6) copies, five on paper reduced to 11 x 17 inches and one on electronic disk, and meet with the Owner and Architect for the purpose of discussion and review.

§ 3.10.4.2 Within thirty (30) days of the notice to proceed, the Contractor shall have reworked the schedule to reflect the comments of the Architect and the requirements of the Project and shall submit six (6) copies, five on paper reduced to 11 x 17 inches and one on electronic disk, of the revised schedule to the Owner and Architect. The Architect will not approve for payment any billing or invoice submitted by the Contractor until such time as the "progress schedule" and the "schedule of values" have been properly submitted to the Architect and Owner.

§ 3.10.4.3 Each time a revision to the schedule is authorized, the Contractor shall submit six (6) copies, five on paper reduced to 11 x 17 inches and one on electronic disk, of the revised schedule to the Owner and Architect. The Owner shall not be liable for any Contractor cost or damages resulting from Contractor's failure to achieve any early completion forecast contained within Contractor's submitted schedules.

§ 3.10.4.4 With each application for payment, the Contractor shall submit two (2) copies of the revised progress schedule, one on paper reduced to 11 x 17 inches, and one on electronic disk. These copies shall have all work on or ahead of schedule marked in red. The application for payment will be returned "rejected" when not accompanied by both copies of the required revised "progress schedule" and "schedule of values".

§ 3.10.4.5 The format for the schedule shall be network analysis (CPM).

§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE

§ 3.11.1 The Contractor shall maintain at the site for the Owner one record copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to record field changes and selections made during construction, and one record copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work.

§ 3.11.1.1 This record shall be in addition to the Drawings and Specification used by the Contractor and its employees for normal reference during construction.

§ 3.11.1.2 The Contractor shall clearly label each document "Project Record" and in addition to changes-(1) mark drawings to indicate exact location of concealed utilities and appurtenances relative to permanent accessible features of structures, or survey data; (2) mark each section of the Specifications to identify manufacturer, trade name, catalog number, and supplier of each product and item of equipment actually installed.

§ 3.11.1.3 The Contractor shall deliver the marked record set of drawings to the Architect with a letter certifying that the changes made to the drawings are complete, correct and fully checked. The Architect will not approve final payment until this condition has been accomplished.

§ 3.11.1.4 In addition to the above, the Contractor shall be furnished by the Architect the latest electronic version of all drawings in the latest version of AutoCAD software for incorporation of all "project record" set markings. Each drawing file will have text added to indicate "project record" with the date and the Contractor's name along with all marks from the field set. The Contractor shall provide at the Contractors' expense three (3) sets of prints (one full size and two half size) and three electronic disks to be delivered to the Owner upon completion of the Work.

§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required by the Contract Documents the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals which are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors. Submittals which are not marked as reviewed for compliance with the Contract Documents and approved by the Contractor may be returned by the Architect without action.

§ 3.12.5.1 All shop drawings for any architectural, structural, mechanical, or electrical work must be submitted to, and reviewed by, the Architect. The Contractor represents and warrants that all shop drawings shall be prepared by persons and entities possessing expertise and experience in the trade for which the shop drawing is prepared and, if required by the Architect or applicable law, by a licensed engineer.

§ 3.12.6 By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing independently of the submittal package of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such written notice the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services which constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services. However, the Construction Manager shall perform constructability reviews of the proposed design as a component of the Construction Manager's services. If professional design services or certifications by a design professional related to systems, materials or equipment are

specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed and insured design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

§ 3.13 USE OF SITE

§ 3.13.1 The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.13.2 Only materials and equipment which are to be used directly in the Work shall be brought to and stored on the project site by the Contractor. After equipment is no longer required for the Work, it shall be promptly removed from the project site. Protection of construction materials and equipment stored at the project site from weather, theft, damage, and all other adversity is solely the responsibility of the Contractor.

§ 3.13.3 The Contractor and any entity for which the Contractor is responsible shall not erect any sign on the Project site without the prior consent of the Owner, which may be withheld in the reasonable discretion of the Owner. If directed by the Owner a sign identifying the project and County Commissioners shall be erected by the Contractor of the project.

§ 3.13.4 Contractor shall ensure that the Work, at all times, is performed in a manner that affords reasonable access, both vehicular and pedestrian by appropriate persons, to the site of the work and all adjacent areas. The Work shall be performed, to the fullest extent reasonably possible, in such a manner that public areas adjacent to the site of the work shall be free from all debris, building materials, and equipment likely to cause hazardous conditions. Without limitation of any other provision of the Contract Documents, Contractor shall use its best efforts to minimize any interference with the occupancy or beneficial use of (1) any areas in building adjacent to the site of the work or (2) the building in the event of partial occupancy as more specifically described in paragraph 9.9.

§ 3.13.5 Without prior approval of the Owner, the Contractor shall not permit any workers to use any existing facilities at the project site, including but not limited to, lavatories, toilets, entrances, and parking areas other than those designated by the Owner. Without limitation of any other provision of the Contract Documents, the Contractor shall use its best efforts to comply with all rules and regulations promulgated by the Owner in connection with the use and occupancy of the project site and the building as amended from time to time. The Contractor shall immediately notify the Owner in writing if during the performance of the Work the Contractor finds compliance with any portion of such rules and regulations to be impracticable, setting forth the problem of such compliance and suggesting alternatives through which the same results intended by such portions of the rules and regulations can be achieved. The Owner may, in the Owner's reasonable discretion, adopt such suggestions, develop new alternatives, or require compliance with the existing requirements of the rules and regulations.

§ 3.14 CUTTING AND PATCHING

§ 3.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

§ 3.15 CLEANING UP

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove from and about the Project waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the cost thereof shall be charged to the Contractor.

§ 3.16 ACCESS TO WORK

§ 3.16.1 The Contractor shall provide the Owner and Architect access to the Work in preparation and progress wherever located.

§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

§ 3.17.1 The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

§ 3.18 INDEMNIFICATION

§ 3.18.1 To The Contractor shall indemnify and hold harmless the Owner, its agents and employees from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, in any way arising out of or resulting from performance of the Work, including any such claim, damage, loss or expense which is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, but only to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the Contractor, a Subcontractor, anyone directly or indirectly employed or utilized by them in the performance of the construction contract, or anyone for whose acts they may be liable. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

ARTICLE 4 ADMINISTRATION OF THE CONTRACT

§ 4.1 ARCHITECT

§ 4.1.1 The Architect is the person lawfully licensed to practice architecture or an entity lawfully practicing architecture identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Architect" means the Architect or the Architect's authorized representative.

§ 4.1.2 Duties, responsibilities and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Contractor and Architect. Consent shall not be unreasonably withheld.

§ 4.1.3 If the employment of the Architect is terminated, the Owner shall employ a new Architect against whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the former Architect.

§ 4.2 ARCHITECT'S ADMINISTRATION OF THE CONTRACT

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents, and will be an Owner's representative (1) during construction, (2) until final payment is due and (3) with the Owner's

concurrence, from time to time during the one-year period for correction of Work described in Section 12.2. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified in writing in accordance with other provisions of the Contract.

§ 4.2.2 The Architect, as a representative of the Owner, will visit the site at intervals appropriate to the stage of the Contractor's operations (1) to become generally familiar with and to keep the Owner informed about the progress and quality of the portion of the Work completed, (2) to endeavor to guard the Owner against defects and deficiencies in the Work, and (3) to determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

§ 4.2.3 The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 Communications Facilitating Contract Administration. Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect will have authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor or separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect or Owner will prepare and issue to the Contractor Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Section 7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion, will receive and forward to the Owner, for the Owner's review and records, written warranties

and related documents required by the Contract and assembled by the Contractor, and will issue a final Certificate for Payment upon compliance with the requirements of the Contract Documents.

§ 4.2.10 The Owner and Architect may provide one or more project representatives.

§ 4.2.11 The Architect will interpret and decide matters concerning performance under and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within fourteen (14) days. If no agreement is made concerning the time within which interpretations required of the Architect shall be furnished in compliance with this Section 4.2, then delay shall not be recognized on account of failure by the Architect to furnish such interpretations until 15 days after written request is made for them.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and initial decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, and will not show partiality to either.

§ 4.2.13 INTENTIONALLY LEFT BLANK

§ 4.3 CLAIMS AND DISPUTES

§ 4.3.1 Definition. A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. Claims must be initiated by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 4.3.1.1 All written claims must specifically detail all facts and issues substantiating the claim, including all schedule impacts, costs, and expenses incurred. Failure to timely comply with the specific requirements of 4.3.1.1 shall constitute a waiver of the time limits on claims identified in 4.3.

§ 4.3.2 Time Limits on Claims. Claims by the Contractor must be initiated within 21 days after occurrence of the event giving rise to such Claim. Claims must be initiated by written notice to the Architect and the other party. An additional Claim made after the initial Claim has been implemented by Change Order will not be considered unless submitted in a timely manner.

§ 4.3.3 Continuing Contract Performance. Pending final resolution of a Claim including mediation or litigation, unless agreed otherwise the Contractor shall proceed diligently with performance of the Contract, including that scope of work which may be in dispute, and the Owner shall continue to make payments in accordance with the Contract Documents.

§ 4.3.4 Claims for Concealed or Unknown Conditions. If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, may recommend an equitable adjustment in the Contract Sum or Contract Time, or both. Notwithstanding anything herein to the contrary, the Contractors' obligations under 1.2.2 shall control. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall so notify the Owner and Contractor in writing, stating the reasons. Claims by either party in opposition to such determination must be made within 21 days after the Architect has given notice of the decision. If the conditions encountered are materially different, the Contract Sum and Contract Time shall be equitably adjusted, but if the Owner and Contractor cannot agree on an adjustment in the Contract Sum or Contract Time, the adjustment shall be referred to the Architect for initial determination, subject to further proceedings pursuant to Section 4.4.

§ 4.3.4.1 All claims as provided for in paragraph 4.3.4 shall be made by specific written notice and shall detail all facts and issues substantiating the claim including all costs and expenses incurred or to be incurred.

§ 4.3.4.2 No adjustment in the Contract Time or Contract Sum shall be permitted, however, in connection with a concealed or unknown condition which does not differ materially from those conditions disclosed or which reasonably should have been disclosed by the Contractor's (1) prior inspections, tests, reviews, and preconstruction services for the project, or (2) inspections, tests, reviews, and preconstruction services which the Contractor had the reasonable opportunity to make or should have performed in connection with the project.

§ 4.3.5 Claims for Additional Cost. If the Contractor wishes to make Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.6.

§ 4.3.6 If the Contractor believes additional cost is involved for reasons including but not limited to (1) a written interpretation from the Architect, (2) an order by the Owner to stop the Work where the Contractor was not at fault, (3) a written order for a minor change in the Work issued by the Architect, (4) failure of payment by the Owner, (5) termination of the Contract by the Owner, (6) Owner's suspension or (7) other reasonable grounds, Claim shall be filed in accordance with this Section 4.3.

§ 4.3.6.1 All claims as provided for in paragraph 4.3.5 and 4.3.6 shall be made by specific written notice and shall detail all facts and issues substantiating the claim including all costs and expenses incurred or to be incurred.

§ 4.3.7 Claims for Additional Time

§ 4.3.7.1 If the Contractor wishes to make Claim for an increase in the Contract Time, specific written notice as defined in paragraph 4.3.1 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay only one Claim is necessary.

§ 4.3.7.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction and that the conditions of § 8.3.1.1 have been met as measured against the most recent progress schedule.

§ 4.3.8 Injury or Damage to Person or Property. If either party to the Contract suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter. If a claim for additional cost or time related to this Claim is asserted, it shall be filed as provided in subparagraphs 4.3.5 through 4.3.6.1 or 4.3.7. The written notice required by paragraph 4.3.8 shall be defined in paragraphs 4.3.1 and 4.3.1.1.

§ 4.3.9 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 4.3.10 INTENTIONALLY LEFT BLANK

(Paragraphs deleted)

§ 4.4 RESOLUTION OF CLAIMS AND DISPUTES

§ 4.4.1 Decision of Architect. Claims, including those alleging an error or omission by the Architect but excluding those arising under Sections 10.3 through 10.5, shall be referred initially to the Architect for decision. An initial decision by the Architect shall be required as a condition precedent to or litigation of a Claim between the Contractor and Owner arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Architect with no decision having been rendered by the Architect. The Architect will not decide

disputes between the Contractor and persons or entities other than the Owner. All references to arbitration in the Contract Documents shall be considered stricken.

§ 4.4.2 The Architect will review Claims and within ten days of the receipt of the Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Architect is unable to resolve the Claim if the Architect concludes that, in the Architect's sole discretion, it would be inappropriate for the Architect to resolve the Claim.

§ 4.4.3 In evaluating Claims, the Architect may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Architect in rendering a decision. The Architect may request the Owner to authorize retention of such persons at the Owner's expense.

§ 4.4.4 If the Architect requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either provide a response on the requested supporting data, advise the Architect when the response or supporting data will be furnished or advise the Architect that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Architect will either reject or approve the Claim in whole or in part.

§ 4.4.5 The Architect will approve or reject Claims by written decision, which shall state the reasons therefor and which shall notify the parties of any change in the Contract Sum or Contract Time or both. The approval or rejection of a Claim by the Architect shall be final and binding on the parties.

§ 4.4.6 When a written decision of the Architect states that (1) the decision is final and (2) a demand for mediation of a Claim covered by such decision must be made within 30 days after the date on which the party making the demand receives the final written decision, then failure to demand mediation within said 30 days' period shall result in the Architect's decision becoming final and binding upon the Owner and Contractor. If the Architect renders a decision after mediation or litigation proceedings have been initiated, such decision may be entered as evidence, but shall not supersede mediation or litigation proceedings unless the decision is acceptable to all parties concerned.

§ 4.4.7 The Contractor is obligated to notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Architect or the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 4.4.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the Claim by the Architect, by mediation or by litigation.

§ 4.5 MEDIATION

§ 4.5.1 Any Claim arising out of or related to the Contract, except Claims relating to aesthetic effect and except those waived as provided for in Sections 4.3.10, 9.10.4 and 9.10.5 shall, after initial decision by the Architect or 30 days after submission of the Claim to the Architect, be subject to mediation as a condition precedent to the institution of legal or equitable proceedings by either party. In the event of any mediation, the mediator shall be selected by mutual agreement of the parties.

§ 4.5.2 The request may be made concurrently with the filing of a demand for arbitration but, in such event, mediation shall proceed in advance of legal or equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

§ 4.5.3 The parties shall share the mediator's fee and any filing fees equally. 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.

§ 4.6 MEDIATION

§ 4.6.1 Any claim arising out of or related to the Contract shall, after submission of the Claim to the Architect, be subject to mediation as a condition precedent to the institution of legal or equitable proceedings by either party.

§ 4.6.2 The parties shall endeavor to resolve their Claims 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 the Contract. The mediation shall proceed in advance of legal or equitable proceedings, which shall be stayed pending mediation for a period of sixty (60) days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. § 4.6.3 The parties shall share the mediator's fee and any filing fees equally. 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.

