CONSTRUCTION OF
NORRIS COMMUNITY CENTER PROJECT
(RFP 064-02)

CONSTRUCTION MANAGEMENT CONTRACT BETWEEN

THE CITY OF NAPLES, FLORIDA

AND

D. GARRETT CONSTRUCTION, INC

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CONSTRUCTION MANAGEMENT AGREEMENT

THE CITY OF NAPLES, FLORIDA, a municipal corporation ("Owner"), hereby contracts with **D. Garrett Construction, Inc**. ("Construction Manager") of **Naples, FL, a Florida corporation**, to perform all work ("Work") in connection with the management and construction of that certain construction of the **Norris Community Center** ("Project"), located at Cambier Park, 8th Street, Naples, FL, said Work being set forth in the Plans and Specifications being prepared by **Warner Architects, Inc.**, the Architect and/or Engineer of Record ("Design Professional") and other Contract Documents hereafter specified.

Owner and Construction Manager, for the consideration herein set forth, agree as follows:

Section 1. Contract Documents.

A. The Contract Documents consist of this Agreement, the Exhibits described in Section 8 hereof, and any duly executed and issued addenda, Change Orders, Work Directive Changes, Field Orders and amendments relating thereto. Further, the term Contract Documents shall include all plans and specifications ("Construction Documents") being prepared by the Design Professional, but only after said Construction Documents have been completed by the Design Professional and accepted by the Owner. All of the foregoing Contract Documents are incorporated by reference and made a part of this Agreement (all of said documents including the Agreement sometimes being referred to herein as the "Contract Documents", "Contract" and "Agreement").

B. Owner shall furnish Construction Manager with three (3) copies and one (1) reproducible set of Contract Documents. Any additional copies of Contract Documents, required by Construction Manager for execution of the Work, shall be made by Construction Manager from its reproducible set at Construction Manager's sole cost and expense. Provided, however, Owner is furnishing Construction Manager a reproducible set of Contract Documents for Construction Manager's convenience and such furnishing by Owner shall not be deemed to be a waiver by Owner or Design Professional of any copyright, patent or license they may have with respect to the Contract Documents. All such copyrights, patents and licenses hereby being expressly reserved by Owner and Design Professional.

Section 2. Scope of Work.

A. **Design Phase Services.** Construction Manager shall review and comment upon the Construction Documents being developed by the Design Professional. The scope of that review shall include, but not be limited to, reviewing those various documents for value engineering and constructability. As the Construction Documents are developed by the Design Professional through the various design phases set forth in the Design Professional Services Agreement between the Design Professional and the Owner ("Design Agreement"), Construction Manager shall provide Owner with a detailed construction cost estimate with respect to those documents. Construction Manager agrees to attend any and all design and preconstruction conferences and to otherwise assist and cooperate with the Design Professional with respect to the design of the Project. Construction Manager shall provide all other services during the Design Phase of the Project as set forth in the Supplemental Terms and Conditions attached hereto as Exhibit B and other Contract Documents.

B. Construction Phase Services. After the Construction Documents have been completed by the Design Professional and accepted by Owner, Construction Manager shall furnish and pay for all management, supervision, financing, labor, materials, tools, fuel, supplies, utilities, equipment and services of every kind and type necessary to diligently, timely and fully perform and complete in a good and workmanlike manner the Work in order to fully construct the Project in accordance with all of the terms and conditions of the Contract Documents.

Section 3. Relationship of Parties.

Construction Manager accepts the relationship of trust and confidence established by this Agreement. Construction Manager covenants with Owner to cooperate with the Design Professional; to utilize Construction Manager's best skill, efforts and judgment in furthering the interest of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in the best way and the most expeditious and economical manner, consistent with the interests of Owner. Further, Construction Manager acknowledges that (i) it has represented to Owner that it has specific expertise in the planning, management and construction of _____governmental facilities and (ii) that such representation is a material inducement to Owner to enter into this Agreement.

Section 4. Contract Amount.

In consideration of the faithful performance by Construction Manager of the covenants in this Agreement to the full satisfaction and acceptance of Owner, Owner agrees to pay, or cause to be paid, to Construction Manager the following amounts (herein "Contract Amount"), in accordance with the terms of this Agreement:

A. Design Phase. For all Design Phase Services, including, but not limited to, providing value engineering services, reviewing Construction Documents for constructability, assisting and meeting with Design Professional during the various design phases, preparing cost estimates and obtaining various project permits, Construction Manager shall receive the fixed amount **of $2,500.00** as the total lump sum compensation for its services. Said lump sum amount shall be paid in accordance with the following schedule:

Lump sum amount at conclusion of design phase.

B. Construction Phase. With respect to the Construction Phase Services to be provided by Construction Manager hereunder, Owner shall reimburse Construction Manager for the Cost of the Work (as that term is defined hereafter), and pay Construction Manager a fixed Construction Management Fee of **$147,064.00**. The Construction Management Fee shall be Construction Manager's total compensation for all overhead not reimbursable under Section 5.A. below, as well as Construction Manager's total profit for Construction Phase Services. Construction Manager agrees to provide Owner with a guaranteed maximum price ("GMP") for the Cost of the Work **within 28 days** after the Construction Documents are completed by Design Professional and approved by Owner. The GMP shall be based upon the previous cost estimates provided by Construction Manager as required hereunder. The GMP shall be mutually agreed upon by Owner and Construction Manager and shall be set forth in Amendment No. 1. A form for Amendment No. 1 is attached hereto as Exhibit K. Construction Manager shall provide a detailed breakdown of the GMP acceptable to Owner. Construction Manager guarantees that, except for Change Orders as expressly provided for herein, in no event shall the total Cost of the Work exceed the GMP.

Section 5. Cost of the Work.

A. Costs to be Reimbursed. The term Cost of the Work shall mean all costs necessarily and reasonably incurred by Construction Manager in the proper performance of the Construction Phase Services portion of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with the prior written consent of Owner. The Cost of the Work shall include only those items set forth below in this subsection A:

1. Labor Costs.

a. Wages of construction workers directly employed by Construction Manager to perform the construction of the Work at the Project site or, with the Owner's written agreement, at off-site workshops.

b. Wages or salaries of the Construction Manager's supervisory and administrative personnel who are stationed at the Project site with the Owner's written agreement.

c. Wages and salaries of the Construction Manager's supervisory and administrative personnel engaged at factories, workshops or on the road in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work and only with the Owner's written agreement as in "b" above.

d. Costs paid or incurred by Construction Manager for taxes, insurance, contributions, assessments and benefits required by law and collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under subsections a through c, above, but in any event excluding bonuses and other similar extraordinary benefits.

2. Subcontract Costs. Payments made by Construction Manager to subcontractors in accordance with the requirements of the subcontracts.

3. Cost of Materials and Equipment Incorporated into the Completed Construction.

a. Costs, including transportation, of materials and equipment incorporated or to be incorporated in the completed construction.

b. Costs of materials described in subsection a, above, in excess of those actually installed but required to provide reasonable allowance for waste and for spoilage. Unused excess materials, if any, shall be handed over to Owner at the completion of the Work or, at the Owner's option, shall be sold by Construction Manager; amounts realized, if any, from such sales, shall be credited to the Owner as a deduction from the Costs of the

Work.

4. <u>Costs of other materials and equipment, temporary facilities and related items</u>.

a. Costs, including transportation, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by Construction Manager at the Project site and fully consumed in the performance of the Work; and costs less salvage value on such items if not fully consumed, whether sold to others or retained by Construction Manager. Costs for items previously used by Construction Manager shall mean fair market value.

b. Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by Construction Manager at the Project site, whether rented from the Construction Manager or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of equipment rented shall be subject to the Owner's prior written approval.

c. Cost of removal of debris from the Project site.

d. Costs of telegrams, long distance telephone calls, postage and parcel delivery charges and telephone service at the Project site and reasonable petty cash expenses of the Project site office.

e. That portion of the reasonable travel and subsistence expenses of the Construction Manager's personnel incurred while traveling in discharge of duties connected with the Work, provided all of such expenses and charges shall be subject to the prior written approval of Owner.

5. <u>Miscellaneous Costs</u>.

a. That portion of premiums for insurance and bonds directly attributable to this Contract .

b. Sales, use or similar taxes imposed by a governmental authority which are related to the Work and for which Construction Manager is liable.

c. Fees and assessments for the building permit and for other permits, licenses and inspections for which Construction Manager is required by the Contract Documents to pay.

d. Fees of testing laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded pursuant to the terms of this Contract.

e. Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents.

6. **Other Costs.** Other costs incurred in performance of the Work if and to the extent approved in advance in writing by Owner.

B. **Costs Not To Be Reimbursed.** The Cost of the Work shall not include the following items:

1. Salaries and other compensation of the Construction Manager's personnel stationed at Construction Manager's principal office or offices other than the Project site office.

2. Expenses of Construction Manager's principal office and offices other than the Project site office.

3. Overhead and general expenses, except as may be expressly included in subsection A above.

4. Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work.

5. Rental costs of machinery and equipment, except as specifically provided in subsection A.4.b above.

6. Costs due to the fault or negligence of Construction Manager, subcontractors, anyone directly or indirectly employed by any of them, or for whose acts any of them may be liable, including, but not limited to, costs for the correction of damaged, defective, or nonconforming Work, disposal and replacement of materials and equipment incorrectly ordered or supplied, and making good damage to property not forming part of the Work.

7. Any costs not specifically and expressly described in subsection A above.

8. Costs which would cause the GMP to be exceeded.

C. **Discounts, Rebates and Refunds.**

1. Cash discounts obtained on payments made by Construction Manager shall accrue to Owner if (i) before making the payment, Construction Manager included them in an application for payment and received payment therefor from the Owner, or (ii) Owner has deposited funds with Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to Owner, and Construction Manager shall make provisions so that they can be secured.

2. Amounts which accrued to the Owner in accordance with the provisions of subsection C.1. above shall be credited to Owner as a deduction from the Cost of the Work.

D. **Final Accounting of the GMP**. Subsequent to completion of the Work and prior to Final Payment, final accounting of Cost of the Work shall be provided by the Construction Manager in the form of a detailed cost report showing vendor, invoice number, and date of invoice for all costs sorted by trade division cost code as is maintained by the Construction Manager in his accounting system. Upon receipt of the detailed cost report final accounting, the Owner may have access to all accounting records at the Construction Manager's place of business for review and reporting purposes by the Owner's accountant, whether external or internal. Utilizing the final accounting of costs and the Construction Manager's records as needed, the Owner's auditor shall, within a reasonable time, conduct a review of all costs presented. The amount of final payment is to be made subject to the Owner's accountant agreeing with the final accounting of Cost of the Work of the Construction Manager.

Section 6. Bonds.

A. Within five (5) business days after the GMP is agreed to by Owner and Construction Manager, Construction Manager shall provide Owner with Performance and Payment Bonds, in the form prescribed in Exhibit C, in the amount of 100% of the total sum of the Construction Management Fee and the GMP, the costs of which are to be paid by Construction Manager. The Performance and Payment Bonds shall be underwritten by a surety, must comply with the following provisions and must be otherwise acceptable to Owner:

1. The Surety Company shall have a currently valid Certificate of Authority issued by the State of Florida, Department of Insurance, authorizing it to write surety bonds in the State of Florida.

2. The Surety Company shall have a currently valid Certificate of Authority issued by the United States Department of Treasury under Sections 9304 to 9308 of Title 31 of the United States Code.

3. The Surety Company shall be in full compliance with the provisions of the Florida Insurance Code.

4. The Surety Company shall have at least twice the minimum surplus and capital required by the Florida Insurance Code at the time the invitation to bid is issued.

5. If the Contract Award Amount exceeds $500,000.00, the Surety Company shall also comply with the following provisions:

   (a) The Surety Company shall have at least the following minimum ratings in the latest issue of Best's Key Rating Guide:

CONTRACT	POLICY HOLDER'S RATING	REQUIRED FINANCIAL RATING
$ 500,000 to 1,000,000	A	CLASS IV
1,000,000 to 2,500,000	A	CLASS V
2,500,000 to 5,000,000	A	CLASS VI
5,000,000 to 10,000,000	A	CLASS VII
10,000,000 to 25,000,000	A	CLASS VIII
25,000,000 to 50,000,000	A	CLASS IX
50,000,000 to 75,000,000	A	CLASS X

(b) The Surety Company shall not expose itself to any loss on any one risk in an amount exceeding ten (10) percent of its surplus to policyholders, provided:

(1) Any risk or portion of any risk being reinsured shall be deducted in determining the limitation of the risk as prescribed in this section. These minimum requirements shall apply to the reinsuring carrier providing authorization or approval by the State of Florida, Department of Insurance to do business in this state have been met.

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

B. Subcontracts over $100,000 will be bonded in a form acceptable to Owner. The Owner shall be identified as an obligee. The Subcontractor Bonds will be acceptable to the Owner only if the following conditions are met: the Surety Company (i) is licensed to do business in the state of Florida; (ii) holds a Certificate of Authority authorizing it to write surety bonds in this state; (iii) has twice the minimum surplus and capital required by the Florida Insurance Code at the time the invitation to bid is issued; (iv) is otherwise in compliance with the provisions of the Florida Insurance Code; (v) holds a currently valid Certificate of Authority issued by the United States Department of Treasury under 31 U.S.C. §§9304-9308.

C. If the surety for any bond furnished by Construction Manager is declared bankrupt, becomes insolvent, its right to do business is terminated in the State of Florida, or it ceases to meet the requirements imposed by the Contract Documents, Construction Manager shall, within five (5) calendar days thereafter, substitute another bond and surety, both of which shall be subject to Owner's approval.

Section 7. Contract Time and Liquidated Damages

A. Time is of the essence in the performance of the Work under this Agreement. The "Design Phase Commencement Date" shall be established in a Notice to Proceed to be issued by Owner. Construction Manager shall commence the Design Phase Services portion of the Work within five (5) calendar days after the Design Phase Commencement Date. Any Work performed by Construction Manager prior to the Design Phase Commencement Date shall be at the sole risk of Construction Manager. The "Construction Phase Commencement Date" shall be established in a Notice to Proceed to

be issued by Owner after the Construction Documents have been completed by the Design Professional and accepted by the Owner. Construction Manager shall commence the Construction Phase Services portion of the Work within five (5) calendar days after the Construction Phase Commencement Date. No portion of the Work, with respect to the Construction Phase Services to be provided hereunder, shall be performed prior to the Construction Phase Commencement Date, unless expressly approved in advance by Owner in writing. The total period of time beginning with the Construction Phase Commencement Date and ending on the date of Substantial Completion of the Work is referred to hereafter as the "Contract Time". The Contract Time shall be mutually agreed upon by Owner and Construction Manager, with both parties signifying their approval by executing Amendment Number 1, a form of which is attached hereto as Exhibit K.

B. Liquidated damages, if any, which may be assessed by Owner against Construction Manager in the event Construction Manager fails to complete the Work within the Contract Time in accordance with the terms of this Agreement are set forth in the Supplemental Terms and Conditions attached hereto as Exhibit B.

C. When any period of time is referenced by days herein, it shall be computed to exclude the first day and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the laws of Florida or Collier County, such day shall be omitted from the computation, and the last day shall become the next succeeding day which is not a Saturday, Sunday or legal holiday.

Section 8. Exhibits Incorporated.

The following documents are expressly agreed to be incorporated by reference and made a part of this Agreement.