(Paragraphs deleted)

ARTICLE 5 SUBCONTRACTORS

§ 5.1 DEFINITIONS

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

§ 5.2.1 Notwithstanding anything contained herein to the contrary, the Owner shall maintain the right to require the Contractor to replace a Subcontractor with which the Owner has reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner has no reasonable objection. The Contract Sum shall be increased by the lesser of the following: (1) the difference between the subcontract amount proposed by the person or entity recommended by the Contractor and the subcontract amount proposed by the person or entity accepted or designated by the Owner; (2) the amount by which the subcontract amount proposed by the person or entity accepted and designated by the Owner exceeds the amount set forth in the Schedule of Values which is applicable to the Work covered by such subcontract. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not change a Subcontractor, person or entity previously selected if the Owner or Architect makes reasonable objection to such substitute.

§ 5.3 SUBCONTRACTUAL RELATIONS

§ 5.3.1 By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner. Each subcontract agreement shall preserve and protect the rights of the Owner under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement which may be at variance with the Contract Documents.

Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner provided that:

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements which the Owner accepts by notifying the Subcontractor and Contractor in writing; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

§ 5.4.2 If the Work in connection with a subcontract has been suspended for more than thirty (30) days after termination of the Contract by the Owner pursuant to paragraph 14.2 and the Owner chooses to accept assignment of such subcontract, the Subcontractor's compensation shall be equitably adjusted for any increase in direct costs incurred by such Subcontractor as a result of the suspension beyond the thirty (30) day period.

§ 5.4.3 Each subcontract shall specifically provide that the Owner shall only be responsible to the Subcontractor for those obligations of the Contractor that accrue subsequent to the Owner's exercise of any rights under this conditional assignment.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts including subcontractors currently on the Project in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Section 4.3.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules when directed to do so. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights which apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.

§ 6.2 MUTUAL RESPONSIBILITY

§ 6.2.1 The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

§ 6.2.3 The Owner shall be reimbursed by the Contractor for costs incurred by the Owner which are payable to a separate contractor because of delays, improperly timed activities or defective construction of the Contractor. The Owner shall be responsible to the Contractor for costs incurred by the Contractor because of delays, improperly timed activities, damage to the Work or defective construction of a separate contractor.

§ 6.2.4 The Contractor shall promptly remedy damage wrongfully caused by the Contractor to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

§ 6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 OWNER'S RIGHT TO CLEAN UP

§ 6.3.1 If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 GENERAL

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor and Architect; a Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work. Except as permitted in paragraph 7.3 and Paragraph 9.7.2, a change in the Contract Sum or Contract Time shall be accomplished only by Change Order. Accordingly, no course of conduct nor dealings between the parties, no express or implied acceptance of alterations or additions to the Work, and no claim that the Owner has been unjustly enriched by any alteration or addition to the Work, whether or not there is, in fact, any unjust enrichment to the Work, shall be the basis of claim to any increase in any amounts due under the Contract Documents or a change in any time period provided for in the Contract Documents.

§ 7.1.4 In subparagraph 7.1.3 the allowance for all home and field office overhead and profit combined included in the total cost to the Owner shall be limited to fifteen (15%) percent pursuant to the following schedule:

- .1 For the Contractor, for work performed by the Contractor's own forces, fifteen (15%) percent of the cost of the work.
- .2 For the Contractor, for work performed by the Contractor's Subcontractor (at any tier), five (5%) percent of the amount due the Subcontractor.
- .3 For each Subcontractor who performs work with its own forces, ten (10 %) percent.
- .4 For each Subcontractor, not performing work with its own forces, five (5%) percent.

All costs associated with field supervision, layout, as-builts, estimating, and related items shall be included in the applicable percentage for overhead and profit referenced above.

All quotations and proposals shall be in sufficient detail and itemization of labor, materials, and equipment to allow the Owner to verify the reasonableness of the costs proposed. Subcontractors' and Sub-subcontractors' quotes, at all tiers, shall be disclosed on their company's particular letterhead or quote form and signed by an officer of that company.

All overhead and profit for such change order work shall be in lieu of and not in addition to the Construction Manager's fee for the Project.

§ 7.2 CHANGE ORDERS

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor and Architect, stating their agreement upon all of the following:

- .1 change in the Work;
- .2 the amount of the adjustment, if any, in the Contract Sum; and
- .3 the extent of the adjustment, if any, in the Contract Time.

§ 7.2.2 Methods used in determining adjustments to the Contract Sum may include those listed in Section 7.3.3.

§ 7.2.3 Agreement on any Change Order shall constitute a final settlement and full accord and satisfaction of all matters by the Contractor relating to the change directly or indirectly changed or unchanged in the Work which is the subject of the Change Order, including, but not limited to, all direct and indirect costs associated with such change and any and all adjustments to the Contract Sum and the construction schedule. In the event a Change Order increases the Contract Sum, Contractor shall include the Work covered by such Change Orders in Applications for Payment as if such Work were originally part of the Contract Documents.

§ 7.3 CONSTRUCTION CHANGE DIRECTIVES

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order. The Contractor, pursuant to the terms of Article 7.3 shall upon receipt of a Construction Change Directive proceed without delay with the change in the Work governed by the Construction Change Directive. However, notwithstanding anything contained within this Contract to the contrary, the Owner shall not be required to make payment of the disputed amount to the Contractor for the Work covered by the Construction Change Directive until such time as the terms of the Construction Change Directive have been finalized and incorporated into an executed Change Order. Any undisputed sums shall be paid by the County.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation,
- .2 unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 as provided in Section 7.3.6.

§ 7.3.4 Upon receipt of a Construction Change Directive, the Contractor shall proceed without delay with the change in the Work involved and as soon as practical advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.5 A Construction Change Directive signed by the Contractor indicates the agreement of the Contractor therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall become effective only upon execution of a Change Order.

§ 7.3.6 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall be determined by the Architect on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an allowance for overhead and profit as specified in paragraph 7.1.4. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting

together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.6 shall be limited to the following:

- .1 costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .2 costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .3 rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work.

§ 7.3.7 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change which results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.8 Pending final determination of the total cost of a Construction Change Directive to the Owner, amounts not in dispute for such changes in the Work shall be included in Applications for Payment accompanied by a Change Order indicating the parties' agreement with part or all of such costs. For any portion of such cost that remains in dispute, the Architect will make an interim determination for purposes of monthly certification for payment for those costs. That determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a claim in accordance with Article 4.

§ 7.3.9 When the Owner and Contractor agree with the determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

§ 7.4 MINOR CHANGES IN THE WORK

§ 7.4.1 The Architect will have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly.

ARTICLE 8 TIME

§ 8.1 DEFINITIONS

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.2 PROGRESS AND COMPLETION

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance. Unless the date of commencement is established by the Contract Documents or a notice to proceed given by the Owner, the Contractor shall notify the Owner in writing not less than five days or other agreed period before commencing the Work to permit the timely filing of mortgages, mechanic's liens and other security interests.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.2.4 When the Contractor proposes to schedule work on Saturdays and Sundays or legal holidays, written notification shall be given to the Architect and Owner within forty-eight (48) hours prior to that date. The Owner shall not be liable for schedule increases or damages resulting from any conflicts which the Contractor may encounter with activities while performing night or weekend work unless the Work was directed by the County.

§ 8.2.5 The Contractor shall furnish adequate forces, construction plant and equipment, and shall work such hours, including night shifts, overtime operations, and Sunday and holiday work as may be necessary to insure the prosecution of the Work in accordance with the approved progress Schedule and updates. If progress falls behind that which is required in the Project Schedule, due to the fault of the Contractor, the Contractor shall take such steps as may be necessary to improve its progress, and the Owner may require the Contractor to increase the number of shifts and/or overtime operations, day of work and/or the amount of construction plant, all without additional cost to the Owner under this Contract. Failure of the Contractor to comply with this provision shall be grounds for termination of the Contract by the Owner in accordance with Paragraph 14.2. Direction from the Owner under this provision shall not be construed by the Contractor as acceleration.

§ 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner, or by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control, or by delay authorized by the Owner, or by other causes which the Architect determines may justify delay, the Contract Time shall be extended by Change Order to the extent such delay will prevent the Contractor from achieving Substantial Completion within the Contract Time and if the performance of the Work is not, was not, or would not have been delayed by any other cause for which the Contractor is not entitled to an extension in the Contract Time under the Contract Documents. The Contractor further acknowledges and agrees that adjustments in the Contract Time will be permitted for a delay only to the extent such delay (1) is not caused, or could not have been reasonably anticipated, by the Contractor, or (2) could not be limited or avoided by the Contractor's timely notice to the Owner of the delay and (3) is of a duration not less than one (1) day.

§ 8.3.1.1 In addition to the requirements of 4.3.7.2, extensions of time will be granted for rain or bad weather, only when such rain or bad weather is in excess of the ten year average for such days as published by the National Oceanic and Atmospheric Administration, Asheville, North Carolina for Metropolitan Orlando, Florida Reporting Station. Otherwise, the Contractor's schedule shall allow the number of days it deems necessary for rain and bad weather when the Contractor prepares its schedule. Contractor and Owner acknowledge that any Project site rain gauge measurements will not be relied upon for determining rain fall amounts.

§ 8.3.1.2 Contractor acknowledges that under no circumstances shall weather delays be compensable delays.

§ 8.3.1.3 Extensions of time will be granted only to the extent that equitable time adjustments for activity or activities affected exceed the total float or slack associated with those activities at the time the direction to proceed was issued for the change. The Contractor acknowledges and agrees that delays in activities which do not affect any milestone completion dates shown on the network at the time of the delay shall not be a basis for granting a time extension.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Section 4.3.

§ 8.3.3 If the Contractor submits a progress report indicating, or otherwise expresses an intention to achieve, completion of the work prior to any completion date required by the Contract Documents or expiration of the Contract Time, no liability of the Owner to the Contractor for any failure of the Contractor to so complete the Work shall be created or implied.

§ 8.3.4 Notwithstanding anything to the contrary in the Contract Documents, an extension in the Contract Time, to the extent permitted under paragraph 8.3.1, shall be the sole remedy of the Contractor for any (1) delay in the commencement, prosecution, or completion of the Work, (2) hindrance or obstruction in the performance of the

Work, (3) loss of productivity, or (4) other similar claims (collectively referred to in this paragraph 8.3.4 as Delays) whether or not such Delays are foreseeable, unless a Delay is caused by acts of the Owner. When Delays are caused by the acts of the Owner which impact the Critical Path, the Owner will be liable for the Contractor's compensable field office overhead only. In no event shall the Contractor be entitled to any compensation or recovery of any damages, in connection with any Delay, including, without limitation, consequential damages, lost opportunity costs, impact damages or other similar remuneration. The Owner's exercise of any of its rights or remedies under the Contract Documents regardless of the extent or frequency of the Owner's exercise of such rights or remedies, shall not be construed as active interference with the Contractor's performance of the Work.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 CONTRACT SUM

§ 9.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.2 SCHEDULE OF VALUES

§ 9.2.1 Upon full execution of Amendment 1 establishing the GMP, the Contractor shall submit to the OWNER a schedule of values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, when approved by the OWNER, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 9.2.2 The work items listed in the Schedule of Values shall relate directly to the items in the progress Schedule required in subparagraph 3.10.4. The Schedule of Values shall be arranged to conform with CSI Mater Format for Divisions and Sections, with each item containing overhead and profit. The Contractor and each Subcontractor shall prepare a trade payment breakdown for the Work for which each is responsible, such breakdown being submitted on a uniform standardized form approved by the Architect and Owner. The form shall be divided in detail sufficient to exhibit areas, floors and/or sections of the Work, and/or by convenient units and shall be updated as reasonably required by either the Owner or the Architect as necessary to reflect (1) description of Work (listing labor and materials separately), (2) total value, (3) percent of the Work completed to date, (4) value of the Work completed to date, (5) percent of previous amount billed, (6) previous amount billed, (7) current percent complete, and (8) value of the Work completed to date. Any trade breakdown which fails to include sufficient detail, is unbalanced or exhibits "front-loading" of the value of the Work shall be rejected. If trade breakdown had been initially approved and subsequently used, but later found improper for any reason, sufficient funds shall be withheld from future Applications for Payment to ensure an adequate reserve (exclusive of normal retainage) to complete the Work.

§ 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment for operations completed in accordance with the schedule of values. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and reflecting retainage if provided for in the Contract Documents.

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§ 9.3.1.2 Such applications may not include requests for payment for portions of the Work for which the Contractor does not intend to pay to a Subcontractor or material supplier because of a dispute or other reason.

§ 9.3.1.3 Each Application for Payment shall be accompanied by the following, all in form and substance satisfactory to the Owner:

1. a current Contractor's lien waiver and duly executed and acknowledged sworn statement showing all Subcontractors and materialmen with whom the Contractor has entered into subcontracts, the amount of each subcontract, the amount requested for any Subcontractor and materialmen in the requested progress payment and the amount to be paid to the Contractor from such progress payment, together with similar sworn statements from all such Subcontractors and materialmen;

.2 duly executed waivers of mechanics' and materialmen's liens from all Subcontractors and, when appropriate, from materialmen and lower tier Subcontractors establishing payment or satisfaction of payment of all amounts requested by the Contractor on behalf of such entities or persons in any previous Application for Payment;

.3 all information and materials required to comply with the requirements of the Contract Documents, including but not limited to as-built drawings, or reasonably requested by the Owner or the Architect.

These submissions of an Application for Payment signed by the Contractor shall constitute the Contractor's certification that all undisputed invoices and amounts due to suppliers and Subcontractors have been paid by the Contractor.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. At the Owner's discretion, partial payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon by the Owner and Architect in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

§ 9.3.2.1 The aggregate cost of materials stored off site shall not exceed \$250,000 at any time without the prior written approval of the Owner which shall not be unreasonably withheld.

§ 9.3.2.2 Title to such materials shall be vested in the Owner, as evidenced by documentation reasonably satisfactory in form and substance to the Owner including, without limitation, recorded financing statements, UCC filings, and UCC searches.

§ 9.3.2.3 With each Application for Payment, the Contractor shall submit to the Owner a written list identifying each location where materials are stored off the Project site and the value of materials at each location. The Contractor shall procure insurance reasonably satisfactory to the Owner for materials stored off the Project site in an amount not less than the total value thereof.

§ 9.3.2.4 the consent of any surety shall be obtained by the Contractor to the extent required prior to payment for any materials stored off the Project site.

§ 9.3.2.5 Representatives of the Owner shall have the right to make reasonable inspections of the storage areas at any time.

§ 9.3.2.6 Such materials shall be protected from diversion, destruction, theft, and damage, specifically marked for Project use and segregated from other materials at the storage facility consistent with the use of the materials.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

§ 9.4 CERTIFICATES FOR PAYMENT

§ 9.4.1 The Architect will, within three (3) days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

§ 9.4.1.1 The surety will include on the bond form the cost of the Performance and Payment Bond.

§ 9.4.1.2 The actual cost of the Performance and Payment Bond shall be stated as a project percentage when determining the cost for additive change orders.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data comprising the Application for Payment, that the Work has progressed to the point indicated and that, to the best of the Architect's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, or (3) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.4.3 If the Contractor has submitted a timely Application for Payment in accordance with this Article, payment may be expected within forty-five (45) days of the receipt of the approved application. Payment for an application reducing or releasing retainage may exceed this duration. Notwithstanding anything else contained herein to the contrary, Final Payment shall not be due to the Contractor prior to the expiration of sixty (60) days from the date of receipt of the Contractor's approved application for payment.

§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss because of:

- 1 defective Work not remedied;
- 2 third party and any notices of non-payment claims filed or reasonable evidence indicating probable filing of such claims until such time the Contractor has provided the Owner with a written acknowledgement from its surety accounting for release of such funds;
- 3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- 4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- 5 damage to the Owner or another contractor;
- 6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- 7 persistent failure to carry out the Work or administrative requirement in accordance with the Contract Documents, which failure substantially prejudices Owner.

§ 9.5.2 When the above reasons for withholding certification are remedied by the Contractor, certification will be made for amounts previously withheld.

§ 9.6 PROGRESS PAYMENTS

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided herein.

§ 9.6.2 The Contractor shall promptly pay each Subcontractor, upon receipt of payment from the Owner, out of the amount paid to the Contractor on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of

such Subcontractor's portion of the Work. The Contractor shall, by similar agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Architect or Owner will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor as reflected in the Contractor's Schedule of Values.

§ 9.6.4 Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor.

§ 9.6.5 Payment to material suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.7 FAILURE OF PAYMENT

§ 9.7.1 If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within forty-five (45) days after receipt, except as provided in paragraph 9.4.3, the amount certified by the Architect, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.7.1.2 If the Owner is entitled to reimbursement or payment from the Contractor under or pursuant to the Contract Documents, such payment shall be made promptly upon demand by the Owner. Notwithstanding anything contained in the Contract Documents to the contrary, if the Contractor fails to promptly make any payment due the Owner, or the Owner incurs any costs and expenses to cure any default of the Contractor or to correct defective Work, the Owner may offset such amount against the Contract Sum and may, in the Owner's reasonable discretion, elect either to: (1) deduct an amount equal to that which the Owner is entitled from any payment then or thereafter due the Contractor from the Owner, or (2) issue a written notice to the Contractor reducing the Contract Sum by an amount equal to that which the Owner is entitled.

§ 9.8 SUBSTANTIAL COMPLETION

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents and as certified by the Architect so that the Owner can occupy or utilize the Work for its intended use.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so

that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, complete or correct such item .

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying and issued simultaneously with the Certificate which shall identify all non-conforming, defective and incomplete Work and establish the date of commencement of warranties in connection with any such Work. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion. The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate.

§ 9.8.5 Upon Construction Manager's completion of all items on the list accompanying and issued simultaneously with the Architect's Certificate of Substantial Completion, the Construction Manager may submit a payment request for all remaining retainage withheld by the Owner. If a good faith dispute exists as to whether one or more items identified on the list have been completed pursuant to this Contract, the Owner may continue to withhold an amount not to exceed one-hundred fifty (150) percent of the total costs to complete such items.

§ 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.4.1.5 and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 FINAL COMPLETION AND FINAL PAYMENT

§ 9.10.1 Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the

Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) as-builts, and (6), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ 9.10.3.1 The Contractor shall submit with its final Application for Payment a Contractors Affidavit of Payment of Debts and Claims AIA Document G706, Contractors Affidavit of Release of Liens AIA Document G706A, and Consent of Surety AIA Document G707.

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§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

§ 9.11 The Owner will suffer damages if the Project is not Substantially and Finally Complete on the dates set forth in the Contract Documents. The Contractor (and Contractor's Surety) shall be liable for and shall pay to the Owner the fixed sum of \$ _____, agreed as liquidated damages for each calendar day of delay until the Work is Substantially and Finally Complete. The Owner and Contractor agree that the daily sum fixed herein as liquidated damages is not to be construed as a penalty, but instead is the parties' best estimate as to the daily damages which the Owner will incur at the time of execution of the Contract.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

§ 10.1.1 The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 SAFETY OF PERSONS AND PROPERTY

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

- 1 employees on the Work and other persons who may be affected thereby;
- 2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
- 3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ 10.2.2 The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

§ 10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel. When use or storage of explosives or other hazardous materials or equipment or unusual construction methods are necessary, the Contractor shall give the Owner and the Architect reasonable advance notice.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not load or permit any part of the construction or site to be loaded so as to endanger its safety.

§ 10.2.8 When all or a portion of the Work is suspended for any reason, the Contractor shall securely fasten down all coverings and protect the Work, as necessary, from damage by any cause.

§ 10.2.9 The Contractor shall promptly report in writing to the Owner and Architect all accidents arising out of or in connection with the Work which cause death, personal injury, or property damage.

§ 10.3 HAZARDOUS MATERIALS

§ 10.3.1 Unless provided elsewhere in the Contract Documents, in the event the Contractor encounters on the site material reasonably believed to be asbestos or polychlorinated biphenyl (PCB) which has not been rendered harmless, the Contractor shall immediately stop Work in the affected area and report the condition to the Owner and Architect in writing.

§ 10.3.2 The Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to verify that it has been rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor.

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§ 10.4 The Owner shall not be responsible under Section 10.3 for materials and substances brought to the site by the Contractor unless such materials or substances were required by the Contract Documents.

§ 10.5 If, without negligence on the part of the Contractor, the Contractor is held liable for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.

§ 10.6 EMERGENCIES

§ 10.6.1 In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Section 4.3 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 CONTRACTOR'S LIABILITY INSURANCE

§ 11.1.1 Notwithstanding anything in here to the contrary, the Owner reserves the right to purchase a wrap-up insurance policy for the Project in lieu of the requirements outlined herein. Unless the Owner purchases a wrap-up insurance policy, the Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1 claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed;
- .2 claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 claims for damages insured by usual personal injury liability coverage;
- .5 claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 ~~claims for bodily injury or property damage arising out of completed operations;~~
- .8 claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18;
- .9 **Contractor's Liability Insurance shall include all major divisions of coverage and be on a comprehensive basis including, without limitation:**
 - a. Premises Operation (including X-C/U as applicable);
 - b. Independent Contractor's Operations;
 - c. Products and Completed Operations;
 - d. Personal Injury Liability with Employment Exclusive deleted;
 - e. Contractual including specified provision for Contractor's obligation under 3.18;
 - f. Owner, non-owned and hired motor vehicles;
 - g. Broad Form Property Damage including Completed Operations; and
 - h. Umbrella Excess Liability.
- .10 Claims for property damage or other damage traditionally covered by Builder's Risk Insurance, including flood and windstorm damage.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, written on an occurrence basis, shall be maintained without interruption from date of commencement of the Work until date of final payment and termination of any coverage required to be maintained after final payment.

§ 11.1.2.1 The insurance required by subparagraph 11.1.1 shall be written for not less than the following or greater if required by law. Insurance coverage provided by the Contractor, listed below shall not include or be limited by an annual aggregate.

- .1 Worker's Compensation:
 - (a) State: As required by Chapter 440, Florida Statutes.
 - (b) Applicable Federal (e.g. Longshoremen's Statute)
 - (c) Employer's Liability: \$ 1,000,000.00
- .2 Comprehensive General Liability (including Premises Operations; Independent Contractor's Protective; Products and Completed Operations; Broad Form Property Damage)
 - (a) Bodily Injury: \$ 3,000,000.00__ per claimant
\$ 6,000,000.00__ per incident or occurrence
 - (b) Property Damage: \$ 3,000,000.00__ per claimant
\$ 6,000,000.00__ per incident or occurrence
 - (c) Products and completed operations to be maintained for one year after final payment.
 - (d) Property Damage Liability Insurance shall provide X, C, or U coverage as applicable.

- .3 Contractual Liability:
 (a) Bodily Injury: \$ 3,000,000.00__ per claimant
 \$ 6,000,000.00__ per incident or occurrence
- .4 Personal Injury with Employment Exclusion deleted:
 \$ 3,000,000.00__ Annual Aggregate
- .5 Comprehensive Automobile Liability:
 The State of Florida has no-fault automobile insurance requirements. The Contractor shall be certain coverage is provided which conforms to any specific stipulation in this law.
 (a) Bodily Injury: \$ 1,000,000.00__ per claimant
 \$ 1,000,000.00__ per incident
 (b) Property Damage: \$ 1,000,000.00__ per claimant
- .6 Umbrella Excess Liability:
 (a) \$ 10,000,000.00__ over primary insurance
 (b) \$ 10,000.00__ retention for self-insured hazards
- .7 Builder's Risk Insurance covering 100% of the value of the completed Work performed under this Contract.

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work. These certificates and the insurance policies required by this Section shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment as required by Section 9.10.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness in accordance with the Contractor's information and belief.

§ 11.1.4 The Contractor shall furnish one copy of each Certificate of Insurance herein required for each copy of the Agreement which shall specifically set forth evidence of coverage required by Subparagraphs 11.1.1, 11.1.2, and 11.1.3. The Contractor shall furnish to the Owner copies of any endorsements that are subsequently issued amending coverage or limits.

§ 11.1.5 The Owner shall be an additional insured with the Contractor in the Contractor's liability insurance.

§ 11.2 OWNER'S LIABILITY INSURANCE

§ 11.2.1 The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

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§ 11.4 PROPERTY INSURANCE

§ 11.4.1 Unless otherwise provided, the Contractor shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.4 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

§ 11.4.1.1 Property insurance provided by the Contractor shall be on an "all-risk" replacement value or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable

compensation for Architect's and Contractor's services and expenses required as a result of such insured loss. The form of policy for this coverage shall be the full insurable value of the property.

§ 11.4.1.2 INTENTIONALLY LEFT BLANK

§ 11.4.1.3 If the property insurance requires deductibles, the Contractor shall pay costs not covered because of such deductibles.

§ 11.4.1.4 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

§ 11.4.1.5 INTENTIONALLY LEFT BLANK

§ 11.4.2 Boiler and Machinery Insurance. The Contractor shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

§ 11.4.3 INTENTIONALLY LEFT BLANK

§ 11.4.3.1 Any specific provisions contained within the Contract Documents addressing the subject matter of paragraph 11.4.3 shall supersede the Owner's waiver contained within 11.4.3.

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§ 11.4.7 INTENTIONALLY LEFT BLANK

(Paragraphs deleted)

§ 11.5 PERFORMANCE BOND AND PAYMENT BOND

§ 11.5.1 The Owner shall require the Contractor or any Subcontractor 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 execution of the Contract.

§ 11.5.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall permit a copy to be made.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 UNCOVERING OF WORK

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's or Owner's request or to requirements specifically expressed in the Contract Documents, it must, if required in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered which the Architect has not specifically requested to examine prior to its being covered, the Architect and Owner together may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

§ 12.2 CORRECTION OF WORK

§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

§ 12.2.1.1 The Contractor shall promptly correct Work rejected by the Architect or Owner or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections and compensation for the Architect's services and expenses made necessary thereby. If prior to the date of Substantial Completion, the contractor, a Subcontractor or anyone for whom either is responsible uses or damages any portion of the Work, including, without limitation, mechanical, electrical, plumbing and other mechanical device, the contractor shall cause such item to be restored to "like new" condition at no expense to the Owner.

§ 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2 If, within one year after the date of Substantial Completion of the Work or designated portion thereof, or by terms of an applicable warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

(Paragraph deleted)

§ 12.2.2.1 The obligations under Paragraph 12.2 shall cover any repairs and replacement to any part of the Work or other property caused by the defective Work.

§ 12.2.2.2 Upon completion of any Work under or pursuant to Paragraph 12.1 the correction period in connection with the Work requiring correction shall be extended for a period of 120 days or through the original warranty period, whichever is longer.

§ 12.2.2.3 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work.

§ 12.2.3 The Contractor shall remove from the site portions of the Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work which is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 ACCEPTANCE OF NONCONFORMING WORK

§ 12.3.1 If the Owner prefers to accept Work which is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 GOVERNING LAW

§ 13.1.1 The Contract shall be governed by the law of the State of Florida. The sole and exclusive venue for initiating any legal proceeding concerning the terms of the Contract or the Work performed pursuant thereto shall be in the appropriate state court in Seminole County, Florida.

§ 13.2 SUCCESSORS AND ASSIGNS

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

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§ 13.3 WRITTEN NOTICE

§ 13.3.1 Written notice shall be deemed to have been duly served if delivered in person to the individual or a member of the firm or entity or to an officer of the corporation for which it was intended, or if delivered at or sent by registered or certified mail to the last business address known to the party giving notice.

§ 13.4 RIGHTS AND REMEDIES

§ 13.4.1 Except as expressly provided in the Contract Documents, duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ 13.4.2 No action or failure to act by the Owner, Architect or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

§ 13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be as required. Testing and balancing of all mechanical system is specifically required herein. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections or approvals which do not become requirements until after bids are received or negotiations concluded. The Contractor shall not obligate the Owner for costs without the Architect's approval.

§ 13.5.2 If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense. The Contractor also agrees that the cost of testing services required for the convenience of the Contractor in his scheduling and performance of the Work, and the cost of testing services related to remedial operations performed to correct deficiencies in the Work shall be borne by the Contractor.

§ 13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.5.5 If the Architect is to observe tests, inspections or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.6 INTEREST

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§ 13.7 COMMENCEMENT OF STATUTORY LIMITATION PERIOD

§ 13.7.1 As between the Owner and Contractor:

- .1 Before Substantial Completion. As to acts or failures to act occurring prior to the relevant date of Substantial Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than such date of Substantial Completion;
- .2 Between Substantial Completion and Final Certificate for Payment. As to acts or failures to act occurring subsequent to the relevant date of Substantial Completion and prior to issuance of the final Certificate for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of issuance of the final Certificate for Payment; and
- .3 After Final Certificate for Payment. As to acts or failures to act occurring after the relevant date of issuance of the final Certificate for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of any act or failure to act by the Contractor pursuant to any Warranty provided under Section 3.5, the date of any correction of the Work or failure to correct the Work by the Contractor under Section 12.2, or the date of actual commission of any other act or failure to perform any duty or obligation by the Contractor or Owner, whichever occurs last.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 TERMINATION BY THE CONTRACTOR

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

- .1 issuance of an order of a court or other public authority having jurisdiction which requires all Work to be stopped;
- .2 an act of government, such as a declaration of national emergency which requires all Work to be stopped;
- .3
- .4

§ 14.1.2 INTENTIONALLY LEFT BLANK

§ 14.1.3 If one of the above reasons exists, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead, profit and damages only for such executed work. The Contractor shall not receive lost anticipated profit.

§ 14.1.4 If the Work is stopped for a period of 60 days or if repeated suspensions, delays or interruptions by the Owner as described in Paragraph 14.3 constitute in the aggregate the lesser of an amount to the Contract Time or 120 days in any one (1) year period through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has persistently failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract if the Contractor:

- .1 persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 persistently disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.
- .5 breaches any warranty made by the Contractor under or pursuant to the Contract Documents.
- .6 fails to furnish the Owner with assurances reasonably satisfactory to the Owner evidencing the Contractor's ability to complete the Work in compliance with all the requirements of the Contract Documents;
- .7 fails after commencement of the Work to proceed continuously with the construction and completion of the Work for more than ten (10) days except as permitted under the Contract Documents.