Exhibit A:	General Terms and Conditions
Exhibit B:	Supplemental Terms and Conditions
Exhibit C:	Form of Performance and Payment Bonds
Exhibit D:	Insurance Requirements
Exhibit E:	Form of Release and Affidavit
Exhibit F:	Form of Construction Manager Application for Payment
Exhibit G:	Form of Change Order
Exhibit H:	Master Project Schedule Form
Exhibit I:	Construction Manager's Staffing Schedule
Exhibit J:	Certificate of Insurance Form
Exhibit K:	Amendment Number 1 to Agreement between Owner and Construction Manager
Exhibit L:	Consent of Surety
Exhibit M:	Truth-In-Negotiation Certificate
Exhibit N:	Public Entity Crimes
Exhibit O:	City of Naples Conflict forms

Section 9. Notices.

A. All notices required or made pursuant to this Agreement by Construction Manager to Owner shall be in writing and delivered by hand or by United States Postal Service Department, first class mail, postage pre-paid, return receipt requested, addressed to the following:

City of Naples
735 Eighth Street South
Naples, FL 34102
Attention: Kevin Rambosk

B. All notices required or made pursuant to this Agreement by Owner to Construction Manager shall be made in writing and shall be delivered by hand or by United States Postal Service Department, first class mail, postage pre-paid, return receipt requested, addressed to the following:

D. Garrett Construction, Inc.
4933 N. Tamiami Trail, Suite 300
Naples, FL 34103
Attention: Donald F. Garrett, Chairman/CEO

C. Either party may change its above noted address by giving written notice to the other party in accordance with the requirements of this Section.

Section 10. Modification.

No modification or change to the Agreement shall be valid or binding upon the parties unless in writing and executed by the party or parties intended to be bound by it.

Section 11. Successors and Assigns.

Subject to other provisions hereof, the Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the parties to the Agreement.

Section 12. Governing Law and Venue.

The Agreement shall be interpreted under and its performance governed by the laws of the State of Florida. Any suit or action between Owner and Construction Manager arising out of this agreement, shall be brought in the appropriate state or federal court in Collier County, Florida.

Section 13. No Waiver.

The failure of Owner to enforce at any time or for any period of time any one or more of the provisions of the Agreement shall not be construed to be and shall not be a waiver of any such provision or provisions or of its right thereafter to enforce each and every such provision.

Section 14. Entire Agreement.

Each of the parties hereto agrees and represents that the Agreement comprises the full and entire agreement between the parties affecting the Work contemplated, and no other agreement or understanding of any nature concerning the same has been entered into or will be recognized, and that all negotiations, acts, work performed, or payments made prior to the execution hereof shall be deemed merged in, integrated and superseded by the Agreement.

Section 15. Severability.

Should any provision of the Agreement be determined by a court to be unenforceable, such a determination shall not affect the validity or enforceability of any other section or part thereof.

Section 16. Construction.

Unless the context of this Agreement otherwise clearly requires, references to the plural include the singular, references to the singular include the plural. The term "including" is not limiting, and the terms "hereof", "herein", "hereunder", and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement, unless stated otherwise. Additionally, the parties hereto acknowledge that they have carefully reviewed this Agreement and have been advised by counsel of their choosing with respect thereto, and that they understand its contents and agree that this Agreement shall not be construed more strongly against any party hereto, regardless of who is responsible for its preparation.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date(s) indicated below.

CONSTRUCTION MANAGER:

D. Garrett Construction, Inc.

By:_____
Donald F. Garrett
Its: Chairman/CEO

ATTEST:

_____
Bruce C. Gilbert, Secretary

Date:_____

[Corporate Seal]

OWNER:

CITY OF NAPLES, FLORIDA

By:_____
Bonnie R. MacKenzie
Its: Mayor

ATTEST:

_____

Approved As To Form:

_____

Robert D. Pritt, City Attorney

EXHIBIT A

GENERAL TERMS AND CONDITIONS

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33. Compliance With Laws. 30
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GENERAL TERMS AND CONDITIONS

1. INTENT OF CONTRACT DOCUMENTS.

1.1. It is the intent of the Contract Documents to describe a functionally complete project (or portion thereof) to be constructed in accordance with the Contract Documents. Any work, materials or equipment that may reasonably be inferred from the Contract Documents as being required to produce the intended result shall be supplied whether or not specifically called for in the Contract Documents. When words which have a well known technical or trade meaning are used to describe work, materials or equipment, such words shall be interpreted in accordance with that meaning. Reference to standard specifications, manuals or codes of any technical society, organization or association or to the laws or regulations of any governmental authority having jurisdiction over the Project, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code, law or regulation in affect at the time the Work is performed, except as may be otherwise specifically stated herein.

1.2. If during the performance of the Work Construction Manager discovers a conflict, error or discrepancy in the Contract Documents, Construction Manager immediately shall report same to Design Professional in writing, and before proceeding with the Work affected thereby, shall obtain a written interpretation or clarification from Design Professional. Construction Manager shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to Construction Manager with the Contract Documents before commencing any portion of the Work.

1.3. Drawings are intended to show general arrangements, design and extent of Work and are not intended to serve as shop drawings. Specifications are separated into divisions for convenience of reference only and shall not be interpreted as establishing divisions for the Work, trades, subcontracts, or extent of any part of the Work. In the event of a discrepancy between or among the drawings, specifications or other Contract Document provisions, Construction Manager shall be required to comply with the provision which is the more restrictive or stringent requirement upon Construction Manager, as determined by Design Professional. Unless otherwise specifically mentioned, all anchors, bolts, screws, fittings, fillers, hardware, accessories, trim and other parts required in connection with any portion of the Work to make a complete, serviceable, finished and first quality installation shall be furnished and installed as part of the Work, whether or not called for by the Contract Documents.

2. INVESTIGATION AND UTILITIES.

2.1. Construction Manager shall have the sole responsibility of satisfying itself concerning the nature and location of the Work and the general and local conditions, and particularly, but without limitation, with respect to the following: those affecting transportation, access, legal disposal, handling and storage of materials; availability and quality of labor; water and electric power; availability and condition of roads; work area; living facilities; climatic conditions and seasons; physical conditions at the work-site and the Project area as a whole; topography and ground surface conditions; nature and quantity of the surface materials to be encountered; subsurface conditions; equipment and facilities needed preliminary to and during performance of the Work; and all other costs associated with such performance. The failure of Construction Manager to acquaint itself with any applicable conditions shall not relieve Construction Manager from any of its responsibilities to perform under the Contract Documents, nor shall

it be considered the basis for any claim for additional time or compensation.

2.2. Construction Manager with assistance from Design Professional shall locate all existing roadways, railways, drainage facilities and utility services above, upon, or under the Project site, said roadways, railways, drainage facilities and utilities being referred to in this Section 2 as the "Utilities". Construction Manager shall contact the owners of all Utilities to determine the necessity for relocating or temporarily interrupting any Utilities during the construction of the Project. Construction Manager shall schedule and coordinate its Work around any such relocation or temporary service interruption. Construction Manager shall be responsible for properly shoring, supporting and protecting all Utilities at all times during the course of the Work.

3. SCHEDULE.

3.1. The Construction Manager shall prepare and provide the various schedules set forth in the Supplemental Terms and Conditions attached hereto as Exhibit B. Said schedules shall include but not be limited to an overall progress schedule for the Project which not only includes the Design Phase and Construction Phase Services to be provided by Construction Manager hereunder, but also shall include the Design Professional's performance schedules ("Master Project Schedule").

3.2. The Master Project Schedule and all other schedules required hereunder shall be updated by Construction Manager as often as is specified in the Supplemental Terms and Conditions. All such updates shall be subject to Owner's and Design Professional's review. Construction Manager's submittal of satisfactory updates and Owner's acceptance of same shall be a condition precedent to Owner's obligation to pay Construction Manager.

4. PROGRESS PAYMENTS.

4.1. Prior to submitting its first monthly Application for Payment, Construction Manager shall submit to Owner and Design Professional, for their review and approval, a schedule of values based upon the lump sum compensation to be paid Construction Manager for Design Phase Services hereunder. The Schedule of Values will be formatted by the Construction Manager to provide for necessary cost breakdowns of the Work by both trade category and, in the event the Owner is utilizing various funding sources to pay for the Work, by funding source. After its approval by Owner, that schedule of values shall be used as the basis for Construction Manager's monthly Applications for Payment with respect to Design Phase Services. The first Application for Payment shall be submitted no earlier than thirty (30) days after the Design Phase Commencement Date. This schedule shall be updated and submitted each month to Design Professional along with a completed and notarized copy of the application for payment form attached to the Agreement as Exhibit F.

4.2. Prior to submitting its first monthly Application for Payment after the GMP is set, Construction Manager shall submit to Owner and Design Professional, for their review and approval, a revised schedule of values based upon the Construction Management Fee and the GMP; all in C.S.I. format, listing the major elements of the Work and the dollar value for each element. After its approval by Owner, this revised schedule of values shall be used as the basis for Construction Manager's monthly Applications for Payment thereafter. This revised schedule shall be updated and submitted each month to Design Professional along with a completed and notarized copy of the Application for Payment form attached to the Agreement as Exhibit F.

4.3. If payment is requested on the basis of materials and equipment not incorporated into the Project, but delivered and suitably stored at the site, the Application for Payment shall also be accompanied by a bill of sale, invoice or other documentation warranting that Owner has received the materials and equipment free and clear of all liens, charges, security interests and encumbrances, together with evidence that the materials and equipment are covered by appropriate property insurance and other arrangements to protect Owner's interest therein, all of which shall be subject to Owner's satisfaction.

4.4. Construction Manager shall submit six (6) notarized original copies of its monthly Application for Payment to Design Professional on or before the 25th day of each month for Work performed during the previous month. Invoices received after the 25th day of each month shall be considered for payment as part of the next month's application. Within ten (10) calendar days after receipt of each Application for Payment, Design Professional shall submit to Owner a Certificate for Payment in the amount recommended by Design Professional as being due and owing Construction Manager. Owner shall pay Construction Manager that portion of Design Professional's Certificate for Payment which Owner approves as being due and owing Construction Manager within thirty (30) calendar days of Owner's approval of same.

4.5. Owner shall retain ten percent (10%) of the gross amount of each monthly payment request or ten percent (10%) of the portion thereof certified by Design Professional and approved by Owner for payment, whichever is less. Such sum shall be accumulated and not released to Construction Manager until final payment is due. No retainage will be held for the Construction Management fee portion of the monthly payment request.

4.6. Monthly payments to Construction Manager shall in no way imply approval or acceptance of Construction Manager's work.

4.7. Each Application for Payment shall be accompanied by a Release and Affidavit, in the form attached as Exhibit E, showing that all materials, labor, equipment and other bills associated with that portion of the Work payment is being requested on have been paid in full. Owner shall not be required to make payment until and unless these affidavits are furnished by Construction Manager.

4.8. If required in the Supplemental Terms and Conditions attached hereto as Exhibit B, Construction Manager agrees that all payments to be paid by Owner pursuant to this Agreement shall be made in strict accordance with a detailed Project Funding Schedule.

5. PAYMENTS WITHHELD.

5.1. Design Professional may decline to certify for payment or Owner may decline to approve any Certificate for Payment, or portions thereof, issued by Design Professional, because of subsequently discovered evidence or subsequent inspections. Owner may nullify the whole or any part of any Certificate for Payment previously issued and Owner may withhold any payments otherwise due Construction Manager under this Agreement or any other agreement between Owner and Construction Manager, to such extent as may be necessary in Owner's opinion to protect it from loss because of: (a) defective Work not remedied; (b) third party claims filed or reasonable evidence indicating probable filing of such claims; (c) failure of Construction Manager to make payment properly to subcontractors or for labor, materials or equipment; (d) reasonable doubt that the Work can be completed for the unpaid balance of the Contract Amount; (e) reasonable indication that the Work will not be completed within the Contract Time; (f) unsatisfactory prosecution of the Work by Construction Manager; or (g) any other

material breach of the Contract Documents. If these conditions are not remedied or removed, Owner may, after three (3) days written notice, rectify the same at Construction Manager's expense. Owner also may offset against any sums due Construction Manager the amount of any liquidated or unliquidated obligations of Construction Manager to Owner, whether relating to or arising out of this Agreement or any other agreement between Construction Manager and Owner.

6. FINAL PAYMENT.

6.1. Owner shall make final payment to Construction Manager within thirty (30) calendar days after the Work is finally accepted by Owner in accordance with Section 21.2 herein, provided that Construction Manager first, and as an explicit condition precedent to the accrual of Construction Manager's right to final payment, shall have furnished Owner with a properly executed and notarized copy of the Release and Affidavit attached as Exhibit E, as well as, a duly executed copy of the Surety's consent to final payment form attached to the Agreement as Exhibit L and such other documentation that may be required by the Contract Documents or Owner.

6.2. Construction Manager's acceptance of final payment shall constitute a full waiver of any and all claims by Construction Manager against Owner arising out of this Agreement or otherwise relating to the Project, except those previously made in writing and identified by Construction Manager as unsettled at the time of the final Application for Payment. Neither the acceptance of the Work nor payment by Owner shall be deemed to be a waiver of Owner's right to enforce any obligations of Construction Manager hereunder or to the recovery of damages for defective Work not discovered by Owner or Design Professional at the time of final inspection.

7. SUBMITTALS AND SUBSTITUTIONS.

7.1. Construction Manager shall carefully examine the Contract Documents for all requirements for approval of materials to be submitted such as shop drawings, data, test results, schedules and samples. Construction Manager shall submit all such materials at its own expense and in such form and manner as required by the Contract Documents in sufficient time to prevent any delay in the delivery of such materials and the installation thereof.

7.2. Whenever materials or equipment are specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular supplier, the naming of the item is intended to establish the type, function and quality required. Unless the name is followed by words indicating that no substitution is permitted, materials or equipment of other suppliers may be accepted by Owner and Design Professional if sufficient information is submitted by Construction Manager to allow Owner and Design Professional to determine that the material or equipment proposed is equivalent or equal to that named. Requests for review of substitute items of material and equipment will not be accepted by Owner from anyone other than Construction Manager and all such requests must be submitted by Construction Manager to Design Professional prior to the setting of the GMP.

7.3. If Construction Manager wishes to furnish or use a substitute item of material or equipment, Construction Manager shall make application to Design Professional for acceptance thereof, certifying that the proposed substitute shall perform adequately the functions and achieve the results called for by the general design, be similar and of equal substance to that specified and be suited to the same use as that specified. The application shall state that the evaluation and acceptance of the proposed substitute will not prejudice Construction Manager's achievement of Substantial Completion on time, whether or not

acceptance of the substitute for use in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for the Project) to adapt the design to the proposed substitute and whether or not incorporation or use by the substitute in connection with the Work is subject to payment of any license fee or royalty. All variations of the proposed substitute from that specified will be identified in the application and available maintenance, repair and replacement service shall be indicated. The application also shall contain an itemized estimate of all costs that will result directly or indirectly from acceptance of such substitute, including costs for redesign and claims of other contractors affected by the resulting change, all of which shall be considered by Design Professional in evaluating the proposed substitute. Design Professional may require Construction Manager to furnish at Construction Manager's expense additional data about the proposed substitute.

7.4. If a specific means, method, technique, sequence or procedure of construction is indicated in or required by Contract Documents, Construction Manager may furnish or utilize a substitute means, method, technique, sequence or procedure of construction acceptable to Design Professional, if Construction Manager submits sufficient information to allow Design Professional to determine that the substitute proposed is equivalent to that indicated or required by the Contract Documents. The procedures for submission to and review by Design Professional shall be the same as those provided herein for substitute materials and equipment.

7.5. Design Professional shall be allowed a reasonable time within which to evaluate each proposed substitute. Design Professional shall be the sole judge of the acceptability of any substitute. No substitute shall be ordered, installed or utilized without Owner's and Design Professional's prior written acceptance which shall be evidenced by either a Change Order or an approved submittal. Owner may require Construction Manager to furnish at Construction Manager's expense a special performance guarantee or other surety with respect to any substitute. Design Professional will record time required by Design Professional and Design Professional's consultants in evaluating substitutions proposed by Construction Manager and making changes in the Contract Documents occasioned thereby. Whether or not Owner accepts a proposed substitute, Construction Manager shall reimburse Owner for the charges of Design Professional and Design Professional's consultants for evaluating each proposed substitute.

7.6. It shall be recognized by the Design Professional, Construction Manager, and Owner that consideration of alternative designs, materials, and methods are fully in conformance with the Design Phase Services of this Agreement and with Section 3, relationship of the parties of this Agreement. In this regard, Construction Manager is encouraged to offer his full expertise and ability to further alternatives for consideration in the Work, including the offering of suggestions during both the Design Phase and the Construction Phase of the Project, so long as the offering of such suggestions is done in the Owner's best interest considering time, cost, and quality.

8. DAILY REPORTS, RECORD CONTRACT DOCUMENTS AND MEETINGS.

8.1. Construction Manager shall prepare, maintain and submit to Design Professional and Owner, for their review and approval, the various logs, reports, and schedules set forth in the Supplemental Terms and Conditions attached hereto as Exhibit B. The Construction Manager's complete performance of its obligation to prepare, maintain and submit those logs, reports, and schedules is a condition precedent to Owner's obligation hereunder to make any payments to Construction Manager. These logs, reports and schedules shall not constitute nor take the place of any notice required to be given by Construction Manager to Owner or Design Professional pursuant to the Contract Documents.

8.2. Construction Manager shall maintain in a safe place at the Project site one record copy and one permit set of the Contract Documents, including, but not limited to, all drawings, specifications, addenda, amendments, Change Orders, Work Directive Changes and Field Orders, as well as all written interpretations and clarifications issued by Design Professional, in good order and annotated to show all changes made during construction. The record Contract Documents shall be continuously updated by Construction Manager throughout the prosecution of the Work to accurately reflect all field changes that are made to adapt the Work to field conditions, changes resulting from Change Orders, Work Directive Changes and Field Orders, and all concealed and buried installations of piping, conduit and utility services. As a condition precedent to Owner's obligation to pay Construction Manager, Construction Manager shall provide evidence, satisfactory to Owner and Design Professional, that Construction Manager is fulfilling its obligation to continuously update the record Contract Documents. All buried and concealed items, both inside and outside the Project site, shall be accurately located on the record Contract Documents as to depth and in relationship to not less than two (2) permanent features (e.g. interior or exterior wall faces). The record Contract Documents shall be clean and all changes, corrections and dimensions shall be given in a neat and legible manner in a contrasting color. The record Contract Documents, together with all approved samples and a counterpart of all approved shop drawings shall be available to Owner and Design Professional for reference. Upon completion of the Work and as a condition precedent to Construction Manager's entitlement to final payment, the record Contract Documents, samples and shop drawings shall be delivered to Design Professional by Construction Manager for Owner.

8.3. Construction Manager shall keep all records and supporting documentation which concern or relate to the Work hereunder for a minimum of five (5) years from the date of termination of this Agreement or the date the Project is completed, or such longer period of time as may be required by law, whichever is later. Owner, or any duly authorized agents or representatives of Owner, shall have the right to audit, inspect and copy all such records and documentation as often as they deem necessary during the period of this Agreement and during the five (5) year period noted above; provided, however, such activity shall be conducted only during normal business hours.

9. CONTRACT TIME AND TIME EXTENSIONS.

9.1. Construction Manager shall diligently pursue the completion of the Work and coordinate the Work being done on the Project by its subcontractors and materialmen, as well as coordinating its Work with all work of others at the Project site, so that its Work or the work of others shall not be delayed or impaired by any act or omission by Construction Manager. Construction Manager shall be solely responsible for all construction means, methods, techniques, sequences, and procedures, as well as coordination of all portions of the Work under the Contract Documents, and the coordination of Owner's suppliers and contractors as set forth in Paragraph 12.2. herein.

9.2. Should Construction Manager be obstructed or delayed in the prosecution of or completion of the Work as a result of unforeseeable causes beyond the control of Construction Manager, and not due to its fault or neglect, including but not restricted to acts of God or of the public enemy, acts of government, fires, floods, epidemics, quarantine regulation, strikes, lockouts, unusually severe weather conditions by comparison with the ten-year Naples, Florida, average not reasonably anticipatable, Construction Manager shall notify Owner and Design Professional in writing within forty-eight (48) hours after the commencement of such delay, stating the cause or causes thereof, or be deemed to have waived any right which Construction Manager may have had to request a time extension.

9.3. No interruption, interference, inefficiency, suspension or delay in the commencement or progress of the Work from any cause whatever, including those for which Owner and Design Professional may be responsible, in whole or in part, shall relieve Construction Manager of his duty to perform or give rise to any right to damages or additional compensation from Owner. Construction Manager expressly acknowledges and agrees that it shall receive no damages for delay. Construction Manager's sole remedy, if any, against Owner will be the right to seek an extension to the Contract Time; provided, however, the granting of any such time extension shall not be a condition precedent to the aforementioned "No Damage For Delay" provision. This paragraph shall expressly apply to claims for early completion, as well as to claims based on late completion.

10. CHANGES IN THE WORK.

10.1. Owner shall have the right at any time during the progress of the Work to increase or decrease the Work. Promptly after being notified of a change, Construction Manager shall submit an itemized estimate of any cost or time increases or savings it foresees as a result of the change. Except in an emergency endangering life or property, or as expressly set forth herein, no addition or changes to the Work shall be made except upon written order of Owner, and Owner shall not be liable to Construction Manager for any increased compensation without such written order. No officer, employee or agent of Owner is authorized to direct any extra or changed work orally.

10.2. A Change Order, in the form attached as Exhibit G to this Agreement, shall be prepared by the Construction Manager, reviewed by Design Professional and Owner, and executed promptly by the parties after an agreement is reached between Construction Manager and Owner concerning the requested changes. Construction Manager shall promptly perform changes authorized by duly executed Change Orders. The Contract Amount and Contract Time shall be adjusted in the Change Order in the manner as Owner and Construction Manager shall mutually agree.

10.3. If Owner and Construction Manager are unable to agree on a Change Order for the requested change, Construction Manager shall, nevertheless, promptly perform the change as directed by Owner in a written Work Directive Change. In that event, the Contract Amount and Contract Time shall be adjusted as directed by Owner. If Construction Manager disagrees with Owner's adjustment determination, Construction Manager must make a claim pursuant to Section 11 of these General Conditions or else be deemed to have waived any claim it might otherwise have had on that matter.

10.4. In the event a requested change is approved by Owner which results in an increase to the Contract Amount, a Change Order shall be issued which increases the GMP by the amount of the Construction Manager's actual and reasonable direct Cost of the Work. In the event such change Work is performed by a subcontractor, a maximum ten percent (10%) markup for all overhead and profit for all subcontractors' and sub-subcontractors' direct labor and material costs and actual equipment costs shall be permitted. Construction Manager shall not be entitled to any mark-up for Change Order work, nor shall the Construction Management Fee be increased as a result of any Change Order work. Provided, however, if at the time final payment is made to Construction Manager the total Cost of the Work has been increased by approved Change Orders in an amount causing the GMP originally set by Construction Manager and Owner to be exceeded by **$25,000**, Construction Manager shall be entitled to an increase to the Construction Management Fee in the amount of **eight percent (8%)** of the amount exceeding the sum of **$25,000** and the GMP.

10.5. Owner shall have the right to conduct an audit of Construction Manager's books

and records to verify the accuracy of Construction Manager's claim with respect to Construction Manager's costs associated with any Change Order.

10.6. Design Professional shall have authority to order minor changes in the Work not involving an adjustment to the Contract Amount or an extension to the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes may be effected by written order issued by Design Professional. Such changes shall be binding on Construction Manager.

11. CLAIMS AND DISPUTES.

11.1. A Claim is a demand or assertion by one of the parties seeking an adjustment or interpretation of the terms of the Contract Documents, payment of money, extension of time or other relief with respect to the terms of the Contract Documents. The term "Claim" also includes other disputes and matters in question between Owner and Construction Manager arising out of or relating to the Contract Documents. The responsibility to substantiate a Claim shall rest with the party making the Claim.

11.2. The Design Professional shall be in the first instance, the interpreter of the requirements of the Construction Documents. The Design Professional shall render opinions on all claims of the Construction Manager relating to the execution and progress of the Work and on all matters or questions related thereto. The Design Professional's decisions in matters relating to artistic effect shall be final if consistent with the intent of the Construction Documents. The Design Professional shall review for comment or approval any and all proposal requests, supplemental drawings and information, substitutions and Change Orders.

11.3. Claims by Construction Manager shall be made in writing to Owner and Design Professional within forty-eight (48) hours after the first day of the event giving rise to such Claim or else Construction Manager shall be deemed to have waived the Claim. Written supporting data shall be submitted to Owner and Design Professional within fifteen (15) calendar days after the occurrence of the event, unless Owner grants additional time in writing, or else Construction Manager shall be deemed to have waived the Claim. All claims shall be priced in accordance with the provisions of Subsection 10.4.

11.4. Construction Manager shall proceed diligently with its performance as directed by Owner, regardless of any pending Claim, action, suit or administrative proceeding, unless otherwise agreed to by Owner in writing. Owner shall continue to make payments in accordance with the Contract Documents during the pendency of any Claim.

12. OTHER WORK.

12.1. Owner may perform other work related to the Project at the site by Owner's own forces, have other work performed by utility owners or let other direct contracts. If the fact that such other work is to be performed is not noted in the Contract Documents, written notice thereof will be given to Construction Manager prior to starting any such other work. If Construction Manager believes that such performance will involve additional expense to Construction Manager or require additional time, Construction Manager shall send written notice of that fact to Owner and Design Professional within seventy-two (72) hours of being notified of the other work. If Construction Manager fails to send the above required seventy-two (72) hour notice, Construction Manager will be deemed to have waived any rights it otherwise may have had to seek an extension to the Contract Time or adjustment to the Contract

Amount.

12.2. Construction Manager shall afford each utility owner and other contractor who is a party to such a direct contract (or Owner, if Owner is performing the additional work with Owner's employees) proper and safe access to the site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such work and shall properly connect and coordinate its Work with theirs. Construction Manager shall do all cutting, fitting and patching of the Work that may be required to make its several parts come together properly and integrate with such other work. Construction Manager shall not endanger any work of others by cutting, excavating or otherwise altering their work and will only cut or alter their work with the written consent of Design Professional and the others whose work will be affected. The duties and responsibilities of Construction Manager under this paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of Construction Manager in said direct contracts between Owner and such utility owners and other contractors.

12.3. If any part of Construction Manager's Work depends for proper execution or results upon the work of any other contractor or utility owner (or Owner), Construction Manager shall inspect and promptly report to Design Professional in writing any delays, defects or deficiencies in such work that render it unavailable or unsuitable for such proper execution and results. Construction Manager's failure to report will constitute an acceptance of the other work as fit and proper for integration with Construction Manager's Work.

13. INSURANCE.

13.1. During the term of this Agreement the Construction Manager shall provide, pay for, and maintain, with companies satisfactory to the Owner, the types of insurance described herein. All insurance shall be from responsible companies duly authorized to do business in the State of Florida and/or responsible risk retention group insurance companies registered with the State of Florida. Promptly after written Notice of Award is issued by the Owner, the insurance coverages and limits required must be evidenced by properly executed Certificates of Insurance on the form which is attached hereto and made a part hereof as Exhibit "J". The Certificates must be personally, manually signed by the Authorized Representatives of the insurance company/companies shown on the Certificates with proof that he/she is an authorized representative thereof. In addition, certified, true and exact copies of all insurance policies required shall be provided to the Owner, on a timely basis, if requested by the Owner. These Certificates and policies shall contain provisions that ninety (90) days written notice by registered or certified mail shall be given the Owner of any cancellation, intent not to renew, or reduction in the policies' coverages, except in the application of the Aggregate Limits Provisions. Construction Manager also shall notify Owner, in a like manner, within twenty-four (24) hours after receipt, of any notices of expiration, cancellation, non-renewal or material change in coverages or limits received by Construction Manager from its insurer, and nothing contained herein shall relieve Construction Manager of this requirement to provide notice. In the event of a reduction in the aggregate limit of any policy, the Construction Manager shall immediately take steps to have the aggregate limit reinstated to the full extent permitted under such policy.

13.2. All insurance policies required by this Agreement shall include the following provisions and conditions by endorsement to the policies:

(a)The term "City of Naples" shall include the City of Naples, Florida, a

municipal corporation, and all Authorities, Boards, Bureaus, Commissions, Divisions, Departments and offices thereof and individual members and employees thereof in their official capacity, and/or while acting on behalf of the City of Naples, Florida.

13.2.2. All insurance policies, other than the Professional Liability policy and the Workers Compensation policy, provided by Construction Manager to meet the requirements of this Agreement shall name the City of Naples, Florida, as that name is defined in subparagraph 13.2.1 above, as an additional insured as to the operations of the Construction Manager under the Contract Documents and shall contain a severability of interests provision.

13.2.3. Companies issuing the insurance policy or policies shall have no recourse against Owner for payment of premiums or assessments for any deductibles which all are at the sole responsibility and risk of Construction Manager.

13.2.4. All insurance coverages of the Construction Manager shall be primary to any insurance or self-insurance program carried by the Owner applicable to this Project, and the "Other Insurance" provisions of any policies obtained by Construction Manager shall not apply to any insurance or self-insurance program carried by Owner applicable to this Project.

13.3. The acceptance by the Owner of any Certificate of Insurance for this Project evidencing the insurance coverages and limits required in this Agreement does not constitute approval or agreement by the Owner that the insurance requirements have been met or that the insurance policies shown on the Certificates of Insurance are in compliance with the requirements of this Agreement.

13.4. No work shall commence at the Project site unless and until the required Certificates of Insurance are received and the written Notice to Proceed is issued to the Construction Manager by the Owner.

13.5. Before starting and until acceptance of the work by Owner, Construction Manager shall procure and maintain insurance of the types and to the limits specified in Exhibit "D", "Insurance Requirements", which is attached hereto and made a part hereof. Construction Manager shall require each of its subcontractors to procure and maintain, until the completion of that subcontractor's work, insurance of the types and to the limits specified in Exhibit "D", unless such insurance requirement for the subcontractor is expressly waived in writing by the Owner.

13.6. If any insurance provided pursuant to this Agreement expires prior to the completion of the Work, renewal Certificates of Insurance and, if requested by the Owner, certified, true copies of the renewal policies, shall be furnished to Owner thirty (30) days prior to the date of expiration.

13.7. Should at any time the Construction Manager not maintain the insurance coverages required in this Agreement, the Owner may cancel the Agreement or at its sole discretion shall be authorized to purchase such coverages and charge the Construction Manager for such coverages purchased. If Construction Manager fails to reimburse Owner for such costs within thirty (30) days after demand, Owner has the right to offset these costs from any amount due Construction Manager under this Agreement. The Owner shall be under no obligation to purchase such insurance, nor shall it be responsible for the coverages purchased or the insurance company/companies used. The decision of the Owner to purchase such insurance coverages shall in no way be construed to be a waiver of its rights under this Agreement.

13.8. Construction Manager shall immediately submit to Owner and Design Professional a copy of all accident reports arising out of any injuries to its employees or those of any firm or individual to whom it may have subcontracted a portion of the Work, or any personal injuries or property damages arising or alleged to have arisen on account of any work by Construction Manager under the Contract Documents.

13.9. The Owner shall be exempt from, and in no way liable for, any sums of money that may represent a deductible in any insurance policy except deductibles as agreed to by the Owner in obtaining Builder's Risk Property Insurance. The payment of such deductible shall be the sole responsibility of the Construction Manager and/or subcontractor providing such insurance.