§ 14.2.2 When any of the above reasons exist, the Owner, , may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 accept assignment of subcontracts pursuant to Section 5.4; and
- .3 finish the Work by whatever reasonable method the Owner may deem expedient. Upon request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment, if any, until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Architect, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.2.5 To the extent that it is determined that insufficient grounds existed for the Owner to terminate the Contractor for cause then such termination for cause hereunder shall be converted to and treated as a termination for convenience in accordance with 14.4.

§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

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§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall:

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and

- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

§ 15. EQUAL OPPORTUNITY

§ 15.1 The Contractor shall maintain policies of employment as follows:

§15.1.1 The Contractor and all Subcontractors shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, or age. The Contractor shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, sex, national origin, or age. Such action shall include employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff, termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the policies of non-discrimination.

§ 16.1.2 The Contractor and all Subcontractors shall, in all solicitations or advertisements for employees placed by them or on their behalf, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, national origin, or age.

§ 17. WAIVER OF JURY TRIAL. Owner and Contractor, jointly and severally, hereby knowingly, voluntarily, and intentionally waive the right either may have to a trial by jury in respect of any litigation based hereon, or arising out of, under, or in connection with the agreement and any agreement contemplated to be executed in conjunction herewith, or any course of conduct, course of dealing, statements, whether verbal or written, or actions of either party.

Additions and Deletions Report for AIA[®] Document A201[™] – 1997

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John E. Polk Correctional Facility Expansion

...
Seminole County, Florida

...
a political subdivision of the State of Florida

...
Seminole County Services Building

...
1101 E. First Street

...
Sanford, Florida 32771

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The Contract Documents consist of the Agreement between Owner and Contractor (hereinafter the Agreement), Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. ~~Unless specifically enumerated in the Agreement, the Contract Documents do not include other documents such as bidding requirements (advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or portions of Addenda relating to bidding requirements).~~

...
§ 1.1.3.1 FIFTY (50) PERCENT COMPLETION. The term "Fifty-Percent completion" means the point at which Construction Manager has performed and Owner has expended 50% of the Contract price.

...
§ 1.1.8 PROVIDE. The term "Provide" as used in the Contract Documents, includes furnishing all labor, supervision, tools, materials, supplies, equipment, shop drawings, product data and samples, together with performance of the Work, or production of an item or system usable in the completed Project.

...
§ 1.1.9 ADDENDA. Addenda are written or graphic instruments issued prior to award of the Contract which modify or interpret the bid documents, including the Drawings and Specifications, by additions, deletions, clarifications, or corrections.

...
§ 1.1.10 KNOWLEDGE. The terms "knowledge", "recognize", and "discover", their respective derivatives and similar terms in the Contract Documents, as used in reference to the Construction Manager, shall be interpreted to mean that the Construction Manager knows (or should have reasonably known), recognizes (or should have reasonably recognized), and discovers (or should have reasonably discovered) in exercising the care, skill, and diligence required by the Contract Documents. Analogously, the expression "reasonably inferable" and similar terms in the Contract Documents shall be interpreted to mean reasonably inferable by a contractor familiar with the Project and exercising the care, skill, and diligence required of the Contractor by the Contract Documents.

§ 1.1.11 PERSISTENTLY. The phrase "persistently fails" and other similar expressions as used in reference to the Contractor, shall be interpreted to mean any combination of acts and omissions which cause the Owner or the Architect to reasonably conclude that the Construction Manager will not complete the Work within the Contract Time, for the Contract Sum, or in substantial compliance with the requirements of the Contract Documents.

...
§ 1.5.2.1 Examination of the site shall include determination of the nature and scope of the work and all difficulties that accompany its execution.

...
§ 1.5.2.2 Claims for additional labor, equipment, materials, or costs, resulting from difficulties which should have reasonably been noted with the exercise of due diligence during the examination of the site will not be allowed.

...
§ 1.5.2.3 Correlate all dimensions shown on the Drawings for existing work and for new work which is meant to connect to it. Verify existing dimensions by actual measurement of existing work. Report in writing to the Architect all discrepancies between the requirement of the Contract Documents and existing conditions.

...
§ 1.5.2.4 The Construction Manager and each Subcontractor shall evaluate and satisfy themselves as to the conditions and limitations under which the Work is to be performed, including, without limitation, (1) the location, condition, layout, and nature of the Project site and surrounding areas, (2) generally prevailing climatic conditions, (3) anticipated labor supply and costs, (4) availability and cost of materials, tools, and equipment, and (5) other similar issues. Upon mobilization, the Construction Manager shall assume responsibility or liability for the physical condition or safety of the Project site or any improvements located on the Project site. Should the Construction Manager encounter unknown conditions at the Project beyond the Construction Manager's control, then the Construction Manager shall immediately notify the Owner of such conditions. The Construction Manager shall be solely responsible for providing a safe place for the performance of the Work. The Owner shall not be required to make any adjustment in either the Contract Sum or Contract Time in connection with any failure by the Contractor or any Subcontractor to comply with the requirements of this paragraph 1.5.2.4.

§ 1.6.1 The Drawings, Specifications and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants are Instruments of Service through which the Work to be executed by the Contractor is described. The Contractor may retain one record set. Neither the Contractor nor any Subcontractor, Sub-subcontractor or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications and other documents prepared by the Architect or the Architect's consultants, and unless otherwise indicated the Architect and the Architect's consultants shall be deemed the authors of them and will retain all common law, statutory and other reserved rights, in addition to the copyrights, consultants. All copies of Instruments of Service, except the Contractor's record set, shall be returned or suitably accounted for to the Architect, Owner, on request, upon completion of the Work. The Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants, and copies thereof furnished to the Contractor, are for use solely with respect to this Project. They are not to be used by the Contractor or any Subcontractor, Sub-subcontractor or material or equipment supplier on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants. Owner. The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants appropriate to and for use in the execution of their Work under the Contract Documents. All copies made under this authorization shall bear the statutory copyright notice, if any, shown on the Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' copyrights or other reserved rights.

...
§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority term "Owner" refers to bind the Owner Board of County Commissioners (interchangeable with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section

4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative. Seminole County).

...
§ 2.1.2 The Owner shall furnish to the Contractor within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein. INTENTIONALLY LEFT BLANK

...
§ 2.2.1 The Owner shall, at the written request of the Contractor, prior to commencement of the Work and thereafter, furnish to the Contractor reasonable evidence that financial arrangements have been made to fulfill the Owner's obligations under the Contract. Furnishing of such evidence shall be a condition precedent to commencement or continuation of the Work. After such evidence has been furnished, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor. INTENTIONALLY LEFT BLANK

...
§ 2.2.3 The Owner shall furnish surveys describing physical characteristics, legal limitations and approximate utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on Owner does not warrant the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work any such information.

...
§ 2.2.4 Information Upon reasonable request of the Contractor, information or services required of the Owner by the Contract Documents shall be furnished by the Owner with reasonable promptness. Any other information or services relevant to the Contractor's performance of the Work under the Owner's control shall be furnished by the Owner after receipt from the Contractor of a written request for such information or services.

...
§ 2.2.5 Unless otherwise provided in the Contract Documents, the Contractor will be furnished, furnished free of charge, such copies charge an electronic disk containing a copy of the Drawings and Project Manuals as are reasonably necessary for execution of the Work. Manuals.

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...
§ 2.4.1 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven day three (3) working day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may after such seven day period give the Contractor a second written notice to correct such deficiencies within a three day period. If the Contractor within such three day period after receipt of such second notice fails to commence and continue to correct any deficiencies, the Owner may, three (3) working day period, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

...
§ 3.2.1 Since the Contract Documents are complementary, before starting each portion of the Work, the Contractor shall carefully study and compare the various Drawings and other Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work and verify field conditions and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating construction by the Contractor it, and are not for shall at once report to the purpose of discovering Architect errors, omissions, inconsistencies, or inconsistencies in the Contract Documents; however, any errors, inconsistencies or omissions discovered by the Contractor shall be reported promptly to the Architect as a request for information in such form as the Architect may require. The Contractor shall not be liable to the Owner or Architect for damage resulting from errors, inconsistencies, or omissions in the Contract Documents unless the Contractors recognized or should have recognized such error, inconsistency, or omission and knowingly failed to report it to the Architect. If the Contractor performs any construction activity knowing it involves a recognized error, inconsistency, or omission in the Contract Documents without such notice to the Architect, the Contractor shall assume appropriate responsibility for such performance and shall bear an appropriate amount of the attributable costs for correction.

...
§ 3.2.3 If the Contractor believes that additional cost or time is involved because of clarifications or instructions issued by the Architect in response to the Contractor's notices or requests for information pursuant to Sections 3.2.1 and 3.2.2, the Contractor shall make Claims as provided in Sections 4.3.6 and 4.3.7. If the Contractor fails to perform the obligations of Sections 3.2.1 and 3.2.2, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. ~~The Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents or for differences between field measurements or conditions and the Contract Documents unless the Contractor recognized such error, inconsistency, omission or difference and knowingly failed to report it to the Architect.~~

...
§ 3.2.4 The Contractor shall satisfy itself as to the accuracy of all grades, elevations, dimensions, and locations. In all cases of interconnection of its Work with existing or other Work, it shall verify at the site all dimensions relating to such existing or other Work. Any errors due to the Contractor's failure to so verify all such grades, elevations, locations or dimensions shall be promptly corrected by the Contractor without any additional cost to the Owner or adjustment of Contract Time.

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§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. ~~If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any resulting loss or damage.~~

...
§ 3.3.3 The Contractor shall be responsible for inspection of portions of all Work already performed under this Contract to determine that such portions are in proper condition to receive subsequent Work.

...
§ 3.3.4 The Contractor shall not be relieved of its obligation to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections, or approvals required or performed by persons other than the Contractor.

...
§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform to the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. All warranties, including equipment warranties, shall commence upon project substantial completion. The Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the ~~Architect, OWNER,~~ the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

...
§ 3.6.1 The Subject to the Owner's Tax Savings Agreement, the Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor which are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

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§ 3.7.3 It is not the Contractor's responsibility to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations. ~~However, The Contractor shall~~

construct the project in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations. Further, if the Contractor observes that portions of the Contract Documents are at variance therewith, the Contractor shall promptly notify the Architect and Owner in writing, and necessary changes shall be accomplished by appropriate Modification.

...
§ 3.7.4 If the Contractor performs Work knowing which it knew or reasonably should have known to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without such notice to the Architect and Owner, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

...
§ 3.9.1 The Contractor shall employ a competent superintendent-project manager, superintendent, assistant superintendent(s) and necessary assistants who shall be in attendance-field office personnel at the Project site-project during performance the progress of the Work. The superintendent-project manager shall represent the Contractor, Contractor and all communications given to the superintendent-project manager shall be as binding as if given to the Contractor. Important communications-Communications shall be confirmed in writing. Other communications-The Superintendent or Project Manager will be present at the site at all times that work is conducted at the project site. The Contractor shall be similarly confirmed on written request in each case-not employ a superintendent to whom the Owner reasonably objects.

...
§ 3.10.1 The Contractor, promptly within twenty-one (21) days or as otherwise agreed to by the Owner after being awarded the Contract, execution of Amendment #1, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

...
§ 3.10.2 The Contractor shall prepare as provided herein and keep current, for the Architect's approval, a schedule of submittals which is coordinated with the Contractor's construction schedule and allows the Architect reasonable time to review submittals. The Schedule shall indicate adequate time for approval of submittal data, purchase and delivery of materials, equipment testing and acceptance.

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...
§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect. The schedule shall be revised to reflect modifications by change order when such changes effect the overall schedule and approved changes in the schedule. The schedule shall be displayed in the Contractors' field office and progress shall be posted on the schedule.

...
§ 3.10.4 The progress schedule shall be submitted as follows:

...
§ 3.10.4.1 Within ten (10) days after notice to proceed, or as otherwise agreed to by the Owner, the Contractor shall prepare a preliminary progress schedule in six (6) copies, five on paper reduced to 11 x 17 inches and one on electronic disk, and meet with the Owner and Architect for the purpose of discussion and review.

...
§ 3.10.4.2 Within thirty (30) days of the notice to proceed, the Contractor shall have reworked the schedule to reflect the comments of the Architect and the requirements of the Project and shall submit six (6) copies, five on paper reduced to 11 x 17 inches and one on electronic disk, of the revised schedule to the Owner and Architect. The Architect will not approve for payment any billing or invoice submitted by the Contractor until such time as the "progress schedule" and the "schedule of values" have been properly submitted to the Architect and Owner.

...
§ 3.10.4.3 Each time a revision to the schedule is authorized, the Contractor shall submit six (6) copies, five on paper reduced to 11 x 17 inches and one on electronic disk, of the revised schedule to the Owner and Architect. The Owner shall not be liable for any Contractor cost or damages resulting from Contractor's failure to achieve any early completion forecast contained within Contractor's submitted schedules.

...
§ 3.10.4.4 With each application for payment, the Contractor shall submit two (2) copies of the revised progress schedule, one on paper reduced to 11 x 17 inches, and one on electronic disk. These copies shall have all work on or

ahead of schedule marked in red. The application for payment will be returned "rejected" when not accompanied by both copies of the required revised "progress schedule" and "schedule of values".

...
§ 3.10.4.5 The format for the schedule shall be network analysis (CPM).

...
§ 3.11.1.1 This record shall be in addition to the Drawings and Specification used by the Contractor and its employees for normal reference during construction.

...
§ 3.11.1.2 The Contractor shall clearly label each document "Project Record" and in addition to changes-(1) mark drawings to indicate exact location of concealed utilities and appurtenances relative to permanent accessible features of structures, or survey data; (2) mark each section of the Specifications to identify manufacturer, trade name, catalog number, and supplier of each product and item of equipment actually installed.

...
§ 3.11.1.3 The Contractor shall deliver the marked record set of drawings to the Architect with a letter certifying that the changes made to the drawings are complete, correct and fully checked. The Architect will not approve final payment until this condition has been accomplished.

...
§ 3.11.1.4 In addition to the above, the Contractor shall be furnished by the Architect the latest electronic version of all drawings in the latest version of AutoCAD software for incorporation of all "project record" set markings. Each drawing file will have text added to indicate "project record" with the date and the Contractor's name along with all marks from the field set. The Contractor shall provide at the Contractors' expense three (3) sets of prints (one full size and two half size) and three electronic disks to be delivered to the Owner upon completion of the Work.

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§ 3.12.5.1 All shop drawings for any architectural, structural, mechanical, or electrical work must be submitted to, and reviewed by, the Architect. The Contractor represents and warrants that all shop drawings shall be prepared by persons and entities possessing expertise and experience in the trade for which the shop drawing is prepared and, if required by the Architect or applicable law, by a licensed engineer.

...
§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing independently of the submittal package of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval thereof.