14. WAIVER OF SUBROGATION.

14.1. The Owner and Construction Manager waive all rights against each other for damages caused by perils covered by insurance provided under section 13 to the extent covered by such insurance, except such rights as they may have to the proceeds of such insurance held by the Owner and Construction Manager as trustees. The Construction Manager shall require similar waivers from all subcontractors and their sub-subcontractors.

14.2. The Owner and Construction Manager waive all rights against each other for loss or damage to any equipment used in connection with the Project and covered by any property insurance. The Construction Manager shall require similar waivers from all subcontractors and their sub-subcontractors.

14.3. The Owner waives subrogation against the Construction Manager on all property and consequential loss policies carried by the Owner on adjacent properties and under property and consequential loss policies purchased for the Project after its completion.

14.4. If the policies of insurance referred to in this section require an endorsement to provide for continued coverage, where there is a waiver of subrogation, the Owner of such policies will cause them to be so endorsed. Failure to obtain proper endorsement nullifies the waiver of subrogation.

15. INDEMNIFICATION.

15.1. Contractor agrees to indemnify and hold harmless the City from liabilities, damages, losses and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the Contractor and persons employer or utilized by the Contractor in the performance of the Contract.

16. CLEANUP AND PROTECTIONS.

16.1. Construction Manager agrees to keep the Project site clean at all times of debris, rubbish and waste materials arising out of the Work. At the completion of the Work, Construction Manager shall remove all debris, rubbish and waste materials from and about the Project site, as well as all tools, appliances, construction equipment and machinery and surface materials, and shall leave the Project site clean and ready for occupancy by Owner.

16.2. Any existing surface or subsurface improvements, including, but not limited to, pavements, curbs, sidewalks, pipes, utilities, footings, structures, trees and shrubbery, not indicated in the Contract Documents to be removed or altered, shall be protected by Construction Manager from damage during the prosecution of the Work. Any such improvements so damaged shall be restored by Construction Manager to the condition equal to that existing at the time of Construction Manager's commencement of the Work.

17. ASSIGNMENT.

17.1. Construction Manager shall not assign this Agreement or any part thereof, without the prior consent in writing of Owner. If Construction Manager does, with approval, assign this Agreement or any part thereof, it shall require that its assignee be bound to it and to assume toward Construction Manager all of the obligations and responsibilities that Construction Manager has assumed toward Owner.

18. PERMITS, LICENSES AND TAXES.

18.1. All permits and licenses necessary for the prosecution of the Work shall be procured and paid for by Construction Manager. Permits and licenses to be acquired by Construction Manager with the assistance of Design Professional include, but are not limited to, building, site, Department of Environmental Protection, and utility permits, required for the construction or relocation of City of Naples, or appropriate entities, water and/or sanitary sewer lines and facilities, to the extent such work is included in this Agreement. All permits and licenses must be obtained no later than the ninety percent (90%) completion point of the Construction Documents Phase contained in the Design Agreement. If Construction Manager performs any Work without obtaining, or contrary to, such permits or licenses, Construction Manager shall bear all costs arising therefrom. Construction Manager shall pay all governmental charges and inspection fees necessary for the prosecution of the Work.

18.2. Construction Manager shall pay all sales, consumer, use and other similar taxes associated with the Work or portions thereof, which are applicable during the performance of the Work. Owner shall pay all impact fees.

19. TERMINATION FOR DEFAULT.

19.1. Construction Manager shall be considered in material default of the Agreement and such default shall be considered cause for Owner to terminate the Agreement, in whole or in part, as further set forth in this Section, if Construction Manager: (1) fails to begin the Work under the Contract Documents within the time specified herein; or (2) fails to properly and timely perform the Work as directed by Owner or Design Professional or as provided for in the approved Master Project Schedule; or (3) performs the Work unsuitably or neglects or refuses to remove materials or to correct or replace such Work as may be rejected as unacceptable or unsuitable; or (4) discontinues the prosecution of the Work; or (5) fails to resume Work which has been suspended within a reasonable time after being notified to do so; or (6) becomes insolvent or is declared bankrupt, or commits any act of bankruptcy; or (7) allows any final judgment to stand against it unsatisfied for more than ten (10) days; or (8) makes an assignment for the benefit of creditors; or (9) fails to obey any applicable codes, laws, ordinances, rules or regulations with respect to the Work; or (10) materially breaches any other provision of the Contract Documents.

19.2. If Owner determines that Construction Manager is in default under this

Agreement, Owner shall notify Construction Manager in writing of Construction Manager's default(s). If Owner determines that Construction Manager has not remedied and cured the default(s) within seven (7) calendar days following receipt by Construction Manager of said written notice, then Owner, at its option, without releasing or waiving its rights and remedies against Construction Manager's sureties and without prejudice to any other right or remedy it may be entitled to hereunder or by law, may terminate Construction Manager's right to proceed under the Agreement, in whole or in part, and take possession of all or any portion of the Work and any materials, tools, equipment, and appliances of Construction Manager, take assignments of any of Construction Manager's subcontracts and purchase orders, and complete all or any portion of Construction Manager's Work by whatever means, method or agency which Owner, in its sole discretion, may choose. In making either the initial determination that Construction Manager is in default under this Agreement or the subsequent determination that Construction Manager has failed to satisfactorily cure its default, Owner may rely solely upon the Design Professional's certification to Owner that in the Design Professional's opinion the Construction Manager is in default or has failed to satisfactorily cure its default.

19.3. If Owner deems any of the foregoing remedies necessary, Construction Manager agrees that it shall not be entitled to receive any further payments hereunder until after the Project is completed. All monies expended and all of the costs, losses, damages and extra expenses, including all management, administrative and other overhead and other direct and indirect expenses (including Design Professional and attorneys' fees) or damages incurred by Owner incident to such completion, shall be deducted from the unpaid balance of the Contract Amount, and if such expenditures exceed the unpaid balance of the Contract Amount, Construction Manager agrees to pay promptly to Owner on demand the full amount of such excess, including costs of collection, attorney's fees (including appeals) and interest thereon at the maximum legal rate of interest until paid. If the unpaid balance of the Contract Amount exceeds all such costs, expenditures and damages incurred by Owner to complete the Work, Construction Manager shall not be entitled to any portion of such excess. Any amounts to be paid to Owner by Construction Manager pursuant to this paragraph 19.3 shall be certified by Design Professional, upon application, and this obligation for payment shall survive termination of the Agreement.

19.4. The liability of Construction Manager hereunder shall extend to and include the full amount of any and all sums paid, expenses and losses incurred, damages sustained, and obligations assumed by Owner in good faith under the belief that such payments or assumptions were necessary or required, in completing the Work and providing labor, materials, equipment, supplies, and other items therefor or re-letting the Work, and in settlement, discharge or compromise of any claims, demands, suits, and judgments pertaining to or arising out of the Work hereunder.

19.5. If, after notice of termination of Construction Manager's right to proceed pursuant to this Section, it is determined for any reason that Construction Manager was not in default, or that its default was excusable, or that Owner is not entitled to the remedies against Construction Manager provided herein, then Construction Manager's remedies against Owner shall be the same as and limited to those afforded Construction Manager under section 20 below.

20. TERMINATION FOR CONVENIENCE AND RIGHT OF SUSPENSION.

20.1. Owner shall have the right to terminate this Agreement without cause upon seven (7) calendar days written notice to Construction Manager. In the event of such termination for convenience, Construction Manager's recovery against Owner shall be limited to that portion of the Contract Amount earned through the date of termination, together with any retainage withheld and

reasonable termination expenses incurred, but Construction Manager shall not be entitled to any other or further recovery against Owner, including, but not limited to, damages or any anticipated profit on portions of the Work not performed.

20.2. Owner shall have the right to suspend all or any portions of the Work upon giving Construction Manager two (2) calendar days' prior written notice of such suspension. If all or any portion of the Work is so suspended, Construction Manager's sole and exclusive remedy shall be to seek an extension of time to its schedule in accordance with the procedures set forth in the Contract Documents. In no event shall Construction Manager be entitled to any additional compensation or damages. Provided, however, if the ordered suspension exceeds four (4) months, Construction Manager shall have the right to terminate the Agreement with respect to that portion of the Work which is subject to the ordered suspension.

21. COMPLETION.

21.1. When the entire Work (or any portion thereof designated in writing by Owner) is ready for its intended use, Construction Manager shall notify Owner and Design Professional in writing that the entire Work (or such designated portion) is substantially complete and request that Design Professional issue a Certificate of Substantial Completion (or Certificate of Partial Substantial Completion). Said written notice from Construction Manager shall include a list of all items of Work to be completed or corrected by Construction Manager. Within a reasonable time thereafter, Owner, Construction Manager and Design Professional shall make an inspection of the Work (or designated portion thereof) to determine the status of completion. If Owner and Design Professional do not consider the Work (or designated portion) substantially complete, Design Professional shall notify Construction Manager in writing giving the reasons therefor. If Owner and Design Professional consider the Work (or designated portion) substantially complete, Design Professional shall prepare and deliver to Construction Manager a Certificate of Substantial Completion (or Certificate of Partial Substantial Completion) which shall fix the date Substantial Completion for the entire Work (or designated portion thereof) is actually achieved by Construction Manager and include a tentative punchlist of items to be completed or corrected by Construction Manager before final payment. Owner shall have the right to exclude Construction Manager from the Work and Project site (or designated portion thereof) after the date of Substantial Completion (or Partial Substantial Completion), but Owner shall allow Construction Manager reasonable access to complete or correct items on the tentative punchlist.

21.2. Upon receipt of written certification by Construction Manager that the Work is completed in accordance with the Contract Documents and is ready for final inspection and acceptance and upon receipt of a final Application for Payment, Design Professional shall promptly make such inspection and, if he finds the Work acceptable and fully performed under the Contract Documents, he shall promptly issue a final Certificate for Payment, stating that, to the best of his knowledge, information and belief, and on the basis of his observations and inspections: (i) the Work has been completed in accordance with the terms and conditions of the Contract Documents; (ii) the entire balance found to be due Construction Manager, and noted in the final Certificate for Payment, is due and payable; and (iii) the conditions precedent to Construction Manager's entitlement to final payment hereafter stated have been satisfied. Neither the final payment nor the retainage shall become due and payable until Construction Manager submits: (1) the final Release and Affidavit in the form attached as Exhibit E, (2) Consent of Surety to final payment in the form attached as Exhibit L, and (3) if required by Owner, other data establishing payment or satisfaction of all obligations, such as receipts, releases and waivers of liens, arising out of the Contract Documents, to the extent and in such form as may be designated by Owner.

Owner reserves the right to inspect the Work and make an independent determination as to the Work's acceptability, even though Design Professional may have issued his recommendations. Unless and until Owner is completely satisfied, neither the final payment nor the retainage shall become due and payable.

22. WARRANTY.

22.1. Construction Manager shall obtain and assign to Owner all express warranties given to Construction Manager or any subcontractors by any materialmen supplying materials, equipment or fixtures to be incorporated into the Project. Construction Manager warrants to Owner that any materials and equipment furnished under the Contract Documents shall be new unless otherwise specified, and that all Work shall be of good quality, free from all defects and in conformance with the Contract Documents. Construction Manager further warrants to Owner that all materials and equipment furnished under the Contract Documents shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable manufacturers, fabricators, suppliers or processors except as otherwise provided for in the Contract Documents**. If, within one (1) year after final completion**, any Work is found to be defective or not in conformance with the Contract Documents, Construction Manager shall correct it promptly after receipt of written notice from Owner. Construction Manager shall also be responsible for and pay for replacement or repair of adjacent materials or Work which may be damaged as a result of such replacement or repair. These warranties are in addition to those implied warranties to which Owner is entitled as a matter of law. Construction Manager shall conduct, jointly with Owner and Design Professional, a warranty inspection **ten (10 months** after the date of final completion.

23. TESTS AND INSPECTIONS.

23.1. Owner, Design Professional, their respective representatives, agents and employees, and governmental agencies with jurisdiction over the Project shall have access at all times to the Work, whether the Work is being performed on or off of the Project site, for their observation, inspection and testing. Construction Manager shall provide proper, safe conditions for such access. Construction Manager shall provide Design Professional with timely notice of readiness of the Work for all required inspections, tests or approvals.

23.2. If the Contract Documents or any codes, laws, ordinances, rules or regulations of any public authority having jurisdiction over the Project require any portion of the Work to be specifically inspected, tested or approved, Construction Manager shall assume full responsibility therefore, pay all costs in connection therewith and furnish Design Professional the required certificates of inspection, testing or approval. All inspections, tests or approvals shall be performed in a manner and by organizations acceptable to Owner and Design Professional.

23.3. If any Work that is to be inspected, tested or approved pursuant to the Contract Documents is covered without such inspection, testing or approval having been satisfactorily obtained by Construction Manager and without obtaining the written concurrence from Design Professional, such Work must, if requested by Design Professional, be uncovered for observation. Such uncovering shall be at Construction Manager's expense unless Construction Manager has given Design Professional timely notice of Construction Manager's intention to cover the same and has requested written concurrence by Design Professional and Design Professional has not acted with reasonable promptness to respond to such notice and request. If any Work is covered contrary to written directions from Design Professional, such Work must, if requested by Design Professional, be uncovered for Design Professional's observation and be replaced at Construction Manager's sole expense.

23.4. Owner shall charge to Construction Manager and may deduct from any payments due Construction Manager all engineering and inspection expenses incurred by Owner in connection with

any overtime work. Such overtime work consisting of any work during the construction period beyond the regular eight (8) hour day and for any work performed on Saturday, Sunday or holidays.

23.5. Neither observations by Design Professional nor inspections, tests or approvals by others shall relieve Construction Manager from Construction Manager's obligations to perform the Work in accordance with the Contract Documents.

24. DEFECTIVE WORK.

24.1. Work not conforming to the requirements of the Contract Documents shall be deemed defective Work. If required by Owner or Design Professional, Construction Manager shall as directed, either correct all defective Work, whether or not fabricated, installed or completed, or, if the defective Work has been rejected by Owner or Design Professional, remove it from the site and replace it with non-defective Work. Construction Manager shall bear all direct, indirect and consequential costs of such correction or removal (including, but not limited to fees and charges of engineers, architects, attorneys and other professionals) made necessary thereby, and shall hold Owner and Design Professional harmless for same.

24.2. If Owner or Design Professional consider it necessary or advisable that covered Work be observed by Design Professional or inspected or tested by others, Construction Manager, at Design Professional's or Owner's request, shall uncover, expose or otherwise make available for observation, inspection or tests as Owner or Design Professional may require, that portion of the Work in question, furnishing all necessary labor, material and equipment. If it is found that such Work is defective, Construction Manager shall bear all direct, indirect and consequential costs of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction (including, but not limited to, fees and charges of engineers, architects, attorneys and other professionals), and Owner shall be entitled to an appropriate decrease in the Contract Amount. If, however, such Work is not found to be defective, Construction Manager shall be allowed an increase in the Contract Amount and/or an extension to the Contract Time, directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction.

24.3. If any portion of the Work is defective, or Construction Manager fails to supply sufficient skilled workers with suitable materials or equipment, or fails to finish or perform the Work in such a way that the completed Work will conform to the Contract Documents, Owner (or Design Professional if such right is provided for in the Supplemental Terms and Conditions attached hereto as Exhibit B) may order Construction Manager to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner (and Design Professional if so provided) to stop the Work shall not give rise to any duty on the part of Owner (or Design Professional if so provided) to exercise this right for the benefit of Construction Manager or any other party.

24.4. Should Owner determine, at its sole opinion, it is in Owner's best interest to accept defective Work, the Owner may do so. Construction Manager shall bear all direct, indirect and consequential costs attributable to Owner's evaluation of and determination to accept defective Work. If such determination is rendered prior to final payment, a Change Order shall be executed evidencing such acceptance of such defective Work, incorporating the necessary revisions in the Contract Documents and reflecting an appropriate decrease in the Contract Amount. If Owner accepts such defective Work after final payment, Construction Manager shall promptly pay Owner an appropriate amount to adequately compensate Owner for its acceptance of the defective Work.

24.5. If Construction Manager fails, within a reasonable time after the written notice from Owner or Design Professional, to correct defective Work or to remove and replace rejected defective Work as required by Owner or Design Professional, or if Construction Manager fails to perform the Work in accordance with the Contract Documents, or if Construction Manager fails to comply with any of the provisions of the Contract Documents, Owner may, after seven (7) days' written notice to Construction Manager, correct and remedy any such deficiency. To the extent necessary to complete corrective and remedial action, Owner may exclude Construction Manager from any or all of the Project site, take possession of all or any part of the Work, and suspend Construction Manager's services related thereto, take possession of Construction Manager's tools, appliances, construction equipment and machinery at the Project site and incorporate in the Work all materials and equipment stored at the Project site or for which Owner has paid Construction Manager but which are stored elsewhere. Construction Manager shall allow Owner, Design Professional and their respective representatives, agents, and employees such access to the Project site as may be necessary to enable Owner to exercise the rights and remedies under this paragraph. All direct, indirect and consequential costs of Owner in exercising such rights and remedies shall be charged against Construction Manager, and a Change Order shall be issued, incorporating the necessary revisions to the Contract Documents, including an appropriate decrease to the Contract Amount. Such direct, indirect and consequential costs shall include, but not be limited to, fees and charges of engineers, architects, attorneys and other professionals, all court and arbitration costs and all costs of repair and replacement of work of others destroyed or damaged by correction, removal or replacement of Construction Manager's defective Work. Construction Manager shall not be allowed an extension of the Contract Time because of any delay in performance of the Work attributable to the exercise by Owner of Owner's rights and remedies hereunder.

25. SUPERVISION AND CONSTRUCTION MANAGER'S REPRESENTATIVE.

25.1. Construction Manager shall supervise and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Construction Manager shall be responsible to see that the finished Work complies accurately with the Contract Documents. Construction Manager shall keep on the Work at all times during its progress a competent resident representative who shall not be replaced without prior written notice to Owner and Design Professional except under extraordinary circumstances. The representative shall have authority to act on behalf of Construction Manager. All communications given to the representative shall be as binding as if given to Construction Manager. Owner shall have the right to direct Construction Manager to remove and replace its Project representative or any other employee of Construction Manager from this Project, with or without cause.

26. PROTECTION OF WORK.

26.1. Construction Manager shall fully protect the Work from loss or damage and shall bear the cost of any such loss or damage until final payment has been made. If Construction Manager or any one for whom Construction Manager is legally liable for is responsible for any loss or damage to the Work, or other work or materials of Owner or Owner's separate contractors, Construction Manager shall be charged with the same, and any monies necessary to replace such loss or damage shall be deducted from any amounts due Construction Manager.

26.2. Construction Manager shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Construction Manager subject any part of

the Work or adjacent property to stresses or pressures that will endanger it.

26.3. Construction Manager shall not disturb any benchmark established by Owner with respect to the Project. If Construction Manager, or its subcontractors, agents or anyone for whom Construction Manager is legally liable, disturbs Owner's benchmarks, Construction Manager shall immediately notify Owner and Design Professional. Owner shall have the benchmarks reestablished and Construction Manager shall be liable for all costs incurred by Owner associated therewith.

27. EMERGENCIES.

27.1. In the event of an emergency affecting the safety or protection of persons or the Work or property at the Project site or adjacent thereto, Construction Manager, without special instruction or authorization from Owner or Design Professional is obligated to act to prevent threatened damage, injury or loss. Construction Manager shall give Design Professional written notice within forty-eight (48) hours after the occurrence of the emergency, if Construction Manager believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby. If Design Professional determines that a change in the Contract Documents is required because of the action taken in response to an emergency, a Change Order shall be issued to document the consequences of the changes or variations. If Construction Manager fails to provide the forty-eight (48) hour written notice noted above, Construction Manager shall be deemed to have waived any right it otherwise may have had to seek an adjustment to the Contract Amount or an extension to the Contract Time.

28. USE OF PREMISES.

28.1. Construction Manager shall confine all construction equipment, the storage of materials and equipment and the operations of workers to the Project site and land and areas identified in and permitted by the Contract Documents and other lands and areas permitted by law, rights of way, permits and easements, and shall not unreasonably encumber the Project site with construction equipment or other material or equipment. Construction Manager shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or any land or areas contiguous thereto, resulting from the performance of the Work.

29. SAFETY.

29.1. Construction Manager shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Construction Manager shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

29.1.1. All employees on the Work and other persons and/or organizations who may be affected thereby;

29.1.2. All the Work and materials and equipment to be incorporated therein, whether in storage on or off the Project site; and

29.1.3. Other property on Project site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities and any underground structures or improvements not designated for removal, relocation or replacement in the Contract Documents.

29.2. Construction Manager shall comply with all applicable codes, laws, ordinances, rules and regulations of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss. Construction Manager shall erect and maintain all necessary safeguards for such safety and protection. Construction Manager shall notify owners of adjacent property and of underground structures and improvements and utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation or replacement of their property. Construction Manager's duties and responsibilities for the safety and protection of the Work shall continue until such time as the Work is completed and final acceptance of same by Owner has occurred.

29.3. Construction Manager shall designate a responsible representative at the Project site whose duty shall be the prevention of accidents. This person shall be Construction Manager's superintendent unless otherwise designated in writing by Construction Manager to Owner.

30. PROJECT MEETINGS.

Prior to the commencement of Work, Construction Manager shall attend a preconstruction conference with Owner and Design Professional and others as appropriate to discuss the Master Project Schedule, procedures for handling shop drawings and other submittals, and for processing Applications for Payment, and to establish a working understanding among the parties as to the Work. During the prosecution of the Work, Construction Manager shall attend any and all meetings convened by Owner or Design Professional with respect to the Project, when directed to do so by Owner or Design Professional. Construction Manager shall have its subcontractors and suppliers attend all such meetings (including the preconstruction conference) as may be directed by Owner or Design Professional.

31. MATERIAL SAFETY DATA SHEET.

If any chemicals, materials, or products containing toxic substances, as defined by Chapter 442, Florida Statutes, are contained in the products used on site or incorporated into the construction as a result of this bid, by the Construction Manager or any of its subcontractors, the Construction Manager shall provide to the Design Professional and Owner, a Material Safety Data Sheet at the time of each delivery or new use of a product and such Material Safety Data Sheets shall be maintained at all times on site.

32. AUDITING RIGHTS.

The Owner reserves the right to audit the Construction Manager's and any subcontractor's records, as such records relate to the purchase of materials for and construction of the project.

33. COMPLIANCE WITH LAWS.

33.1. Construction Manager agrees to comply, at its own expense, with all federal, state and local laws, codes, statutes, ordinances, rules, administrative orders, regulations and requirements applicable to the Project, including but not limited to those dealing with safety (including, but not limited to, the Trench Safety Act, Chapter 553, Florida Statutes). If Construction Manager observes that the Contract Documents are at variance therewith, it shall promptly notify Owner and Design Professional in writing.

33.2. For federal funded projects, the Construction Manager must comply with rules and regulations as defined in the Davis Bacon Wage Rate Act, in addition to, but not limited to, the Copeland Anti-Kickback Act (29 C.F.R. Part 3) and the Contract Work Hours and Safety Standards Act (28 C.F.R. Part 5).

34. SUBCONTRACTS.

34.1. A subcontractor is a person or entity who has a direct contract with the Construction Manager to perform a portion of the Work.

34.2. Unless otherwise stated in the Contract Documents or the bidding requirements, the Construction Manager, as soon as practical after the Notice to Proceed is issued for the Construction Phase Services, shall furnish in writing to Owner through the Design Professional the names of the subcontractors for each portion of the Work. The Construction Manager shall not contract with any subcontractor to whom the Owner has made reasonable and timely objection. Construction Manager shall not be required to contract with anyone to whom the Construction Manager has made reasonable objection. Subcontracts between the Construction Manager and subcontractors shall (1) require each subcontractor, to the extent of the Work to be performed by the subcontractor, to be bound to the Construction Manager by the terms of the Contract Documents, and to assume towards the Construction Manager all the obligations and responsibilities which the Construction Manager, by the Contract Documents, assumes towards the Owner and Design Professional, and (2) provide for the assignment of those subcontracts from Construction Manager to Owner at the election of Owner upon termination of Construction Manager. The Construction Manager shall make available to each proposed subcontractor, prior to the execution of the subcontract, copies of the Contract Documents to which the subcontractor will be bound by this paragraph 34.2 and identify to the subcontractor any terms and conditions of the proposed subcontract which may be at variance with the Contract Documents. Each subcontractor shall similarly make copies of such documents available to his sub-subcontractors.

34.3. On all subcontracts where the bid exceeds $100,000.00, the subcontractor **may be required to** provide a 100% performance bond and a 100% labor and material payment bond from a surety company authorized to do business in the State of Florida by the Department of Insurance. The Owner shall be identified as an Obligee on all Performance Bonds. If the Construction Manager wishes to award subcontracts to contractors unable to supply this bonding, he may request special authorization to do so. Upon providing justifiable background information, such authorization shall not be withheld unreasonably.

34.3.1. Subcontract bidders must submit a completed experience questionnaire and financial statement on the form as provided by the Construction Manager or such other qualification process as may be agreed to by the Owner, prior to award of the subcontract. Such information shall be reviewed by the Construction Manager and the Owner prior to award of the subcontract. Any subcontractor may be disapproved for award by either the Owner or the Construction Manager at their sole option and without statement as to the reason why such decline has been made. As a minimum requirement, the subcontractor's financial condition must demonstrate that adequate fixed and liquid assets and equipment are available to properly perform the subcontract.

34.3.2. Workforce - The subcontractor must agree to perform no less than 15% of the Project construction work utilizing its own employees.

34.3.3. Subcontractor experience - The subcontractor must have successfully completed no less than two projects of similar size and complexity within the last five years.

34.3.4. Supervision - The subcontractor must agree to provide field (on-site) supervision through a named superintendent for each trade (general concrete forming and placement, masonry, mechanical, plumbing, electrical and roofing) included in the subcontract. In addition, the subcontractor shall assign and name a qualified employee for scheduling direction for its work. The supervisory employees of the subcontractor (including field superintendent, foreman and schedulers at all levels) must have been employed in a supervisory (leadership) capacity of substantially equivalent level on a similar project for at least two years within the last five years. The subcontractor shall include a resume of experience for each employee identified by him to supervise and schedule his work.

34.3.5. All subcontracts shall provide:

34.3.5.1 LIMITATION OF REMEDY - NO DAMAGES FOR DELAY

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

In the event of a change in the work, the subcontractor's claim for adjustments in the contract sum are limited exclusively to its actual costs for such changes plus no more than 10% for overhead and profit and bond costs.

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

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

34.4. Construction Managers who do business for the Owner are advised that the Owner would like to encourage general contractors to select subcontractors who are licensed to operate

businesses in Southwest Florida to include Collier, Lee and Hendry Counties.

34.5. The Construction Manager shall not employ the Civil Engineering firm of record to perform any survey work that is required under the terms of the contract.

34.6. The Construction Manager shall be responsible to the Owner for the acts and omissions of his employees and agents and his subcontractors, their agents and employees, and all other persons performing any of the work or supplying materials under a contract to the Construction Manager.

34.7. The Construction Manager shall not employ on this project any person or subcontractor with any employee who has been convicted of a felony or misdemeanor-level criminal charge regarding sexual abuse or misconduct.

35. SECURING AGREEMENT.

35.1. Construction Manager warrants that Construction Manager has not employed or retained any company or person, other than a bona fide employee working solely for Construction Manager, to solicit or secure this Agreement and that Construction Manager has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for Construction Manager, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this Agreement. At the time this Agreement is executed, Construction Manager shall sign and deliver to Owner the Truth-in-Negotiation Certificate attached hereto and made a part hereof as Exhibit M. The Construction Manager's compensation shall be adjusted to exclude any sums by which Owner determines the compensation was increased due to inaccurate, incomplete, or non-current wage rates and other factual unit costs.

36. PUBLIC ENTITY CRIMES

36.1. At the time this Agreement is executed, Construction Manager shall sign and deliver to Owner the sworn statement under §287.133(3)(a), Florida Statutes, on Public Entity Crimes ("Sworn Statement"), which is attached hereto and made a part hereof as Exhibit N. Construction Manager shall not be entitled to any payment for services rendered until the Sworn Statement has been provided to Owner.

37. ASSURANCES WITH REGARD TO OWNER'S EMPLOYEES

37.1 Construction Manager agrees not to employ or offer to employ any Elected Officer or City Managerial Employee who in any way deals with, coordinates on, or assists with, the construction services provided in this Agreement, for a period of two (2) years after termination of all provisions of this Agreement.

37.2 If Construction Manager violates the provisions of paragraph 37.1, Construction Manager shall be required to pay damages to Owner in an amount equal to any and all compensation which is received by the former Elected Officer or City Managerial Employee from or on behalf of the Construction Manager, or an amount equal to the former Elected Officer's or City Managerial Employee's last two (2) years of gross compensation from Owner, whichever is greater.

37.3 For purposes of this section, the terms "Elected Officer" shall mean any member of the City Council and "City Managerial Employee" shall mean the City Manager, the Assistant City Manager, the City

Clerk, and any City department head or director.

38. ASSURANCES WITH REGARD TO THIRD PARTIES

38.1 Construction Manager agrees not to provide services for compensation to any other party other than Owner on the same subject matter, same project, or scope of services without approval from the City Council of Owner.

38.2 Except as otherwise provided in this Agreement, Construction Manager agrees not to disclose or use information not available to members of the general public and gained by reason of Construction Manager's contractual relationship with Owner for the special gain or benefit of Construction Manager, or for the special gain or benefit of any other person or entity.

END OF GENERAL TERMS AND CONDITIONS

EXHIBIT B

SUPPLEMENTAL TERMS AND CONDITIONS

The following Supplemental Terms and Conditions hereby amend, modify and supersede in the event of a conflict the terms of the Construction Agreement and the General Terms and Conditions attached thereto as Exhibit A.

A. The Work to be provided by Construction Manager pursuant to this Agreement shall be performed essentially in two phases. Those phases being Design Phase Services and Construction Phase Services. During the Design Phase Services, Construction Manager shall cooperate with and assist the Design Professional in the design of the Project. Construction Manager shall review and comment upon the Construction Documents being prepared by the Design Professional. The scope of Construction Manager's review shall include, but shall not be limited to, providing value engineering services and commentary concerning the constructability of the design. At the completion of the CM Selection Phase, Schematic Design Phase, Design Development Phase and at 50% of the completion of the Construction Documents Phase (as those phases are set forth in the Design Agreement), Construction Manager shall review and comment upon all documents being submitted by the Design Professional to Owner with respect to those various phases and prepare for Owner's review and approval detailed estimates of construction costs based upon those documents. After Design Professional has completed the Construction Documents, and Owner and Construction Manager have reviewed and mutually accepted those final documents, Construction Manager, with the assistance of Design Professional, shall develop, from the previous cost estimates submitted to and approved by Owner, the GMP for the Project. Construction Manager shall submit the GMP to Owner for Owner's review and approval. In the event Construction Manager and Owner fail to reach an agreement on the GMP, Owner may elect to terminate this Agreement. In the event of any such termination, Construction Manager shall be entitled to receive that portion of the Contract Sum attributable to the Design Phase Services earned through the date of termination; but Construction Manager shall not be entitled to any further or additional compensation from Owner, including but not limited to damages or lost profits on portions of the Work not performed.