...
§ 3.12.10 The Contractor shall not be required to provide professional services which constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out. However, the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor Construction Manager shall not be required to provide professional services in violation perform constructability reviews of the proposed design as a component of applicable law-the Construction Manager's services. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed and insured design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The

Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

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§ 3.13.2 Only materials and equipment which are to be used directly in the Work shall be brought to and stored on the project site by the Contractor. After equipment is no longer required for the Work, it shall be promptly removed from the project site. Protection of construction materials and equipment stored at the project site from weather, theft, damage, and all other adversity is solely the responsibility of the Contractor.

§ 3.13.3 The Contractor and any entity for which the Contractor is responsible shall not erect any sign on the Project site without the prior consent of the Owner, which may be withheld in the reasonable discretion of the Owner. If directed by the Owner a sign identifying the project and County Commissioners shall be erected by the Contractor of the project.

§ 3.13.4 Contractor shall ensure that the Work, at all times, is performed in a manner that affords reasonable access, both vehicular and pedestrian by appropriate persons, to the site of the work and all adjacent areas. The Work shall be performed, to the fullest extent reasonably possible, in such a manner that public areas adjacent to the site of the work shall be free from all debris, building materials, and equipment likely to cause hazardous conditions. Without limitation of any other provision of the Contract Documents, Contractor shall use its best efforts to minimize any interference with the occupancy or beneficial use of (1) any areas in building adjacent to the site of the work or (2) the building in the event of partial occupancy as more specifically described in paragraph 9.9.

§ 3.13.5 Without prior approval of the Owner, the Contractor shall not permit any workers to use any existing facilities at the project site, including but not limited to, lavatories, toilets, entrances, and parking areas other than those designated by the Owner. Without limitation of any other provision of the Contract Documents, the Contractor shall use its best efforts to comply with all rules and regulations promulgated by the Owner in connection with the use and occupancy of the project site and the building as amended from time to time. The Contractor shall immediately notify the Owner in writing if during the performance of the Work the Contractor finds compliance with any portion of such rules and regulations to be impracticable, setting forth the problem of such compliance and suggesting alternatives through which the same results intended by such portions of the rules and regulations can be achieved. The Owner may, in the Owner's reasonable discretion, adopt such suggestions, develop new alternatives, or require compliance with the existing requirements of the rules and regulations.

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§ 3.18.1 To the fullest extent permitted by law and to the extent claims, damages, losses or expenses are not covered by Project Management Protective Liability insurance purchased by the Contractor in accordance with Section 11.3, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and its agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, in any way arising out of or resulting from performance of the Work, provided that including any such claim, damage, loss or expense which is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), property, but only to the extent caused by the negligent acts, negligence, recklessness, or omissions-intentional wrongful misconduct of the Contractor, a Subcontractor, anyone directly or indirectly employed or utilized by them in the performance of the construction contract, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder, liable. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 3.18.

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§ 4.2.8 The Architect or Owner will prepare and issue to the Contractor Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Section 7.4.

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~~§ 4.2.10 If the The Owner and Architect agree, the Architect will may provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents-representatives.~~

...
§ 4.2.11 The Architect will interpret and decide matters concerning performance under and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in ~~writing within any time limits agreed upon or otherwise with reasonable promptness-~~ writing within fourteen (14) days. If no agreement is made concerning the time within which interpretations required of the Architect shall be furnished in compliance with this Section 4.2, then delay shall not be recognized on account of failure by the Architect to furnish such interpretations until 15 days after written request is made for them.

...
§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and initial decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, and will not show partiality to either and will not be liable for results of interpretations or decisions so rendered in good faith-either.

...
§ 4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents-INTENTIONALLY LEFT BLANK

...
§ 4.3.1.1 All written claims must specifically detail all facts and issues substantiating the claim, including all schedule impacts, costs, and expenses incurred. Failure to timely comply with the specific requirements of 4.3.1.1 shall constitute a waiver of the time limits on claims identified in 4.3.

...
§ 4.3.2 Time Limits on Claims. Claims by ~~either party-the Contractor~~ must be initiated within 21 days after occurrence of the event giving rise to such Claim ~~or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.~~ Claim. Claims must be initiated by written notice to the Architect and the other party. An additional Claim made after the initial Claim has been implemented by Change Order will not be considered unless submitted in a timely manner.

...
§ 4.3.3 Continuing Contract Performance. Pending final resolution of a Claim ~~except as including mediation or litigation, unless agreed otherwise agreed in writing or as provided in Section 9.7.1 and Article 14,~~ the Contractor shall proceed diligently with performance of the Contract ~~Contract,~~ including that scope of work which may be in dispute, and the Owner shall continue to make payments in accordance with the Contract Documents.

...
§ 4.3.4 Claims for Concealed or Unknown Conditions. If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will may recommend an equitable adjustment in the Contract Sum or Contract Time, or both. Notwithstanding anything herein to the contrary, the Contractors' obligations under 1.2.2 shall control. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall so notify the Owner and Contractor in writing, stating the reasons. Claims by either party in opposition to such determination must be made within 21 days after the Architect has given notice of the decision. If the conditions encountered are materially different, the Contract Sum and Contract Time shall be equitably adjusted, but if the Owner and Contractor cannot agree on an adjustment in the Contract Sum or Contract Time, the adjustment shall be referred to the Architect for initial determination, subject to further proceedings pursuant to Section 4.4.

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§ 4.3.4.1 All claims as provided for in paragraph 4.3.4 shall be made by specific written notice and shall detail all facts and issues substantiating the claim including all costs and expenses incurred or to be incurred.

...
§ 4.3.4.2 No adjustment in the Contract Time or Contract Sum shall be permitted, however, in connection with a concealed or unknown condition which does not differ materially from those conditions disclosed or which reasonably should have been disclosed by the Contractor's (1) prior inspections, tests, reviews, and preconstruction services for the project, or (2) inspections, tests, reviews, and preconstruction services which the Contractor had the reasonable opportunity to make or should have performed in connection with the project.

...
§ 4.3.6.1 All claims as provided for in paragraph 4.3.5 and 4.3.6 shall be made by specific written notice and shall detail all facts and issues substantiating the claim including all costs and expenses incurred or to be incurred.

...
§ 4.3.7.1 If the Contractor wishes to make Claim for an increase in the Contract Time, specific written notice as provided herein defined in paragraph 4.3.1 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay only one Claim is necessary.

...
§ 4.3.7.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction and that the conditions of 8.3.1.1 have been met as measured against the most recent progress schedule.

...
§ 4.3.8 Injury or Damage to Person or Property. If either party to the Contract suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter. If a claim for additional cost or time related to this Claim is asserted, it shall be filed as provided in subparagraphs 4.3.5 through 4.3.6.1 or 4.3.7. The written notice required by paragraph 4.3.8 shall be defined in paragraphs 4.3.1 and 4.3.1.1.

...
§ 4.3.10 Claims for Consequential Damages. The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes:

1 — damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons;
and INTENTIONALLY LEFT BLANK

2 — damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 4.3.10 shall be deemed to preclude an award of liquidated direct damages, when applicable, in accordance with the requirements of the Contract Documents.

...
§ 4.4.1 Decision of Architect. Claims, including those alleging an error or omission by the Architect but excluding those arising under Sections 10.3 through 10.5, shall be referred initially to the Architect for decision. An initial decision by the Architect shall be required as a condition precedent to mediation, arbitration or litigation of all Claims a Claim between the Contractor and Owner arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Architect with no decision having been rendered by the Architect. The Architect will not decide disputes between the Contractor and persons or entities other than the Owner. All references to arbitration in the Contract Documents shall be considered stricken.

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§ 4.4.2 The Architect will review Claims and within ten days of the receipt of the Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from

the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Architect is unable to resolve the Claim if the Architect lacks sufficient information to evaluate the merits of the Claim or if the Architect concludes that, in the Architect's sole discretion, it would be inappropriate for the Architect to resolve the Claim.

...

§ 4.4.5 The Architect will approve or reject Claims by written decision, which shall state the reasons therefor and which shall notify the parties of any change in the Contract Sum or Contract Time or both. The approval or rejection of a Claim by the Architect shall be final and binding on the ~~parties but subject to mediation and arbitration parties.~~

...

§ 4.4.6 When a written decision of the Architect states that (1) the decision is final ~~but subject to mediation and arbitration~~ and (2) a demand for ~~arbitration mediation~~ of a Claim covered by such decision must be made within 30 days after the date on which the party making the demand receives the final written decision, then failure to demand ~~arbitration mediation~~ within said 30 days' period shall result in the Architect's decision becoming final and binding upon the Owner and Contractor. If the Architect renders a decision after ~~arbitration mediation or litigation~~ proceedings have been initiated, such decision may be entered as evidence, but shall not supersede ~~arbitration mediation or litigation~~ proceedings unless the decision is acceptable to all parties concerned.

...

§ 4.4.7 Upon receipt of a Claim against the ~~The~~ Contractor or at any time thereafter, ~~the Architect or the Owner may, but is not obligated to, to~~ notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Architect or the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

...

§ 4.4.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the Claim by the Architect, by mediation or by ~~arbitration litigation.~~

...

§ 4.5.1 Any Claim arising out of or related to the Contract, except Claims relating to aesthetic effect and except those waived as provided for in Sections 4.3.10, 9.10.4 and 9.10.5 shall, after initial decision by the Architect or 30 days after submission of the Claim to the Architect, be subject to mediation as a condition precedent to ~~arbitration or~~ the institution of legal or equitable proceedings by either party. In the event of any mediation, the mediator shall be selected by mutual agreement of the parties.

...

§ 4.5.2 ~~The parties shall endeavor to resolve their Claims 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 the Contract and with the American Arbitration Association. The request may be made concurrently with the filing of a demand for arbitration but, in such event, mediation shall proceed in advance of arbitration or legal or equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.~~

...

§ 4.6 ARBITRATION MEDIATION

...

§ 4.6.1 Any Claim ~~claim~~ arising out of or related to the Contract, ~~except Claims relating to aesthetic effect and except those waived as provided for in Sections 4.3.10, 9.10.4 and 9.10.5, Contract~~ shall, after decision by the Architect or 30 days after submission of the Claim to the Architect, be subject to arbitration. Prior mediation as a condition precedent to arbitration, the institution of legal or equitable proceedings by either party. § 4.6.2 The parties shall endeavor to resolve disputes their Claims 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 the Contract. The mediation shall proceed in advance of legal or equitable proceedings, which shall be stayed pending mediation for a period of sixty (60) days from the provisions date of filing, unless stayed for a longer period by agreement of Section 4.5 the parties or court order. § 4.6.3 The parties shall share the mediator's fee and any filing fees equally. 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.

~~§ 4.6.2~~ Claims not resolved by mediation shall be decided by arbitration which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect. The demand for arbitration shall be filed in writing with the other party to the Contract and with the American Arbitration Association, and a copy shall be filed with the Architect.

~~§ 4.6.3~~ A demand for arbitration shall be made within the time limits specified in Sections 4.4.6 and 4.6.1 as applicable, and in other cases within a reasonable time after the Claim has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitations as determined pursuant to Section 13.7.

~~§ 4.6.4~~ Limitation on Consolidation or Joinder. No arbitration arising out of or relating to the Contract shall include, by consolidation or joinder or in any other manner, the Architect, the Architect's employees or consultants, except by written consent containing specific reference to the Agreement and signed by the Architect, Owner, Contractor and any other person or entity sought to be joined. No arbitration shall include, by consolidation or joinder or in any other manner, parties other than the Owner, Contractor, a separate contractor as described in Article 6 and other persons substantially involved in a common question of fact or law whose presence is required if complete relief is to be accorded in arbitration. No person or entity other than the Owner, Contractor or a separate contractor as described in Article 6 shall be included as an original third party or additional third party to an arbitration whose interest or responsibility is insubstantial. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of a Claim not described therein or with a person or entity not named or described therein. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

~~§ 4.6.5~~ Claims and Timely Assertion of Claims. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

~~§ 4.6.6~~ Judgment on Final Award. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

~~§ 5.2.1~~ Unless otherwise stated in Notwithstanding anything contained herein to the Contract Documents or contrary, the bidding requirements, Owner shall maintain the Contractor, as soon as practicable after award of the Contract, shall furnish in writing right to require the Owner through the Architect the names of persons or entities (including those who are Contractor to furnish materials or equipment fabricated to replace a special design) proposed for each principal portion of the Work. The Architect will promptly reply to Subcontractor with which the Contractor in writing stating whether or not the Owner or the Architect, after due investigation, has reasonable objection to any such proposed person or entity. Failure of the Owner or Architect to reply promptly shall constitute notice of no reasonable objection.

~~§ 5.2.2~~ The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

~~§ 5.2.3~~ If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If The Contract Sum shall be increased by the lesser of the following: (1) the difference between the subcontract amount proposed but rejected Subcontractor was reasonably capable of performing by the Work, person or entity recommended by the Contract Sum Contractor and Contract Time shall be increased the subcontract amount proposed by the person or entity accepted or decreased designated by the Owner; (2) the amount by which the difference, if any, occasioned subcontract amount proposed by such change, the person or entity accepted and an appropriate Change Order shall be issued before commencement designated by the Owner exceeds the amount set forth in the Schedule of Values which is applicable to the substitute Subcontractor's Work. Work covered by such subcontract. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.3.1 By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the ~~Owner and Architect.~~ Owner. Each subcontract agreement shall preserve and protect the rights of the ~~Owner and Architect~~ under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement which may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

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§ 5.4.2 ~~Upon such assignment, if~~ If the Work in connection with a subcontract has been suspended for more than 30 days, that thirty (30) days after termination of the Contract by the Owner pursuant to paragraph 14.2 and the Owner chooses to accept assignment of such subcontract, the Subcontractor's compensation shall be equitably adjusted for increases any increase in cost resulting from direct costs incurred by such Subcontractor as a result of the suspension beyond the suspension-thirty (30) day period.

§ 5.4.3 Each subcontract shall specifically provide that the Owner shall only be responsible to the Subcontractor for those obligations of the Contractor that accrue subsequent to the Owner's exercise of any rights under this conditional assignment.

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts including subcontractors currently on the Project in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Section 4.3.

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§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work. Except as permitted in paragraph 7.3 and Paragraph 9.7.2, a change in the Contract Sum or Contract Time shall be accomplished only by Change Order. Accordingly, no course of conduct nor dealings between the parties, no express or implied acceptance of alterations or additions to the Work, and no claim that the Owner has been unjustly enriched by any alteration or addition to the Work, whether or not there is, in fact, any unjust enrichment to the Work, shall be the basis of claim to any increase in any amounts due under the Contract Documents or a change in any time period provided for in the Contract Documents.

§ 7.1.4 In subparagraph 7.1.3 the allowance for all home and field office overhead and profit combined included in the total cost to the Owner shall be limited to fifteen (15%) percent pursuant to the following schedule:

1. For the Contractor, for work performed by the Contractor's own forces, fifteen (15%) percent of the cost of the work.

2. For the Contractor, for work performed by the Contractor's Subcontractor (at any tier), five (5%) percent of the amount due the Subcontractor.

3. For each Subcontractor who performs work with its own forces, ten (10 %) percent.

.4 For each Subcontractor, not performing work with its own forces, five (5%) percent.

...
All costs associated with field supervision, layout, as-builts, estimating, and related items shall be included in the applicable percentage for overhead and profit referenced above.

...
All quotations and proposals shall be in sufficient detail and itemization of labor, materials, and equipment to allow the Owner to verify the reasonableness of the costs proposed. Subcontractors' and Sub-subcontractors' quotes, at all tiers, shall be disclosed on their company's particular letterhead or quote form and signed by an officer of that company.

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All overhead and profit for such change order work shall be in lieu of and not in addition to the Construction Manager's fee for the Project.

...
§ 7.2.3 Agreement on any Change Order shall constitute a final settlement and full accord and satisfaction of all matters by the Contractor relating to the change directly or indirectly changed or unchanged in the Work which is the subject of the Change Order, including, but not limited to, all direct and indirect costs associated with such change and any and all adjustments to the Contract Sum and the construction schedule. In the event a Change Order increases the Contract Sum, Contractor shall include the Work covered by such Change Orders in Applications for Payment as if such Work were originally part of the Contract Documents.

...
§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order. The Contractor, pursuant to the terms of Article 7.3 shall upon receipt of a Construction Change Directive proceed without delay with the change in the Work governed by the Construction Change Directive. However, notwithstanding anything contained within this Contract to the contrary, the Owner shall not be required to make payment of the disputed amount to the Contractor for the Work covered by the Construction Change Directive until such time as the terms of the Construction Change Directive have been finalized and incorporated into an executed Change Order. Any undisputed sums shall be paid by the County.

...
§ 7.3.4 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed without delay with the change in the Work involved and as soon as practical advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

...
§ 7.3.5 A Construction Change Directive signed by the Contractor indicates the agreement of the Contractor therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall become effective immediately and shall be recorded as only upon execution of a Change Order.

...
§ 7.3.6 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall be determined by the Architect on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, a reasonable allowance for overhead and profit, profit as specified in paragraph 7.1.4. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.6 shall be limited to the following:

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- .4 costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .5 additional costs of supervision and field office personnel directly attributable to the change Work.

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§ 8.2.4 When the Contractor proposes to schedule work on Saturdays and Sundays or legal holidays, written notification shall be given to the Architect and Owner within forty-eight (48) hours prior to that date. The Owner

shall not be liable for schedule increases or damages resulting from any conflicts which the Contractor may encounter with activities while performing night or weekend work unless the Work was directed by the County.

...
§ 8.2.5 The Contractor shall furnish adequate forces, construction plant and equipment, and shall work such hours, including night shifts, overtime operations, and Sunday and holiday work as may be necessary to insure the prosecution of the Work in accordance with the approved progress Schedule and updates. If progress falls behind that which is required in the Project Schedule, due to the fault of the Contractor, the Contractor shall take such steps as may be necessary to improve its progress, and the Owner may require the Contractor to increase the number of shifts and/or overtime operations, day of work and/or the amount of construction plant, all without additional cost to the Owner under this Contract. Failure of the Contractor to comply with this provision shall be grounds for termination of the Contract by the Owner in accordance with Paragraph 14.2. Direction from the Owner under this provision shall not be construed by the Contractor as acceleration.

...
§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner, or by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control, or by delay authorized by the Owner pending mediation and arbitration, Owner, or by other causes which the Architect determines may justify delay, then the Contract Time shall be extended by Change Order to the extent such delay will prevent the Contractor from achieving Substantial Completion within the Contract Time and if the performance of the Work is not, was not, or would not have been delayed by any other cause for which the Contractor is not entitled to an extension in the Contract Time under the Contract Documents. The Contractor further acknowledges and agrees that adjustments in the Contract Time will be permitted for a delay only to the extent such reasonable time as delay (1) is not caused, or could not have been reasonably anticipated, by the Contractor, or (2) could not be limited or avoided by the Contractor's timely notice to the Owner of the Architect may determine delay and (3) is of a duration not less than one (1) day.

...
§ 8.3.1.1 In addition to the requirements of 4.3.7.2, extensions of time will be granted for rain or bad weather, only when such rain or bad weather is in excess of the ten year average for such days as published by the National Oceanic and Atmospheric Administration, Asheville, North Carolina for Metropolitan Orlando, Florida Reporting Station. Otherwise, the Contractor's schedule shall allow the number of days it deems necessary for rain and bad weather when the Contractor prepares its schedule. Contractor and Owner acknowledge that any Project site rain gauge measurements will not be relied upon for determining rain fall amounts.

...
§ 8.3.1.2 Contractor acknowledges that under no circumstances shall weather delays be compensable delays.

...
§ 8.3.1.3 Extensions of time will be granted only to the extent that equitable time adjustments for activity or activities affected exceed the total float or slack associated with those activities at the time the direction to proceed was issued for the change. The Contractor acknowledges and agrees that delays in activities which do not affect any milestone completion dates shown on the network at the time of the delay shall not be a basis for granting a time extension.

...
§ 8.3.3 This Section 8.3 does not preclude recovery. If the Contractor submits a progress report indicating, or otherwise expresses an intention to achieve, completion of damages for delay the work prior to any completion date required by either party under other provisions the Contract Documents or expiration of the Contract Documents Time, no liability of the Owner to the Contractor for any failure of the Contractor to so complete the Work shall be created or implied.

...
§ 8.3.4 Notwithstanding anything to the contrary in the Contract Documents, an extension in the Contract Time, to the extent permitted under paragraph 8.3.1, shall be the sole remedy of the Contractor for any (1) delay in the commencement, prosecution, or completion of the Work, (2) hindrance or obstruction in the performance of the Work, (3) loss of productivity, or (4) other similar claims (collectively referred to in this paragraph 8.3.4 as Delays) whether or not such Delays are foreseeable, unless a Delay is caused by acts of the Owner. When Delays are caused by the acts of the Owner which impact the Critical Path, the Owner will be liable for the Contractor's compensable field office overhead only. In no event shall the Contractor be entitled to any compensation or recovery of any damages, in connection with any Delay, including, without limitation, consequential damages, lost opportunity costs, impact damages or other similar remuneration. The Owner's exercise of any of its rights or remedies under

the Contract Documents regardless of the extent or frequency of the Owner's exercise of such rights or remedies, shall not be construed as active interference with the Contractor's performance of the Work.

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§ 9.2.1 Before Upon full execution of Amendment 1 establishing the first Application for Payment, GMP, the Contractor shall submit to the Architect-OWNER a schedule of values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to when approved by the Architect, OWNER, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 9.2.2 The work items listed in the Schedule of Values shall relate directly to the items in the progress Schedule required in subparagraph 3.10.4. The Schedule of Values shall be arranged to conform with CSI Mater Format for Divisions and Sections, with each item containing overhead and profit. The Contractor and each Subcontractor shall prepare a trade payment breakdown for the Work for which each is responsible, such breakdown being submitted on a uniform standardized form approved by the Architect and Owner. The form shall be divided in detail sufficient to exhibit areas, floors and/or sections of the Work, and/or by convenient units and shall be updated as reasonably required by either the Owner or the Architect as necessary to reflect (1) description of Work (listing labor and materials separately), (2) total value, (3) percent of the Work completed to date, (4) value of the Work completed to date, (5) percent of previous amount billed, (6) previous amount billed, (7) current percent complete, and (8) value of the Work completed to date. Any trade breakdown which fails to include sufficient detail, is unbalanced or exhibits "front-loading" of the value of the Work shall be rejected. If trade breakdown had been initially approved and subsequently used, but later found improper for any reason, sufficient funds shall be withheld from future Applications for Payment to ensure an adequate reserve (exclusive of normal retainage) to complete the Work.

§ 9.3.1.1 As provided in Section 7.3.8, such applications may include requests for payment on account of changes in the Work which have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders. INTENTIONALLY LEFT BLANK

§ 9.3.1.2 Such applications may not include requests for payment for portions of the Work for which the Contractor does not intend to pay to a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay supplier because of a dispute or other reason.

§ 9.3.1.3 Each Application for Payment shall be accompanied by the following, all in form and substance satisfactory to the Owner:

1. a current Contractor's lien waiver and duly executed and acknowledged sworn statement showing all Subcontractors and materialmen with whom the Contractor has entered into subcontracts, the amount of each subcontract, the amount requested for any Subcontractor and materialmen in the requested progress payment and the amount to be paid to the Contractor from such progress payment, together with similar sworn statements from all such Subcontractors and materialmen;

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2. duly executed waivers of mechanics' and materialmen's liens from all Subcontractors and, when appropriate, from materialmen and lower tier Subcontractors establishing payment or satisfaction of payment of all amounts requested by the Contractor on behalf of such entities or persons in any previous Application for Payment;

3. all information and materials required to comply with the requirements of the Contract Documents, including but not limited to as-built drawings, or reasonably requested by the Owner or the Architect.

These submissions of an Application for Payment signed by the Contractor shall constitute the Contractor's certification that all undisputed invoices and amounts due to suppliers and Subcontractors have been paid by the Contractor.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance

by ~~At the Owner, Owner's discretion, partial~~ payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon by ~~the Owner and Architect~~ in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

...
§ 9.3.2.1 The aggregate cost of materials stored off site shall not exceed \$250,000 at any time without the prior written approval of the Owner which shall not be unreasonably withheld.

...
§ 9.3.2.2 Title to such materials shall be vested in the Owner, as evidenced by documentation reasonably satisfactory in form and substance to the Owner including, without limitation, recorded financing statements, UCC filings, and UCC searches.

...
§ 9.3.2.3 With each Application for Payment, the Contractor shall submit to the Owner a written list identifying each location where materials are stored off the Project site and the value of materials at each location. The Contractor shall procure insurance reasonably satisfactory to the Owner for materials stored off the Project site in an amount not less than the total value thereof.

...
§ 9.3.2.4 the consent of any surety shall be obtained by the Contractor to the extent required prior to payment for any materials stored off the Project site.

...
§ 9.3.2.5 Representatives of the Owner shall have the right to make reasonable inspections of the storage areas at any time.

...
§ 9.3.2.6 Such materials shall be protected from diversion, destruction, theft, and damage, specifically marked for Project use and segregated from other materials at the storage facility consistent with the use of the materials.

...
§ 9.4.1 The Architect will, within seven-three (3) days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

...
§ 9.4.1.1 The surety will include on the bond form the cost of the Performance and Payment Bond.

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...
§ 9.4.1.2 The actual cost of the Performance and Payment Bond shall be stated as a project percentage when determining the cost for additive change orders.

...
§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data comprising the Application for Payment, that the Work has progressed to the point indicated and that, to the best of the Architect's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, or (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

...
§ 9.4.3 If the Contractor has submitted a timely Application for Payment in accordance with this Article, payment may be expected within forty-five (45) days of the receipt of the approved application. Payment for an application reducing or releasing retainage may exceed this duration. Notwithstanding anything else contained herein to the

contrary, Final Payment shall not be due to the Contractor prior to the expiration of sixty (60) days from the date of receipt of the Contractor's approved application for payment.

...
§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss ~~resulting from acts and omissions described in Section 3.3.2,~~ because of:

...
2. third party and any notices of non-payment claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to until such time the Owner is Contractor has provided by the Contractor; Owner with a written acknowledgement from its surety accounting for release of such funds;

...
7. persistent failure to carry out the Work or administrative requirement in accordance with the Contract Documents. Documents, which failure substantially prejudices Owner.

...
§ 9.5.2 When the above reasons for withholding certification are removed, remedied by the Contractor, certification will be made for amounts previously withheld.

...
§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect herein.

...
§ 9.6.2 The Contractor shall promptly pay each Subcontractor, upon receipt of payment from the Owner, out of the amount paid to the Contractor on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of such Subcontractor's portion of the Work. The Contractor shall, by appropriate similar agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

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...
§ 9.6.3 The Architect or Owner will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor. Subcontractor as reflected in the Contractor's Schedule of Values.

...
§ 9.6.4 Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor except as may otherwise be required by law. Subcontractor.

...
§ 9.7.1 If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven forty-five (45) days after the date established receipt, except as provided in the Contract Documents paragraph 9.4.3, the amount certified by the Architect or awarded by arbitration, Architect, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

...
§ 9.7.1.2. If the Owner is entitled to reimbursement or payment from the Contractor under or pursuant to the Contract Documents, such payment shall be made promptly upon demand by the Owner. Notwithstanding anything contained in the Contract Documents to the contrary, if the Contractor fails to promptly make any payment due the Owner, or the Owner incurs any costs and expenses to cure any default of the Contractor or to correct defective Work, the Owner may offset such amount against the Contract Sum and may, in the Owner's reasonable discretion,

elect either to: (1) deduct an amount equal to that which the Owner is entitled from any payment then or thereafter due the Contractor from the Owner, or (2) issue a written notice to the Contractor reducing the Contract Sum by an amount equal to that which the Owner is entitled.

...
§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents and as certified by the Architect so that the Owner can occupy or utilize the Work for its intended use.

...
§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

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§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying and issued simultaneously with the Certificate which shall identify all non-conforming, defective and incomplete Work and establish the Certificate date of commencement of warranties in connection with any such Work. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion. The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate.

...
§ 9.8.5 The Upon Construction Manager's completion of all items on the list accompanying and issued simultaneously with the Architect's Certificate of Substantial Completion shall be submitted Completion, the Construction Manager may submit a payment request for all remaining retainage withheld by the Owner. If a good faith dispute exists as to whether one or more items identified on the Owner and Contractor for their written acceptance of responsibilities assigned list have been completed pursuant to them in such Certificate. Upon such acceptance and consent of surety, if any, this Contract, the Owner shall make payment of retainage applying may continue to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or withhold an amount not in accordance with the requirements to exceed one-hundred fifty (150) percent of the Contract Documents total costs to complete such items.

...
§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment-payment, (5) as-builts, and ~~(5), (6)~~, if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

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~~§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.~~

~~...~~
§ 9.10.3.1 The Contractor shall submit with its final Application for Payment a Contractors Affidavit of Payment of Debts and Claims AIA Document G706, Contractors Affidavit of Release of Liens AIA Document G706A, and Consent of Surety AIA Document G707.
~~...~~

~~...~~
§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from INTENTIONALLY LEFT BLANK
~~...~~

- ~~1~~ — ~~liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;~~
- ~~2~~ — ~~failure of the Work to comply with the requirements of the Contract Documents; or~~
- ~~3~~ — ~~terms of special warranties required by the Contract Documents.~~

~~...~~
§ 9.11 The Owner will suffer damages if the Project is not Substantially and Finally Complete on the dates set forth in the Contract Documents. The Contractor (and Contractor's Surety) shall be liable for and shall pay to the Owner the fixed sum of \$ _____, agreed as liquidated damages for each calendar day of delay until the Work is Substantially and Finally Complete. The Owner and Contractor agree that the daily sum fixed herein as liquidated damages is not to be construed as a penalty, but instead is the parties' best estimate as to the daily damages which the Owner will incur at the time of execution of the Contract.
~~...~~

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~~...~~
§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel. When use or storage of explosives or other hazardous materials or equipment or unusual construction methods are necessary, the Contractor shall give the Owner and the Architect reasonable advance notice.
~~...~~

~~...~~
§ 10.2.8 When all or a portion of the Work is suspended for any reason, the Contractor shall securely fasten down all coverings and protect the Work, as necessary, from damage by any cause.
~~...~~

~~...~~
§ 10.2.9 The Contractor shall promptly report in writing to the Owner and Architect all accidents arising out of or in connection with the Work which cause death, personal injury, or property damage.
~~...~~

~~...~~
§ 10.3.1 If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a Unless provided elsewhere in the Contract Documents, in the event the Contractor encounters on the site material or substance, including but not limited to reasonably believed to be asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, (PCB) which has not been rendered harmless, the Contractor shall, upon recognizing the condition, shall immediately stop Work in the affected area and report the condition to the Owner and Architect in writing.
~~...~~

~~...~~
§ 10.3.2 The Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to verify that it has been rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall
~~...~~

propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. The Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut down, delay and start-up, which adjustments shall be accomplished as provided in Article 7.