B. Because the Work is to be completed in two phases, the timely completion of the first phase is critical to the timely completion of the second phase and, therefore, completion of the entire Project. Accordingly, Construction Manager agrees to provide the Design Phase Services in accordance with the design schedule set forth in the Design Agreement. With respect to the Construction Phase Services, at the time the GMP is set, Owner and Construction Manager also shall set the date that portion of the Work associated with the Construction Phase Services shall be substantially completed by Construction Manager. That substantial completion date shall be established in terms of calendar days after the Construction Phase Commencement Date. In the event Construction Manager and Owner fail to reach an agreement on that substantial completion date, Owner may elect to terminate this Agreement. In the event of any such termination, Construction Manager shall be entitled to receive that portion of the Contract Sum attributable to the Design Phase Services earned to the date of termination; but Construction Manager shall not be entitled to any further or additional compensation from Owner, including but not limited to damages or lost profits on portions of the Work not performed. The date of Substantial Completion of the Work (or designated portions thereof) is the date certified by Design Professional when construction is sufficiently complete, in accordance with the Contract Documents, so Owner can occupy or utilize the Work (or designated portions thereof) for the use for which it is intended. The entire Work shall be fully completed and ready for final acceptance by Owner within sixty (60) calendar days after the day to be fixed by Owner and Construction Manager for Substantial Completion pursuant to the above noted terms, as that date may be extended pursuant to other terms of this Agreement.

C. Owner and Construction Manager recognize that, since time is of the essence for this Agreement, Owner will suffer financial loss if the Work associated with the Construction Phase is not substantially completed within the time specified above, as said time may be adjusted as provided for herein. The total amount of the Owner's damages, in whole or in part, will be difficult, if not impossible, to definitely ascertain and quantify, because this is a public construction project that will, when completed, benefit the public and enhance the delivery of valuable education to the public, in Collier County, Florida. It is hereby agreed that it is appropriate and fair that the Owner receive liquidated damages from the Construction Manager, if the Project does not actually achieve Substantial Completion by the Substantial Completion date identified for the Project. Should Construction Manager fail to substantially complete that portion of the Work within the time period noted above, Owner shall be entitled to assess, as liquidated damages, but not as a penalty, **$500 for each calendar day** thereafter until Substantial Completion is achieved. The Project shall be deemed to be substantially completed on the date Design Professional issues a Substantial Completion Certificate pursuant to the terms hereof. Construction Manager hereby expressly waives and relinquishes any right which it may have to seek to characterize the above noted liquidated damages as a penalty, which the parties agree represents a fair and reasonable estimate of Owner's actual damages at the time of contracting if Construction Manager fails to substantially complete the Work in a timely manner.

D. Construction Manager agrees and understands that funding limitations exist and that the expenditure of funds must be spread over the duration of the Project at regular intervals based on the Contract Amount and Master Project Schedule. Accordingly, prior to submitting its first monthly Application for Payment after the GMP is set as provided for herein, Construction Manager shall prepare and submit for Owner's review and approval, a detailed Project Funding Schedule, which shall be updated as necessary and approved by Owner to reflect approved adjustments to the Contract Amount and Contract Time. No voluntary acceleration or early completion of the Work shall accelerate the time of payments by Owner to Construction Manager as set forth in the approved Project Funding Schedule.

E. If during the performance of the Work, Construction Manager or any subcontractor, sub-subcontractor, agent, employee or any one else for whom Construction Manager is legally liable, causes a disruption of utility service to other facilities or customers within the Project area, including, but not limited to, **one hundred yards from the site**, Construction Manager shall take all actions necessary and required to immediately restore such utility service. If Construction Manager fails to take such immediate actions Owner shall have the right to take whatever actions it deems necessary and required to immediately restore the disrupted utilities, and all costs incurred by Owner as a result thereof shall be reimbursed to Owner by Construction Manager within five (5) business days of written demand for same from Owner.

F. If Construction Manager encounters on the Project site any materials reasonably believed by Construction Manager to be hazardous, petroleum or petroleum related products or other hazardous or toxic substances which have not been rendered harmless, Construction Manager may immediately stop Work in the area affected and shall report the condition to Owner in writing. If the Work is so stopped, the Work in the affected area shall not thereafter be resumed except by Change Order. Any such Change Order shall include, but not be limited to, an adjustment to the Contract Amount and Contract Time as appropriate.

G. Construction Manager shall provide the following Project Management Information System ("PMIS"), which system shall be in place for both the Design Phase and Construction Phase

services to be provided by Construction Manager pursuant to this Agreement.

1. General:

1.1. Commencing immediately after the Notice of Award is issued to Construction Manager by Owner, the Construction Manager shall implement and shall utilize throughout the life of this Contract all subsystems of the PMIS.

1.2. The reports, documents, and data to be provided shall represent an accurate assessment of the current status of the Project and of the Work remaining to be accomplished and it shall provide a sound basis for identifying variances and problems and for making management decisions.

1.3. If requested by the Owner, the Construction Manager shall conduct a comprehensive workshop for participants designated by the Owner and additional seminars as required to provide instruction with respect to the PMIS. This workshop and the seminars shall facilitate each participant's and the Owner's representatives' use and understanding of the PMIS.

1.4. The PMIS shall be described in terms of the following major subsystems:

1.4.1 Narrative Reporting;
1.4.2 Schedule Control;
1.4.3 Cost Control and Estimating;
1.4.4 Project Accounting;
1.4.5 Accounting and Payment; and
1.4.6 Action Reports.

1.5. The above reports shall be submitted at least on a monthly basis and shall accompany each monthly Application for Payment.

2. Narrative Reporting Subsystem.

2.1. The Construction Manager shall prepare written reports as described hereunder. All reports shall be in 8 1/2" x 11" format.

2.2. The Narrative Reporting Subsystem shall include the following reports:

2.2.1 A Monthly Executive Summary which provides an overview of current issues and pending decisions, future developments and expected achievements, and any problems or delays, including code violations found by any permitting authority.

2.2.2 A Monthly Cost Narrative describing the current construction cost estimate status of the Project.

2.2.3 A Monthly Scheduling Narrative summarizing the current status of the overall Master Project Schedule. This report shall include an analysis of

the various Project subschedules, a description of the critical path, and other analyses as necessary to compare planned performance with actual performance.

2.2.4 A Monthly Accounting Narrative describing the current cost and payment status for the entire Project. This report shall relate current encumbrances and expenditures to the budget allocations.

2.2.5 A Monthly Construction Progress Report during the Construction Phase summarizing the Work of the various subcontractors. This report shall include information from the weekly job site meetings as applicable such as general conditions, long lead supplies, current deliveries, safety and labor relations, programs, permits, construction problems and recommendations, and plans for the succeeding month.

2.2.6 A Daily Construction Diary during the Construction Phase describing events and conditions on the site.

2.3. The Reports outlined in subsection 2.2.1 through 2.2.6 above shall be bound with applicable computer reports and submitted monthly during Design and Construction Phases and shall be current through the end of the preceding month. Copies shall be delivered to the Owner and the Design Professional. A bound copy of the complete diary shall be submitted to the Owner at the conclusion of the Project.

3. Schedule Control Subsystem.

3.1 Master Project Schedule: Prior to the submittal of its first application for payment, the Construction Manager shall submit to the Owner and Design Professional for their review and approval a Master Project Schedule covering the planning and design approvals, construction, and Owner occupancy of the Project. This schedule shall conform to the format outlined in Section 3.4 below. This schedule shall serve as the framework for the subsequent development of all detailed schedules and shall be updated monthly by the Construction Manager throughout the Project. Within fifteen (15) calendar days of the Construction Manager's submittal, the Owner and the Design Professional shall review the schedule and provide the Construction Manager a written list of corrections needed to approve the schedule. The Construction Manager must make all corrections and resolve all comments within sixty (60) calendar days of the Construction Phase Commencement Date. If the schedule is not approved within sixty (60) calendar days of the Construction Phase Commencement Date, the Owner and Design Professional will withhold all Contract payments until the schedule is approved. The approval of the schedule by the Owner and Design Professional in no way attests to the validity of the assumptions, logic constraints, dependency relationships, resource allocations, manpower and equipment, and any other aspect of the proposed schedule. The Construction Manager is and shall remain solely responsible for the planning and execution of work in order to meet Project milestones or Contract completion dates.

3.2 Construction Schedule: Within ten (10) calendar days after the Construction Phase Commencement Date, the Construction Manager shall prepare and submit to the Owner and Design Professional, for their review and approval, a Construction Schedule in quadruplicate. This schedule shall conform to the format outlined in Section 3.4 below. Within fifteen (15) calendar days of the Construction Manager's submittal, the Owner and the Design Professional shall review the schedule and provide the Construction Manager a written list of corrections needed to approve the schedule. The Construction Manager must make all corrections and resolve all comments within sixty (60) calendar days of the Construction Phase Commencement Date. If the schedule is not approved within sixty (60) calendar days of the Construction Phase Commencement Date, the Owner and Design Professional will withhold all Contract payments until the schedule is approved. The Construction Schedule shall be integrated into the Master Project Schedule. Failure of the Construction Manager to develop and submit a Construction Schedule as aforesaid shall be sufficient grounds for the Owner to find the Construction Manager in substantial default hereunder and that sufficient cause exists to terminate the Agreement or to withhold any payment.

3.2.1 Following development and submittal of the Construction Schedule as aforesaid, the Construction Manager shall, at the end of each calendar month occurring thereafter during the period of time required to finally complete the Project, or at such earlier intervals as circumstances may require, update and/or revise the Construction Schedule which shall be submitted to the Owner in duplicate. No additional compensation will be due the Construction Manager for making such updates. Failure of the Construction Manager to update, revise, and submit the Construction Schedule as aforesaid shall be sufficient grounds for the Owner to find the Construction Manager in substantial default hereunder and that sufficient cause exists to terminate the Agreement or to withhold payment to the Construction Manager until a schedule or schedule update acceptable to the Owner is submitted.

3.3 The Construction Manager shall prepare and incorporate into the schedule database, at the required intervals, the following schedules:

3.3.1 Pre-Bid Schedules (Subnetworks): The Construction Manager shall prepare a construction schedule for Work encompassed in each bid package. The schedule shall be sufficiently detailed as to be suitable for inclusion in the bid package as a framework for subcontract completion by the successful bidder. It shall show the interrelationships between the Work of the successful bidder and that of other subcontractors, and shall establish milestones keyed to the Project Schedule.

3.3.2 Subcontractor Construction Schedules (Subnetworks): Upon the award of each subcontract, the Construction Manager shall jointly with the subcontractor, develop a schedule which is more detailed than the pre-bid

schedule included in the bid packages, taking into account the Work schedule of the other subcontractors. The construction schedule shall include as many activities as necessary to make the schedule an effective tool for construction planning and for monitoring the performance of the subcontractor. The construction schedule also shall show pertinent activities for material purchase orders, manpower supply, shop drawing schedules and material delivery schedules.

3.3.3 Occupancy Schedule: The Construction Manager shall jointly develop with the Design Professional and Owner a detailed plan, inclusive of punch lists, final inspections, maintenance training and turn-over procedures, to be used for ensuring accomplishment of a smooth and phased transition from construction to Owner occupancy. The Occupancy Schedule shall be produced and updated monthly from its inception through final Owner occupancy and shall be integrated into the Master Project Schedule.

3.4 Schedule Format: The Master Project Schedule and the Construction Schedule shall be planned and recorded with a Critical Path Method (CPM) schedule in the form of an activity-on-node diagram. All activity-on-node diagrams shall include the Activity Identification, Activity Description, and the type of relationship between activities, including any lead or lag time.

3.4.1 No activity shall have a duration greater than fifteen (15) work days or less than one (1) work day. If requested by the Owner or Design Professional, the Construction Manager shall furnish any information needed to justify the reasonableness of activity durations. Such information shall include, but not be limited to, estimated activity manpower, anticipated quantities, and production rates.

3.4.2 Procurement shall be identified with at least two (2) activities: fabrication and delivery. Insure that all work activities that require a submittal are preceded by submittal and approval activities.

3.4.3 Only contractual constraints shall be shown in the schedule logic. No other restraints are allowed unless approved by the Owner or Design Professional. The disallowance of constraints includes the use of activity mandatory start and finish dates.

3.4.4 Activities shall be identified by codes to reflect the responsible party for the accomplishment of each activity (only one party per activity), the Phase/Stage of the Project for each activity, and the Area/Location of each activity

3.4.5 The construction time for the entire Project, or any milestone, shall not exceed the specified Contract time. Logic or activity durations shall be revised in the event that any milestone or Contract completion date is exceeded in the schedule.

3.4.6 Float is defined as the amount of time between when an activity "can start" (the early start) and when an activity "must start" (the late start). It is understood by the Owner and the Construction Manager that float is a shared commodity, not for the exclusive use or financial benefit of either party. Either party has the full use of the float until it is depleted.

3.4.7 The CPM schedules must be compatible with Primavera Project Planner Software, version 5.0 or later, by Primavera Systems, Inc., Bala Cynwyd, PA. It is the Construction Manager's responsibility to ascertain the software compatibility with the Owner or Design Professional.

3.4.8 Initial Schedule Submittal Requirements:

3.4.8.1 Predecessor/Successor Sort
3.4.8.2 Total Float/Early Start Sort
3.4.8.3 Responsibility/Early Start Sort
3.4.8.5 Area/Early Start Sort
3.4.8.6 Logic Diagram: Produce diagram with not more than 100 activities per ANSI D (24-inch x 36-inch) size sheet. Insure each sheet includes title, match data or diagram correlation, and key to identify all components used in the diagram.
3.4.8.7 Narrative discussing general approach to completion of the work.
3.4.8.8 Diskette in Primavera (P3) format.

3.4.9 Schedule Update Requirements: The Construction Manager shall update the schedules monthly to show actual, current progress. The submission date of the updates shall be determined by the OWNER, as outlined in Section 3.2 above. The schedule updates shall be submitted within seven (7) calendar days of the data dates. The Owner may require submission of the updated schedule on diskette prior to submission of the full update package. Should the Construction Manager fail to provide an update, the Owner may withhold payment of the current monthly progress estimate until the monthly scheduled update is submitted. The updates shall include:

3.4.9.1 Dates of activities' actual starts and completions.
3.4.9.2 Percent of work remaining for activities started but not completed as of the update date.
3.4.9.3 Narrative report including a listing of monthly progress, the activities that define the critical path and any changes to the path of critical activities from the previous update, sources of delay, any potential problems, requested logic changes, and work planned for the next month.
3.4.9.4 Predecessor/Successor Sort
3.4.9.5 Total Float/Early Start Sort
3.4.9.6 Responsibility/Early Start Sort

3.4.9.7 Area/Early Start Sort

3.4.9.8 Diskette in Primavera (P3) format

3.4.9.9 Fragnet of logic diagram for all requested logic changes.

3.4.9.10 Updated logic diagram as required by the Owner. At a minimum, the Owner shall require a final logic diagram at the end of the Project showing the planned and actual starts and completions.

3.4.9.11 A bar chart comparison of the updated schedule to the initial schedule. This diagram shall show actual and planned performance dates for all completed activities.

3.4.9.12 All update information shall be an accurate representation of the actual Project progress.

3.5 Recovery Schedule: If the initial schedule or current updates fail to reflect the Project's actual plan or method of operation, or a contractual milestone date is more than thirty (30) days behind, the Owner may require that a recovery schedule for completion of the remaining Contract work be submitted. The Recovery Schedule must be submitted within seven (7) calendar days of the Owner's request. The Recovery Schedule shall describe in detail the Construction Manager's plan to complete the remaining Contract work by the Contract milestone date. The Recovery Schedule submitted shall meet the same requirements as the Initial Schedule. The narrative submitted with the Recovery Schedule should describe in detail all changes that have been made to meet the Contract milestone date.