...
§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) and provided that such damage, loss or expense is not due to the sole negligence of a party seeking indemnity. INTENTIONALLY LEFT BLANK

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§ 11.1.1 The Notwithstanding anything in here to the contrary, the Owner reserves the right to purchase a wrap-up insurance policy for the Project in lieu of the requirements outlined herein. Unless the Owner purchases a wrap-up insurance policy, the Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- ... 7. claims for bodily injury or property damage arising out of completed operations; and
- ... 8. claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.3.18;
- ... 9. Contractor's Liability Insurance shall include all major divisions of coverage and be on a comprehensive basis including, without limitation:
 - ... a. Premises Operation (including X-C/U as applicable);
 - ... b. Independent Contractor's Operations;
 - ... c. Products and Completed Operations;
 - ... d. Personal Injury Liability with Employment Exclusive deleted;
 - ... e. Contractual including specified provision for Contractor's obligation under 3.18;
 - ... f. Owner, non-owned and hired motor vehicles;
 - ... g. Broad Form Property Damage including Completed Operations; and
 - ... h. Umbrella Excess Liability.

... 10. Claims for property damage or other damage traditionally covered by Builder's Risk Insurance, including flood and windstorm damage.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from date of commencement of the Work until date of final payment and termination of any coverage required to be maintained after final payment.

.7 Builder's Risk Insurance covering 100% of the value of the completed Work performed under this Contract.

...
§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work. These certificates and the insurance policies required by this Section ~~11.1~~ shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment as required by Section 9.10.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness in accordance with the Contractor's information and belief.

...
§ 11.1.4 The Contractor shall furnish one copy of each Certificate of Insurance herein required for each copy of the Agreement which shall specifically set forth evidence of coverage required by Subparagraphs 11.1.1, 11.1.2, and 11.1.3. The Contractor shall furnish to the Owner copies of any endorsements that are subsequently issued amending coverage or limits.

...
§ 11.1.5 The Owner shall be an additional insured with the Contractor in the Contractor's liability insurance.

...
§ 11.3 PROJECT MANAGEMENT PROTECTIVE LIABILITY INSURANCE

~~§ 11.3.1~~ Optionally, the Owner may require the Contractor to purchase and maintain Project Management Protective Liability insurance from the Contractor's usual sources as primary coverage for the Owner's, Contractor's and Architect's vicarious liability for construction operations under the Contract. Unless otherwise required by the Contract Documents, the Owner shall reimburse the Contractor by increasing the Contract Sum to pay the cost of purchasing and maintaining such optional insurance coverage, and the Contractor shall not be responsible for purchasing any other liability insurance on behalf of the Owner. The minimum limits of liability purchased with such coverage shall be equal to the aggregate of the limits required for Contractor's Liability Insurance under Sections ~~11.1.1.2, through 11.1.1.5.~~

~~§ 11.3.2~~ To the extent damages are covered by Project Management Protective Liability insurance, the Owner, Contractor and Architect waive all rights against each other for damages, except such rights as they may have to the proceeds of such insurance. The policy shall provide for such waivers of subrogation by endorsement or otherwise. INTENTIONALLY LEFT BLANK

...
~~§ 11.3.3~~ The Owner shall not require the Contractor to include the Owner, Architect or other persons or entities as additional insureds on the Contractor's Liability Insurance coverage under Section 11.1.

...
§ 11.4.1 Unless otherwise provided, the Owner Contractor shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.4 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

...
§ 11.4.1.1 Property insurance provided by the Contractor shall be on an "all-risk" replacement value or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss. The form of policy for this coverage shall be the full insurable value of the property.

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§ 11.4.1.2 If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance which will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto. INTENTIONALLY LEFT BLANK

...
§ 11.4.1.3 If the property insurance requires deductibles, the Owner-Contractor shall pay costs not covered because of such deductibles.

...
§ 11.4.1.5 Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance. INTENTIONALLY LEFT BLANK

...
§ 11.4.2 Boiler and Machinery Insurance. The Owner-Contractor shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

...
§ 11.4.3 Loss of Use Insurance. The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused. INTENTIONALLY LEFT BLANK

...
§ 11.4.3.1 Any specific provisions contained within the Contract Documents addressing the subject matter of paragraph 11.4.3 shall supersede the Owner's waiver contained within 11.4.3.

...
§ 11.4.4 If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order. INTENTIONALLY LEFT BLANK

...
§ 11.4.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.4.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise. INTENTIONALLY LEFT BLANK

...
§ 11.4.6 Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by this Section 11.4. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor. INTENTIONALLY LEFT BLANK

...
§ 11.4.7 Waivers of Subrogation. The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.4 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where

legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged. INTENTIONALLY LEFT BLANK

...
§ 11.4.8 A loss insured under Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.4.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

§ 11.4.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or in accordance with an arbitration award in which case the procedure shall be as provided in Section 4.6. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

§ 11.4.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved as provided in Sections 4.5 and 4.6. The Owner as fiduciary shall, in the case of arbitration, make settlement with insurers in accordance with directions of the arbitrators. If distribution of insurance proceeds by arbitration is required, the arbitrators will direct such distribution.

...
§ 11.5.1 The Owner shall have the right to require the Contractor or any Subcontractor 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 execution of the Contract.

...
§ 12.1.1 If a portion of the Work is covered contrary to the Architect's or Owner's request or to requirements specifically expressed in the Contract Documents, it must, if required in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

...
§ 12.1.2 If a portion of the Work has been covered which the Architect has not specifically requested to examine prior to its being covered, the Architect and Owner together may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

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§ 12.2.1.1 The Contractor shall promptly correct Work rejected by the Architect or Owner or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections and compensation for the Architect's services and expenses made necessary thereby, thereby. If prior to the date of Substantial Completion, the contractor, a Subcontractor or anyone for whom either is responsible uses or damages any portion of the Work, including, without limitation, mechanical, electrical, plumbing and other mechanical device, the contractor shall cause such item to be restored to "like new" condition at no expense to the Contractor's expense. Owner.

...
§ 12.2.2 If, within one year after the date of Substantial Completion of the Work or designated portion thereof, or by terms of an applicable warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of

such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

...
§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

...
§ 12.2.2.1 The obligations under Paragraph 12.2 shall cover any repairs and replacement to any part of the Work or other property caused by the defective Work.

...
§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work.

§ 12.2.2.2 Upon completion of any Work under or pursuant to Paragraph 12.1 the correction period in connection with the Work requiring correction shall be extended for a period of 120 days or through the original warranty period, whichever is longer.

...
§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective with respect to portions of Work first performed after Substantial Completion by the Contractor pursuant to this Section 12.2. period of time between Substantial Completion and the actual performance of the Work.

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§ 13.1.1 The Contract shall be governed by the law of the State of Florida. The sole and exclusive venue for initiating any legal proceeding concerning the terms of the Contract or the place where Work performed pursuant thereto shall be in the Project is located appropriate state court in Seminole County, Florida.

...
§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to an institutional lender providing construction financing for the Project. In such event, the lender shall assume the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment. INTENTIONALLY LEFT BLANK

...
§ 13.4.1 Duties Except as expressly provided in the Contract Documents, duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

...
§ 13.5.1 Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time, as required. Testing and balancing of all mechanical system is specifically required herein. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections or approvals which do not become requirements until after bids are received or negotiations concluded. The Contractor shall not obligate the Owner for costs without the Architect's approval.

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense. The Contractor also agrees that the cost of testing services required for the convenience of the Contractor in his scheduling and performance of the Work, and the cost of testing services related to remedial operations performed to correct deficiencies in the Work shall be borne by the Contractor.

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§ 13.6.1 Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located. INTENTIONALLY LEFT BLANK

- ... 3 because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- ... 4 the Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less. INTENTIONALLY LEFT BLANK

§ 14.1.3 If one of the above reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead, profit and damages-damages only for such executed work. The Contractor shall not receive lost anticipated profit.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days or if repeated suspensions, delays or interruptions by the Owner as described in Paragraph 14.3 constitute in the aggregate the lesser of an amount to the Contract Time or 120 days in any one (1) year period through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has persistently failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

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- ... 5 breaches any warranty made by the Contractor under or pursuant to the Contract Documents.
- ... 6 fails to furnish the Owner with assurances reasonably satisfactory to the Owner evidencing the Contractor's ability to complete the Work in compliance with all the requirements of the Contract Documents;
- ... 7 fails after commencement of the Work to proceed continuously with the construction and completion of the Work for more than ten (10) days except as permitted under the Contract Documents.

§ 14.2.2 When any of the above reasons exist, the Owner, upon certification by the Architect that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, _____, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 16:07:29 on 05/01/2006 under Order No. 1000202098_1 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ – 1997 - General Conditions of the Contract for Construction, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)

Amendment #1

RFP-0613-06/TLR

Construction Manager at Risk (CM/GC) Seminole County Jail Expansion

TBD & incorporated after award

Amendment No. 1 to Agreement Between Owner and Construction Manager

Pursuant to Paragraph 2.2 of the Agreement, dated between (Owner) and (Construction Manager), for (the Project), the Owner and Construction Manager establish a Guaranteed Maximum Price and Contract Time for the Work as set forth below.

**ARTICLE I
GUARANTEED MAXIMUM PRICE**

The Construction Manager's Guaranteed Maximum Price for the Work, including the estimated Cost of the Work as defined in Article 6 and the Construction Manager's Fee as defined in Article 5, is Dollars (\$).

This Price is for the performance of the Work in accordance with the Contract Documents listed and attached to this Amendment and marked Exhibits A through L, as follows:

- Exhibit A Drawings, Specifications, addenda and General, Supplementary and other Conditions of the Contract on which the Guaranteed Maximum Price is based, pages through , dated .
- Exhibit B Allowance items, pages through , dated .
- Exhibit C Assumptions and clarifications made in preparing the Guaranteed Maximum Price, pages through , dated .
- Exhibit D Completion schedule, pages through , dated .
- Exhibit E Alternate prices, pages through , dated .
- Exhibit F Unit prices, pages through , dated .

- Insert O: Exhibit G Owner/Construction Manager Tax Savings Agreement
- Insert P: Exhibit H Construction Manager lien waiver form
- Insert Q: Exhibit I Subcontractor/Supplier lien waiver form
- Insert R: Exhibit J Construction Manager Certificate of Insurance
- Insert S: Exhibit K Owner's Youth Apprenticeship Vertical Construction Program
- Insert T: Exhibit L Construction Manager's Key Personnel List

**ARTICLE II
CONTRACT TIME**

The date of Substantial Completion established by this Amendment is:

OWNER	CONSTRUCTION MANAGER
(Signature)	(Signature)
(Printed Name and Title)	(Printed Name and Title)

OWNER DIRECT PURCHASE AGREEMENT
EXHIBIT "G"

Agreement between _____ hereinafter called the "Construction Manager" and Seminole County, Florida, herein called "Owner".

RECITALS

1. Construction Manager and Owner entered into a contract, "Contract", dated _____, 2000, for the performance of the work described therein, this Agreement herein attached as a Contract Document identified as Exhibit "G".
2. Construction Manager and Owner desire to enter into an arrangement whereby certain purchases under the Contract can be made through an "Owner Direct Purchase Program" as a means of taking advantage of its tax exempt status. All monies which would have been payable as taxes if not for Owner Direct Purchase under this Agreement, will inure to the benefit of the Owner.
3. Owner's direct purchase of materials will not limit the Construction Manager's responsibility for obtaining the Materials, or installation, coordination, storage, protection, warranty, etc. of the Materials as described herein and in the plans and specifications of the Contract.
4. The Construction Manager will notify the Owner's Representative or its Designee of each item of Materials required for the Project which the Construction Manager recommends be direct purchased. Upon approval by Owner of such Materials, they will be reduced to a list which will comprise Materials to be direct purchased by the Owner. The specific procedures for purchasing such Materials are outlined below as part of this Agreement.

AGREEMENT

1. Owner does hereby appoint the Construction Manager as Agent for Owner to purchase for and in the name of Seminole County, Florida, equipment, materials, and supplies required for performance of Work that Owner has approved. This authority is granted only to the extent that the Construction Manager may use purchase orders, issued and executed by the Owner or its designee, to procure items on behalf of Owner. The purchase of any materials, supplies, or other items which are not required for performance of the Work are expressly made outside the authority granted hereunder.
2. Owner will be liable for the payment of all purchases made hereunder, subject to the terms of this Agreement and the Project's Contract Documents.

3. Construction Manager shall require the Subcontractors to comply with the procedures outlined herein and shall incorporate such procedures into its Subcontract agreements by reference.
4. Administrative costs incurred by the Construction Manager in administering Material purchases in the name of the Owner shall be considered to be included in the Cost of the Work of the Construction Manager's Contract. No addition shall be added to the Construction Manager's Fee because of the service provided by the Construction Manager in the purchase of Materials in the name of the Owner.
5. The administration of the sales and use tax savings will be in accordance with the agreements and forms bound herein and the procedure will be administered by Construction Manager. Three (3) copies of the Invoice Summary with attached invoices will be forwarded to Seminole County's Representative for payment.
6. The Construction Manager, notwithstanding Owner Purchase Materials arrangement, shall select, describe, order, obtain approvals, submit samples, coordinate, process, prepare shop drawings, receive, inspect, and store all materials.
7. Construction Manager shall maintain accounting records for all transactions carried out under the authority to Owner as its Agent. Such records shall be open to for review by Owner during normal business hours of Construction Manager.

Seminole County, Florida

Seminole County, Florida

By: _____

By: _____

Title: _____

Title: _____

PROCEDURES

- A. Upon receipt of the written notification from Construction Manager that an item is ready to be direct purchased, the Owner's Representative will notify the Construction Manager in writing within forty-eight (48) hours, exclusive of weekends or holidays, whether Owner will accept such direct purchase of Materials.
- B. When a Material Purchase for the Project is accepted by the Owner, the Construction Manager shall prepare a Material Requisition Form acceptable to Owner, which specifically identifies the Materials which Owner has elected to purchase directly.
- C. If the Owner consents to purchase Materials directly, the Owner shall promptly issue the original Purchase Order for same. Construction Manager shall deliver Purchase Order to Subcontractor or Vendor. The Purchase Order shall require (1) that the Subcontractor or Vendor provides the required shipping, (2) that the Subcontractor or Vendor provide the required shipping and handling insurance, and (3) delivery of the Owner Purchased Materials on the delivery dates provided by the Construction Manager in the Material Requisition.
- D. The Construction Manager shall be bound by the obligations and responsibilities set forth in the Contract Documents. The Construction Manager shall be responsible for all matters relating to the receipt of Owner Purchased Materials under these Procedures and the Contract Documents, including, but not limited to, preparation of shop drawings and submittals, verifying correct quantities, verifying documents of orders in a timely manner, coordinating purchases, providing and obtaining all warranties and guarantees required by the Contract Documents, inspection and acceptance of the Materials at the time of delivery, loading orientation, and other arrangements normally required by the Construction Manager for the Materials furnished. The Construction Manager shall provide all services required for the unloading, handling and storage of Materials through installation.
- E. The Construction Manager shall insure that Owner Purchased Materials conform to the specifications, and determine prior to incorporation into the Work, if such Materials are patently defective, and whether such Materials are identical to the Material ordered and match the description on the Bill of Lading. As Owner Direct Purchased Materials are delivered to the Project Site, the Construction Manager shall inspect all shipments from the suppliers, and if in conformance with the Purchase Order, approve the Subcontractor's or Vendor's invoice for Materials delivered. The Construction Manager shall assure that each delivery of Owner Purchased Material is accompanied by documentation adequate to identify the Purchase Order against which the purchase is made. This documentation may consist of an itemized delivery ticket, packing slip or invoice from the Subcontractor or Vendor conforming to the Purchase Order against which the purchase is made, together with such additional

information as the Owner may reasonably require. The Construction Manager shall forward such documentation to the Owner.

- F. If the Construction Manager discovers Materials to be defective or non-conforming upon inspection, the Construction Manager shall not incorporate such Materials into the Work, and shall immediately notify the Owner and coordinate the repair or replacement of those Materials. All repair, maintenance or damage-repair calls shall be forwarded to the Construction Manager for resolution with the appropriate Subcontractor or Vendor.
- G. On a monthly basis, the Construction Manager shall review invoices submitted by all Subcontractors and Vendors of Owner Purchased Materials delivered to the Project Site during that Month and either concur or object to the Owner's issuance of Payment to the Subcontractor's and/or Vendor's based on the Construction Manager's records of Materials delivered to the Project site.
- H. The Construction Manager shall provide Owner a list indicating the acceptance of the Materials within fifteen (15) days of receipt of said invoice for Materials. The list shall reference the applicable Purchase Order and include a copy of the invoiced, delivery tickets, Bill of Lading, written acceptance of the delivered items, and such other documentation as the Owner may require. Upon receipt of the appropriate documentation in duplicate, the Owner shall prepare a check drawn to the Construction Manager based upon the receipt of data provided. This check will be delivered to the Construction Manager directly for disbursement upon receipt by the Construction Manager of waiver and release of liens and claims from such Subcontractors and Vendors. The Construction Manager shall obtain the partial or final release of waivers as appropriate from such Subcontractors and Vendors.
- I. Each month submitted with Construction Manager's Application for Payment, Construction Manager shall execute and deliver a Materials Deduction Summary setting forth the full value of all Owner Purchased Materials, plus all taxes which would have been payable on the purchase of the Materials had they not been purchased by Owner. The Materials Deduction Summary shall be signed by the Construction Manager and show all sums to be deducted by an appropriate Deductive Change Order, and ultimately the Cost of the Work, to date. The Owner, or its authorized Representative shall be the approving authority for the Materials Deduction Summary for Owner Purchased Materials.
- J. Notwithstanding the delivery of Owner Purchased Materials to the Project Site for the Construction Manager's inspection, custody and incorporation into the Work, the Owner shall retain legal and equitable title to any and all Owner Purchased Materials.
- K. The Owner shall purchase and maintain Builder's Risk Insurance sufficient to protect against any loss or damage to Owner Purchased Materials. Such insurance shall cover the full value of any Materials not yet incorporated into the Work from the

time the Owner first takes title to any of such Materials through the time when the last of such Materials are incorporated into the Work, or are returned to the Subcontractor or Vendor at the Construction Manager's discretion, prior to Owner's payment for same.

- L. In the event that materials, supplies, or equipment purchased under this option are defective or rejected for any reason whatsoever, and it becomes necessary in the opinion of the Construction Manager to initiate legal action against the responsible party, the Owner agrees to assign and subordinate to the Construction Manager any claims the Owner has against the responsible party resulting from the Purchase Order and to execute any legal documents necessary to accomplish the assignment, subordination or subrogation of such claims, and to cooperate with the Construction Manager in such legal action.

**CONSTRUCTION MANAGER'S AUTHORIZATION TO MAKE PURCHASE
ON BEHALF OF SEMINOLE COUNTY, FLORIDA, AN EXEMPT ORGANIZATION**

Date

To:

Subcontractor/Vendor Name

Subcontractor/Vendor's Address

Construction Manager, the undersigned, has express authority as Agent of Seminole County, Florida, a tax exempt organization. The purchase of Materials are more specifically described as follows:

made on _____ (Date) from the business identified above is for the use by Seminole County, Florida. The charges for the above-described purchase from the business identified above will be billed to and paid directly by Seminole County, Florida.

Under penalty of perjury, I declare that I have read the foregoing and that the facts stated in it are true.

Construction Manager, "Agent's signature
on behalf of Seminole County, Florida

Address

Organization's Certificate of Exemption Number

OWNER DIRECT PURCHASE AGREEMENT
EXHIBIT "G"

Agreement between _____ hereinafter called the "Construction Manager" and Seminole County, Florida, herein called "Owner".

RECITALS

1. Construction Manager and Owner entered into a contract, "Contract", dated _____, 2000, for the performance of the work described therein, this Agreement herein attached as a Contract Document identified as Exhibit "G".
2. Construction Manager and Owner desire to enter into an arrangement whereby certain purchases under the Contract can be made through an "Owner Direct Purchase Program" as a means of taking advantage of its tax exempt status. All monies which would have been payable as taxes if not for Owner Direct Purchase under this Agreement, will inure to the benefit of the Owner.
3. Owner's direct purchase of materials will not limit the Construction Manager's responsibility for obtaining the Materials, or installation, coordination, storage, protection, warranty, etc. of the Materials as described herein and in the plans and specifications of the Contract.
4. The Construction Manager will notify the Owner's Representative or its Designee of each item of Materials required for the Project which the Construction Manager recommends be direct purchased. Upon approval by Owner of such Materials, they will be reduced to a list which will comprise Materials to be direct purchased by the Owner. The specific procedures for purchasing such Materials are outlined below as part of this Agreement.

AGREEMENT

1. Owner does hereby appoint the Construction Manager as Agent for Owner to purchase for and in the name of Seminole County, Florida, equipment, materials, and supplies required for performance of Work that Owner has approved. This authority is granted only to the extent that the Construction Manager may use purchase orders, issued and executed by the Owner or its designee, to procure items on behalf of Owner. The purchase of any materials, supplies, or other items which are not required for performance of the Work are expressly made outside the authority granted hereunder.
2. Owner will be liable for the payment of all purchases made hereunder, subject to the terms of this Agreement and the Project's Contract Documents.

3. Construction Manager shall require the Subcontractors to comply with the procedures outlined herein and shall incorporate such procedures into its Subcontract agreements by reference.
4. Administrative costs incurred by the Construction Manager in administering Material purchases in the name of the Owner shall be considered to be included in the Cost of the Work of the Construction Manager's Contract. No addition shall be added to the Construction Manager's Fee because of the service provided by the Construction Manager in the purchase of Materials in the name of the Owner.
5. The administration of the sales and use tax savings will be in accordance with the agreements and forms bound herein and the procedure will be administered by Construction Manager. Three (3) copies of the Invoice Summary with attached invoices will be forwarded to Seminole County's Representative for payment.
6. The Construction Manager, notwithstanding Owner Purchase Materials arrangement, shall select, describe, order, obtain approvals, submit samples, coordinate, process, prepare shop drawings, receive, inspect, and store all materials.
7. Construction Manager shall maintain accounting records for all transactions carried out under the authority to Owner as its Agent. Such records shall be open to for review by Owner during normal business hours of Construction Manager.

By: _____

Title: _____

Seminole County, Florida

By: _____

Title: _____

PROCEDURES

- A. Upon receipt of the written notification from Construction Manager that an item is ready to be direct purchased, the Owner's Representative will notify the Construction Manager in writing within forty-eight (48) hours, exclusive of weekends or holidays, whether Owner will accept such direct purchase of Materials.
- B. When a Material Purchase for the Project is accepted by the Owner, the Construction Manager shall prepare a Material Requisition Form acceptable to Owner, which specifically identifies the Materials which Owner has elected to purchase directly.
- C. If the Owner consents to purchase Materials directly, the Owner shall promptly issue the original Purchase Order for same. Construction Manager shall deliver Purchase Order to Subcontractor or Vendor. The Purchase Order shall require (1) that the Subcontractor or Vendor provides the required shipping, (2) that the Subcontractor or Vendor provide the required shipping and handling insurance, and (3) delivery of the Owner Purchased Materials on the delivery dates provided by the Construction Manager in the Material Requisition.
- D. The Construction Manager shall be bound by the obligations and responsibilities set forth in the Contract Documents. The Construction Manager shall be responsible for all matters relating to the receipt of Owner Purchased Materials under these Procedures and the Contract Documents, including, but not limited to, preparation of shop drawings and submittals, verifying correct quantities, verifying documents of orders in a timely manner, coordinating purchases, providing and obtaining all warranties and guarantees required by the Contract Documents, inspection and acceptance of the Materials at the time of delivery, loading orientation, and other arrangements normally required by the Construction Manager for the Materials furnished. The Construction Manager shall provide all services required for the unloading, handling and storage of Materials through installation.
- E. The Construction Manager shall insure that Owner Purchased Materials conform to the specifications, and determine prior to incorporation into the Work, if such Materials are patently defective, and whether such Materials are identical to the Material ordered and match the description on the Bill of Lading. As Owner Direct Purchased Materials are delivered to the Project Site, the Construction Manager shall inspect all shipments from the suppliers, and if in conformance with the Purchase Order, approve the Subcontractor's or Vendor's invoice for Materials delivered. The Construction Manager shall assure that each delivery of Owner Purchased Material is accompanied by documentation adequate to identify the Purchase Order against which the purchase is made. This documentation may consist of an itemized delivery ticket, packing slip or invoice from the Subcontractor or Vendor conforming to the Purchase Order against which the purchase is made, together with such additional

information as the Owner may reasonably require. The Construction Manager shall forward such documentation to the Owner.

- F. If the Construction Manager discovers Materials to be defective or non-conforming upon inspection, the Construction Manager shall not incorporate such Materials into the Work, and shall immediately notify the Owner and coordinate the repair or replacement of those Materials. All repair, maintenance or damage-repair calls shall be forwarded to the Construction Manager for resolution with the appropriate Subcontractor or Vendor.
- G. On a monthly basis, the Construction Manager shall review invoices submitted by all Subcontractors and Vendors of Owner Purchased Materials delivered to the Project Site during that Month and either concur or object to the Owner's issuance of Payment to the Subcontractor's and/or Vendor's based on the Construction Manager's records of Materials delivered to the Project site.
- H. The Construction Manager shall provide Owner a list indicating the acceptance of the Materials within fifteen (15) days of receipt of said invoice for Materials. The list shall reference the applicable Purchase Order and include a copy of the invoiced, delivery tickets, Bill of Lading, written acceptance of the delivered items, and such other documentation as the Owner may require. Upon receipt of the appropriate documentation in duplicate, the Owner shall prepare a check drawn to the Construction Manager based upon the receipt of data provided. This check will be delivered to the Construction Manager directly for disbursement upon receipt by the Construction Manager of waiver and release of liens and claims from such Subcontractors and Vendors. The Construction Manager shall obtain the partial or final release of waivers as appropriate from such Subcontractors and Vendors.
- I. Each month submitted with Construction Manager's Application for Payment, Construction Manager shall execute and deliver a Materials Deduction Summary setting forth the full value of all Owner Purchased Materials, plus all taxes which would have been payable on the purchase of the Materials had they not been purchased by Owner. The Materials Deduction Summary shall be signed by the Construction Manager and show all sums to be deducted by an appropriate Deductive Change Order, and ultimately the Cost of the Work, to date. The Owner, or its authorized Representative shall be the approving authority for the Materials Deduction Summary for Owner Purchased Materials.
- J. Notwithstanding the delivery of Owner Purchased Materials to the Project Site for the Construction Manager's inspection, custody and incorporation into the Work, the Owner shall retain legal and equitable title to any and all Owner Purchased Materials.
- K. The Owner shall purchase and maintain Builder's Risk Insurance sufficient to protect against any loss or damage to Owner Purchased Materials. Such insurance shall cover the full value of any Materials not yet incorporated into the Work from the

time the Owner first takes title to any of such Materials through the time when the last of such Materials are incorporated into the Work, or are returned to the Subcontractor or Vendor at the Construction Manager's discretion, prior to Owner's payment for same.

- L. In the event that materials, supplies, or equipment purchased under this option are defective or rejected for any reason whatsoever, and it becomes necessary in the opinion of the Construction Manager to initiate legal action against the responsible party, the Owner agrees to assign and subordinate to the Construction Manager any claims the Owner has against the responsible party resulting from the Purchase Order and to execute any legal documents necessary to accomplish the assignment, subordination or subrogation of such claims, and to cooperate with the Construction Manager in such legal action.

**CONSTRUCTION MANAGER'S AUTHORIZATION TO MAKE PURCHASE
ON BEHALF OF SEMINOLE COUNTY, FLORIDA, AN EXEMPT ORGANIZATION**

Date

To:

Subcontractor/Vendor Name

Subcontractor/Vendor's Address

Construction Manager, the undersigned, has express authority as Agent of Seminole County, Florida, a tax exempt organization. The purchase of Materials are more specifically described as follows:

made on _____ (Date) from the business identified above is for the use by Seminole County, Florida. The charges for the above-described purchase from the business identified above will be billed to and paid directly by Seminole County, Florida.

Under penalty of perjury, I declare that I have read the foregoing and that the facts stated in it are true.

Construction Manager, "Agent's signature
on behalf of Seminole County, Florida

Address

Organization's Certificate of Exemption Number

SALES TAX RECOVERY PROGRAM
 PURCHASE REQUISITION
 SEMINOLE COUNTY COURTHOUSE PROJECT (PS-564-00/BJC)

P.O. _____
 Change _____
 Order No: _____

Requisition #: _____ Date: _____ Date Delivery Required: As indicated by The Haskell Company.

Subcontractor:		Vendor:			Deliver To:	
Address:		Address:		Remit Address:		Address:
P.O.C./Phone		P.O.C./Phone				
		Tax ID Number				

SUBMITTAL SPECIFICATION SECTIONS: _____

PROJECT MANAGER APPROVAL DATE: _____

Quantity	Full Description of Requirement Size, Color, Grade, Etc	Price
	Furnish and deliver materials as specified for the Seminole County Courthouse project in accordance with instructions provided by The Haskell Company.	

Requisition Request Amount: _____ **This value does not include tax**

Note: The above to be in accordance with instructions provided by The Haskell Company.