3.6 Change Orders: When a Change Order is proposed, the Construction Manager must identify all logic changes as a result of the Change Order. The Construction Manager shall include, as part of each Change Order proposal, a sketch showing all schedule logic revisions, duration changes, and the relationships to other activities in the approved Initial Schedule. This sketch shall be known as the fragnet for the change. Upon acceptance of the fragnet, the Construction Manager will revise the Initial Schedule or current update. The logic changes required by the Change Order will be considered incidental to the Construction Manager's work. No separate payment will be made.

3.7 Schedule Revisions to Utility Work: The Construction Manager shall provide the utilities ten (10) days notice when revisions in the schedule of work affect operations of a utility unless previous arrangements have been made with the utility company involved.

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

4.1 Design Phase Estimates; and

4.2 At establishment of the GMP.

5. Project Accounting Subsystem: This subsystem shall enable the Construction Manager to plan effectively and the Owner to monitor and control the funds available for the Project, cash flow, costs, Change Orders, payments, and other major financial factors by comparison of budget, estimate, total commitment, amounts invoiced, and amounts payable, and also enable the Owner to stay informed as to the overall Project status. All reports to be generated as part of this subsystem shall be consistent with the Project Funding Schedule. This subsystem will be produced and updated monthly and includes the following reports:

5.1. Costs Status Report representing the budget, estimate, and base commitment (awarded subcontracts and purchase orders) for any given subcontract or budget line item. It shall show approved Change Orders for each subcontract which when added to the base commitment will become the total commitment. Pending Change Orders also will be shown to produce the total estimated probable cost to complete the Work.

5.2. A Payment Status Report showing the value in place (both current and cumulative), the amount invoiced (both current and cumulative), and the balance remaining. A summary of this report shall accompany each pay request.

5.3. A Detailed Status Report showing the complete activity history of each item in the Project accounting structure. It shall include the budget, estimate, and base commitment figures for each subcontract. It shall give the Change Order history, including Change Order numbers, description, proposed and approved dollar amounts. It also shall show all pending or rejected Change Orders.

5.4. A Cash Flow Diagram showing the projected accumulation of cash payments against the Project. Cash flow projections shall be generated for anticipated monthly payments as well as cumulative payments.

5.5. A Job Ledger shall be maintained as necessary to supplement the operation of the Project accounting subsystem. The job ledger will be used to provide construction cost accountability for general conditions work, on-site reimbursable expenses, and costs requiring accounting needs.

A. Construction Manager shall provide a Policy and Procedure Manual in accordance with the following requirements:

1. Upon execution of this Agreement, the Construction Manager shall develop a draft of the comprehensive Policy and Procedure Manual describing the services set forth in this Agreement. This shall provide a plan for the control, direction, coordination and evaluation of the Work performed throughout the Project; the Project organization including identification of key personnel, responsibilities of the Construction Manager, Owner and Design Professional; Work flow diagrams; and strategy for bidding and subcontracting the Work. The Owner shall have the

right to review the Policy and Procedure Manual and to approve its content and format. The Policy and Procedure Manual may be updated as necessary throughout the Design and Construction Phases, but substantive changes will not be made without the Owner's prior written concurrence. Five (5) copies of the Policy and Procedure Manual and any updates shall be submitted to the Owner and Design Professional. In developing the Policy and Procedure Manual, the Construction Manager shall coordinate with the Owner and the Design Professional. The initial manual shall be submitted to the Owner for approval.

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

2.1. Project Definition: The known characteristics of the Project and sub-projects shall be described in general terms which will provide the participants a basic understanding of the Project and sub-projects.

2.2. Project Goals: The schedule, budget, physical, technical and other objectives for the Project shall be defined.

2.3. Project Strategy: A narrative description of the Project delivery methods which shall be utilized to accomplish the Project goals.

2.4. Project Work Plan: A matrix display of the Work to be performed by the Construction Manager, as well as the services and items to be furnished by the Design Professional and the Owner during each phase of the Project.

2.5. Project Organization: A summary organization chart showing the interrelationships between the Owner, the Construction Manager and the Design Professional, and other supporting organizations and permitting review agencies. Detailed charts, one each for the Construction Manager and Design Professional, showing organizational elements participating in the Project shall be included.

2.6. Responsibility Performance Chart: A detailed matrix showing the specific responsibilities and interrelationships of the Owner, the Design Professional, and Construction Manager. The Responsibility Performance Chart shall indicate major responsibility, and minor responsibility, for each specific task required to deliver the Project. The Construction Manager shall develop a similar chart for the personnel within his own organization who are assigned to the Project, as well as for the Design Professional's and Owner's personnel assigned to the Project from data supplied by them.

2.7. Flow Diagrams: These charts shall display the flow of information and the decision process for the review and approval of shop drawings and

submittals, progress, and change orders.

2.8. Written Procedure: The Construction Manager will provide written procedures for communications and coordination required between the Construction Manager, Design Professional and Owner throughout the Project. Procedures shall cover such items as correspondence, minutes, reports, inspections, team meetings, technical reviews, design reviews, and other necessary communications.

3. This Policy and Procedure Manual shall be completed and submitted to the Design Professional and Owner prior to payment of any compensation under this Agreement.

4. This Policy and Procedure Manual is merely an amplification and clarification of this Agreement. Any conflicts between the Policy and Procedure Manual and this Agreement shall be governed by the latter.

B. Construction Manager shall provide the following review and commentary services, in addition to any other such services required by the terms of this Agreement:

1. Review, Recommendations and Warranty: The Construction Manager shall familiarize himself thoroughly with the evolving architectural, civil, mechanical, plumbing, electrical and structural plans and specifications and shall follow the development of design from Schematic Design Phase through Construction Documents Phase (as those phases are defined in the Design Agreement). The Construction Manager shall make recommendations with respect to the selection of systems and materials, and cost-reducing alternatives including assistance to the Design Professional and Owner in evaluating alternative comparisons versus long term cost effects. The evaluation shall address the benefits of the speed of erection and early completion of the Project. The Construction Manager shall furnish pertinent information as to the availability of materials and labor that will be required. The Construction Manager shall submit to the Owner and Design Professional such comments as may be appropriate concerning construction feasibility and practicality. The Construction Manager shall call to the Owner's and the Design Professional's attention any apparent defects in the design, drawings and specifications or other documents. The Construction Manager shall prepare estimates of the construction cost utilizing the unit quantity survey method in the CSI format. These estimates shall be performed at the completion of the CM Selection Phase and shall be called the Program Estimate, followed by a Schematic Design Estimate, which shall be followed by the Design Development Estimate, which shall be followed by a 50% Construction Document Estimate, which shall be followed by the setting of the GMP.

2. Review Reports: Within ten (10) days after receiving the various documents produced by the Design Professional for each design phase of the Project, the Construction Manager shall perform a specific review thereof, focused upon factors of a nature encompassed in Paragraph 1 above and on factors set out in Paragraph 6 below. Within the same ten (10) day period, the Construction

Manager shall submit to the Owner, with copies to the Design Professional, a written report covering suggestions or recommendations previously submitted, additional suggestions or recommendations as the Construction Manager may deem appropriate, and all actions taken by the Design Professional with respect to same, any comments the Construction Manager may deem to be appropriate with respect to separating the Work into separate subcontracts, alternative materials, and any other appropriate or required comments.

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

DISCLAIMER OF WARRANTY: THE OWNER DISCLAIMS ANY WARRANTY THAT THE PLANS AND SPECIFICATION FOR THE PROJECT ARE ACCURATE, PRACTICAL, CONSISTENT OR CONSTRUCTABLE.

3. Long Lead Procurement: The Construction Manager shall review the Project design for the purpose of identifying long lead procurement items (machinery, equipment, materials and supplies) and consult with Design Professional concerning same. When each item is identified, the Construction Manager shall notify the subcontractors, Owner and the Design Professional of the required procurement and schedule. Such information shall be included in the bid documents and made a part of all affected subcontracts. As soon as the Design Professional has completed drawings and technical specifications and the Construction Manager has obtained permitting approval, the Construction Manager shall prepare invitations for bids. Copies to be supplied to Owner, in advance of Construction Manager's issuing the invitation to bid, for Owner's review. The Construction Manager shall keep himself informed of the progress of the respective subcontractors or suppliers, manufacturing or fabricating such items, and advise Owner and Design Professional of any problems or prospective delays in delivery.

4. Separate Subcontracts Planning: The Construction Manager shall review the design and shall determine how it desires to divide the sequence of construction activities, and will determine the breakdown and composition of bid packages for award, based on the current Master Project Schedule, and shall supply a copy of same to Owner and Design Professional for their review and approval. Construction Manager shall take into consideration such factors as natural and practical lines of severability, sequencing effectiveness, access and availability

constraints, total time for completion, construction market conditions, availability of labor and materials, community relations and any other factors pertinent to saving time and costs. The Construction Manager will supply the Owner a copy of the schedule for the Owner's review and approval.

5. Interfacing

5.1. The Construction Manager shall take such measures as are appropriate to provide that all construction requirements will be covered in the separate procurement of long lead items, the separate construction subcontractors and the general conditions items performed without duplication or overlap, sequenced to maintain completion of all Work on schedule. Particular attention shall be given to provide that each bid package clearly identifies the Work included in that particular separate subcontract, its schedule for start and completion and its relationship to other separate subcontractors.

5.2. Without assuming any Design responsibilities of the Design Professional, the Construction Manager shall include in the reports required under Paragraph 2 above comments on overlap with any other separate subcontracts, omissions, lack of correlation between drawings, and any other deficiencies noted, in order that the Design Professional may arrange for necessary corrections.

6. Job-Site Facilities: The Construction Manager shall arrange for all job-site facilities as required by the Owner and necessary to enable the Construction Manager and Design Professional to perform their respective duties and to accommodate any representatives of the Owner which the Owner may choose to have present on the job, the description of which shall be finalized prior to the establishment of the GMP.

Tangible personal property, otherwise referred to as job-site facilities, include, but are not limited to such things as trailers, toilets, typewriters, computers and any other equipment necessary to carry on the Project. The method of acquiring such job-site facilities, which are planned to become the property of the Owner at the conclusion of the Project, shall be evaluated based on cost over the life of the Project. Owning versus leasing shall be considered by the Construction Manager obtaining at least three (3) proposals for leasing and at least three (3) proposals for purchasing and then analyzing which is least expensive over the usage life of the item. The Construction Manager shall present his evaluation with recommendation to the Owner for approval.

When the Construction Manager wishes to supply job-site facilities from his own equipment pool, he shall first evaluate buy versus lease as discussed in the paragraph above. If leasing is found to be the least expensive approach, then he may lease such job-site facilities from his own equipment pool at a price not greater than the lowest of the three (3) lease proposals obtained.

For all such job-site facilities purchased, which may become the property of the Owner at the conclusion of the Project, the Construction Manager shall maintain ownership responsibilities of such facilities until the Project conclusion. Reimbursement for cost of such equipment will be made at the conclusion of the Project at the documented purchase price. At that time, the Construction Manager shall provide the Owner with a complete inventory for each unit of equipment. The inventory shall describe the equipment and identify the purchase price, serial number, model number and condition. Where said equipment has a title, said title shall be properly transferred to the Owner or to its designee.

The Construction Manager is responsible for proper care and maintenance of all equipment while in his control. At the time of transfer to the Owner, the Owner may refuse acceptance of the equipment if the Owner determines, in its sole discretion, that the equipment has not been properly cared for by the Construction Manager or that such acquisition would not otherwise be in the best interest of the Owner. In such event, the Construction Manager will be reimbursed for such item in accordance with section 5 hereof.

7. Weather Protection: The Construction Manager shall ascertain what temporary enclosures, if any, of building areas, including existing facilities, should be provided for and may be provided as a practical matter, in order to assure orderly progress of the Work and to protect and secure the Work and existing facilities, in periods when extreme weather conditions are likely to be experienced.

8. Market Analysis and Stimulation of Bidder Interest:

8.1. The purpose of this subsection is to insure that the Construction Manager makes a genuine effort to stimulate interest in the Project and maximize participation of potential qualified subcontractors in the bidding process. The Construction Manager shall monitor conditions in the construction market to identify factors that will or may affect costs and time for completing the Project; Construction Manager shall make analysis as necessary to (i) determine and report on availability of labor, materials, equipment, potential bidders, and possible impact of any shortages or surpluses of labor or material, and (ii) in light of such determination, make recommendations and take action as may be appropriate with respect to long lead procurement, separation of construction into bid packages, sequencing of Work, use of alternative materials, equipment or methods, other economics in design or construction, and other matters that will promote cost savings and completion within the Contract Time.

8.2. Within thirty (30) days after execution of this Agreement, the Construction Manager shall submit a written "Construction Market Analysis and Prospective Bidders Report" setting out recommendations and providing information as to prospective bidders. As various bid packages are prepared for bidding, the Construction Manager shall submit to the Owner and Design Professional a list of potential bidders. The Construction Manager shall be responsible to stimulate bidder

interest in the local market place and identify and encourage bidding competition.

8.3. The Construction Manager shall carry out an active program of stimulating interest of qualified subcontractors in bidding on the Work and of familiarizing those bidders with the requirements of this Project.

C. In addition to all other Construction Phase services required to be performed by Construction Manager pursuant to the terms of this Agreement, Construction Manager also shall provide the following services:

1. Construction Manager's Staff: The Construction Manager shall maintain sufficient off-site support staff, and competent full time staff at the Project site authorized to act on behalf of the Construction Manager to coordinate, inspect and provide general direction of the Work and progress of the subcontractors. Construction Manager shall provide no less than those personnel during the respective phases of construction that are set forth in Exhibit I to this Agreement. The Construction Manager shall not change any of those persons identified in Exhibit I unless mutually agreed to in writing by the Owner and Construction Manager. In such case, the Owner shall have the right to approve the qualifications of the replacement personnel.

2. Lines of Authority: The Construction Manager shall establish and maintain lines of authority for its personnel, and shall provide this information to the Owner and all other affected parties, such as the code inspectors of any permitting authority, the subcontractors, and the Design Professional to provide general direction of the Work and progress of the various phases and subcontractors. The Owner and Design Professional may attend meetings between the Construction Manager and his subcontractors; however, such attendance is optional and shall not diminish either the authority or responsibility of the Construction Manager to administer the subcontracts.

3. Schedule and Policy and Procedure Manual Provision - Construction Phase: The Construction Manager shall provide the Owner, its representatives and the Design Professional with copies of the Policy and Procedure Manual (total number of copies not to exceed 10) developed and updated as required herein, expanded for the Construction Phase, employing the Construction Phase milestones, beginning and finishing dates, the various parties' respective responsibilities for performance and the relationships of their Work with respect to subcontractors and suppliers. The Construction Manager also shall continue to provide current scheduling information and provide direction and coordination regarding milestones, beginning and finishing dates, responsibilities for performance and the relationships of the Construction Manager's Work to the Work of his subcontractors and suppliers to enable them to perform their respective tasks so that the construction progresses in a smooth and efficient manner in conformance with the overall Master Project Schedule. The schedule shall include all phases of the construction Work, material supplies, long lead procurement, approval of shop drawings, change orders in progress, schedules for change orders, and

performance testing requirements. The Construction Manager shall advise the Owner, its representatives and the Design Professional of their required participation in any meeting or inspection giving each at least one week notice unless such notice is made impossible by conditions beyond Construction Manager's fault and control. The Construction Manager shall hold jobsite meetings at least once each month with the construction team and at least once each week with the subcontractors and the Design Professional's field representative, or more frequently as required by Work progress, to review progress, discuss problems and their solutions and coordinate future Work with all subcontractors.

4. Solicitation of Bids

4.1. The Construction Manager shall prepare invitations for bids and shall solicit from the open marketplace for all procurement of long lead items, materials and services, for subcontractor contracts and for site utilities. In addition to open marketplace solicitation, the Construction Manager shall identify and specifically solicit bids from not less than three subcontractors who are known to him or have experience in projects of like nature and scope of the Work. The Design Professional shall assist the Construction Manager in the preparation of the bidding information, bidding forms and other bidding documents. The Owner shall have the right to review invitation for bids and bid packages prior to distribution to bidders.

4.2 Furnishing of Subcontract Forms: The Construction Manager, during the design phase of the project, shall furnish his standard sub-trade contract form, terms, and conditions to the Owner and Design Professional for their review, approval, and for incorporation on the project specifications for review of all sub-trade bidders during the bidding process.

4.3 It is the intent of the Owner that the Construction Manager conduct open competitive bidding of sub-trade work for the project. Although the solicitation of specific bidders by the Construction Manager is encouraged, the Construction Manager shall in no way limit those firms who may submit proposals to him. Proposals for sub-trade work shall be sealed bids to be received at a date and time specific and the Owner shall be advised of all such bid dates. Bids shall be received by the Construction Manager by hand delivery or mail ahead of the closing time of bids at the office of the Construction Manger and the Owner and/or Architect may observe the bidding process.

4.4. As part of such preparation, the Construction Manager shall review the specifications and drawings prepared by the Design Professional. Ambiguities, conflicts or lack of clarity of language, use of illegally restrictive requirements, and any other defects in the specifications or in

the drawings noted by the Construction Manager shall be brought to the attention of the Owner and Design Professional in written form.

4.5. The Construction Manager shall, unless waived by Owner, conduct a pre-bid conference with prospective bidders. The Design Professional shall be invited to all such meetings. In the event questions are raised which require an interpretation of the bidding documents or otherwise indicate a need for clarification or correction of the invitation, the Construction Manager shall transmit these to the Design Professional in writing and upon receiving clarification or correction in writing shall prepare an addendum to the bidding documents, and issue same to all of the prospective bidders.

4.6 Subsequent to receipt of bids, the Project Team (the Construction Manager, Owner, and Architect with applicable consultants) shall review all bids and rank preliminary selections of proposers to be considered for contract awards.

4.7 The Construction Manager will conduct pre-award conferences with all prospective sub-trade contractors selected through the above process. The Design Professional and the Owner shall be invited to all such meetings. At the pre-award meeting, the Construction Manager and prospective subcontractor shall review all aspects of the scope of the work to assess the capability of the subcontractor to fulfill the needs of the Project including the subcontractor qualification information required pursuant to Paragraph 34.3.1 of the General Terms and Conditions of this Agreement. Subjects covered may include schedule, manufacturers used in bidding the work, manpower, supervisory personnel, value engineering suggestions, etc. Within forty-eight (48) hours of the pre-award conference, the Construction Manager shall decide whether to accept or reject the lowest responsive bidder and to enter into the same process with the next lowest bidder.

5. Quality Control: The Construction Manager shall develop and maintain a program, acceptable to the Owner and Design Professional, to assure quality control of the Work. The Construction Manager shall be responsible for and supervise the Work of all subcontractors, providing instructions to each when their portion of the Work does not conform to the requirements of the plans and specifications and Construction Manager shall continue to exert its influence and control over each subcontractor to ensure that corrections are made in a timely manner so as to not affect the efficient progress of the Work. Should a disagreement occur between the Construction Manager and the Design Professional over the acceptability of the Work, the Owner, in its sole discretion, shall have the right to determine the acceptability.

6. Subcontractor: The Construction Manager shall solely control the subcontractors. The Construction Manager shall negotiate all Change Orders, field orders and request for proposals, with all affected subcontractors and shall

review the costs of those proposals and advise the Owner and Design Professional of their validity and reasonableness, acting in the Owner's best interest, prior to requesting approval of each Change Order from the Owner. Before any Work is begun on any Change Order, a written authorization from the Owner must be issued. However, when there is an eminent threat to health and safety, and Owner's concurrence is impractical, the Construction Manager shall act immediately to remove the threats to health and safety and shall subsequently fully inform Owner of all such action taken. The Construction Manager shall also carefully review all shop drawings and then forward the same to the Design Professional for review and actions. The Design Professional will transmit them back to the Construction Manager who will then issue the shop drawings to the affected subcontractor for fabrication or revision. The Construction Manager shall maintain a suspense control system to promote expeditious handling. The Construction Manager shall request the Design Professional to make interpretations of the drawings or specifications requested of him by the subcontractors and shall maintain a suspense control system to promote timely response. The Construction Manager shall advise the Design Professional in writing which shop drawings or requests for clarification have the greatest urgency; the purpose being to enable the Design Professional to prioritize requests coming from the Construction Manager. The Construction Manager shall advise the Owner and Design Professional in writing when timely response is not occurring on any of the above.

7. Permits: The Construction Manager shall secure all necessary building permits from any permitting authorities. The Construction Manager, with assistance from the Design Professional, will obtain all necessary site and utility permits. All costs incurred by Construction Manager with respect to performing its obligations under this paragraph 7 shall be considered a direct cost item and shall be considered reimbursable as Cost of the Work as provided for in the Agreement. The Owner shall fully cooperate with the Construction Manager where necessary.

8. Job Site Requirements:

8.1. The Construction Manager shall provide the following:

8.1.1 Maintain a log of daily activities, including manpower records, weather, delays, major decisions, etc.

8.1.2 Maintain a roster of companies on the Project with names and telephone numbers of key personnel.

8.1.3 Establish and enforce job rules governing parking, clean-up, use of facilities and Worker discipline.

8.1.4 Provide labor relations management for a harmonious, productive project.

8.1.5 Provide and administer a safety program for the Project to meet

OSHA and other governmental requirements. Monitor subcontractor compliance with that safety program.

8.1.6 Provide and administer a quality control program as developed pursuant to the terms herein.

8.1.7 Provide miscellaneous office supplies that support the construction efforts which are consumed by Construction Manager's own forces.

8.1.8 Provide for travel to and from Construction Manager's home office to the Project site and Collier County as the Project requires.

8.2. The Construction Manager shall provide personnel and equipment or shall arrange for separate subcontractors to provide each of the following as a direct cost item:

8.2.1 Services of independent testing laboratories and provide the necessary testing of materials to ensure conformance with the Contract Documents.

8.2.2 Printing and distributing of all required biding documents and shop drawings, including the sets required by any permitting authority's inspectors.

9. Job Site Administration: The Construction Manager shall provide job site administration functions during construction to assure proper documentation, including but not limited to the following:

9.1. Job Meetings: Conduct a preconstruction conference with each subcontractor after award of the subcontract and prior to the start of its portion of the Work. Hold weekly progress and coordination meetings to provide for a timely completed Project. Implement procedures and assure timely submittals, expedite processing approvals and return of shop drawings, samples, etc. Coordinate and expedite critical long lead materials, work sequences, inspection and testing, labor allocation, etc. Review and coordinate each subcontractor's work. Review and implement revisions to the Master Project Schedule or subschedules as provided herein. Monitor and promote safety requirements. In addition, Construction Manager shall arrange and conduct regular monthly Project status meetings with the Design Professional and Owner.

Construction Manager shall use the job site meetings as a tool for the preplanning of Work and enforcing schedules, and for establishing procedures, responsibilities, and identification of authority for all parties to clearly understand.

Construction Manager shall identify party or parties responsible for following up on any problems, delay items or questions, and Construction Manager shall note the action to be taken by such party or parties. Construction Manager shall revisit each pending item at each subsequent meeting until resolution is achieved. Construction Manager shall attempt to obtain from all present any problems or delaying event known to them for appropriate attention and resolution.

9.2. Shop Drawing Submittals/Approvals: Provide staff to review and approve shop drawings and to implement procedures for submittal and transmittal to the Design Professional of such drawings for action, and closely monitor their submittal and approval process.

9.3. Material and Equipment Expediting: Provide staff to closely monitor material and equipment deliveries, perform critically important checking and follow-up procedures on supplier commitments for all subcontractors and maintain a material and equipment expediting log.

9.4. Payments to Subcontractors: Develop and implement a procedure for the review, processing and payment of applications by subcontractors for progress and final payments.

9.5. Document Interpretation: Refer all questions for interpretation of the Contract Documents to the Design Professional in writing.

9.6. Reports and Project Site Documents: Record the progress of the Project. Submit written progress reports to the Owner and the Design Professional, including information on subcontractors' Work, and the percentage of completion. Keep a daily log available to the Owner, the Design Professional, and any permitting authority inspectors.

9.7. Subcontractors Progress: Prepare periodic punch lists for subcontractors' work including unsatisfactory or incomplete items and schedules for their completion.

9.8. Substantial Completion: Ascertain when the Work or designated portions thereof are ready for the Design Professional's substantial completion inspections. From the punch lists of incomplete or unsatisfactory items prepared by Construction Manager and reviewed and supplemented by Design Professional, prepare a schedule for their completion indicating completion dates for the Owner's review. The Design Professional will issue a Certificate of Substantial Completion when the Work on the list has been accomplished and Substantial Completion has been achieved as otherwise required hereunder.

9.9. Final Completion: Monitor the subcontractors' performance on the completion of the Project and provide notice to the Owner and Design Professional that the Work is ready for final inspection. Secure and

transmit to the Owner, through the Design Professional, all required guarantees, warranties, affidavits, releases, bonds and waivers, manuals, record drawings, and maintenance books.

9.10. Start-Up: With the Owner's personnel, direct the check-out of utilities, operations, systems and equipment for readiness and assist in their initial start-up and testing by the subcontractors.

9.11. Record Drawings: The Construction Manager shall monitor the progress of its own forces and its subcontractors on marked up field prints which at Project completion shall be developed by Construction Manager into the final record drawings.

10. Administrative Records: The Construction Manager shall maintain at the Project site, originals or copies of, on a current basis, files and records such as, but not limited to the following:

10.1. Subcontracts and Purchase Orders
10.2. Shop Drawing Submittal/Approval Logs
10.3. Equipment Purchase/Delivery Logs
10.4. Contract Drawings and Specifications with Addenda
10.5. Warranties and Guarantees
10.6. Cost Accounting Records
10.7. Labor Costs
10.8. Material Costs
10.9. Equipment Costs
10.10. Cost Proposal Request
10.11. Payment Request Records
10.12. Meeting Minutes
10.13. Cost-Estimates
10.14. Bulletin Quotations
10.15. Lab Test Reports
10.16. Insurance Certificates and Bonds
10.17. Contract Changes
10.18. Permits
10.19. Material Purchase Delivery Logs
10.20. Technical Standards
10.21. Design Handbooks
10.22. "As-Built" Marked Prints
10.23. Operating & Maintenance Instruction
10.24. Daily Progress Reports
10.25. Monthly Progress Reports
10.26. Correspondence Files
10.27. Transmittal Records
10.28. Inspection Reports
10.29. Bid/Award Information
10.30. Bid Analysis and Negotiations
10.31. Punch Lists

10.32. PMIS Schedule and Updates
10.33. Suspense (Tickler) Files of Outstanding Requirements
10.34. Policy and Procedure Manual

The Project records shall be available at all times to the Owner and Design Professional for reference or review.

11. Owner Occupancy

11.1. The Construction Manager shall provide services which will provide for the smooth, successful and timely occupancy of the Project by Owner. The Construction Manager shall provide consultation and Project management to facilitate Owner occupancy and provide transitional services to place the Work, as completed by the subcontractors, "on line" in such conditions as will satisfy Owner's operations requirements.

11.2. The Construction Manager shall conduct the preliminary punch list inspections with the Owner and Design Professional, prepare the punch list and coordinate the completion of all punch list work to be done with the Owner occupancy requirements in mind.

11.3. The Construction Manager shall catalog operational and maintenance requirements of equipment to be operated by maintenance personnel and convey these to the Owner in the form of an operation and maintenance manual so as to promote their usability.

11.4. The Construction Manager shall provide operations training in equipment use for building operators.

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

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

END OF SUPPLEMENTAL TERMS AND CONDITIONS

EXHIBIT C

FORM OF PERFORMANCE AND PAYMENT BONDS

BOND NO._____

PUBLIC PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS: That _____ as Principal, and _____, as Surety, located at _____ (Business Address) are held and firmly bound to the City of Naples, Florida, as Obligee in the sum of ($_____) for the payment whereof we bind ourselves, our heirs, executors, personal representatives, successors and assigns, jointly and severally.

WHEREAS, Principal has entered into a contract dated as of the ____ day of _____, 199__, with Obligee for _____
_____
_____
in accordance with drawings and specifications, which contract is incorporated by reference and made a part hereof, and is referred to as the Contract.

THE CONDITION OF THIS BOND is that if Principal:

1. Promptly makes payment to all claimants as defined in Section 255.05(1), Florida Statutes, supplying Principal with labor, materials or supplies, used directly or indirectly by Principal in the prosecution of the Work provided for in the Contract, then this bond is void; otherwise it remains in full force.

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

The provisions of this bond are subject to the time limitations of Section 255.05(2). In no event will the Surety be liable in the aggregate to claimants for more than the penal sum of this Payment Bond, regardless of the number of suits that may be filed by claimants.

IN WITNESS WHEREOF, the above parties have executed this instrument this ____ day of _____, 199__, the name of each party being affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

Signed, sealed and delivered in the presence of:

PRINCIPAL:

_____

_____

_____
Witnesses as to Principal

By:_____

Name:_

Its:_____

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this ___ day of _____, 199__, by _____, as _____ of _____, a _____ corporation, on behalf of the corporation. He/she is personally known to me **OR** has produced _____ as identification.

My Commission Expires:

(AFFIX NOTARY SEAL)

_____
Notary Public (Signature)

_____
(Printed Name)

_____
(Title or Rank)

_____
(Serial Number, if any)

ATTEST:

SURETY:

_____
(Printed Name)

_____

_____

_____
(Business Address)

_____

_____
(Authorized Signature)

_____
Witness as to Surety

_____
(Printed Name)

OR

_____ _____

As Attorney in Fact
(Attach Power of Attorney)

_____
Witnesses

_____

_____

_____
(Business Address)

_____
(Printed Name)

_____
(Telephone Number)

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this ___ day of _____, 199__, by _____, as _____, of _____ _____. Surety, on behalf of Surety. He/She is personally known to me **OR** has produced _____ as identification.

My Commission Expires:

(AFFIX NOTARY SEAL)

_____
Notary Public (Signature)

_____
(Printed Name)

_____
(Title or Rank)

_____
(Serial Number, if any)

BOND NO._____

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS: That _____ as Principal, and _____, as Surety, located at _____ _____ (Business Address) are held and firmly bound to the City of Naples, Florida, as Obligee, in the sum of _____ ($_____) for the payment whereof we bind ourselves, our heirs, executors, personal representatives, successors and assigns, jointly and severally.

WHEREAS, Principal has entered into a contract dated as of the _____ day of _____, 199__ _____ _____ in accordance with drawings and specifications, which contract is incorporated by reference and made a part hereof, and is referred to as the Contract.

THE CONDITION OF THIS BOND is that if Principal:

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

2. Pays Obligee any and all losses, damages, expenses, costs and attorneys' fees, including appellate proceedings, that Obligee sustains because of any default by Principal under the Contract, including, but not limited to, all delay damages, whether liquidated or actual, incurred by Obligee; and

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

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

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

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

additions to the terms of the Contract or to Work or to the specifications.

This instrument shall be construed in all respects as a common law bond. It is expressly understood that the time provisions and statute of limitations under Section 255.05, Florida Statutes, shall not apply to this bond.

In no event will the Surety be liable in the aggregate to Obligee for more than the penal sum of this Performance Bond regardless of the number of suits that may be filed by Obligee.

IN WITNESS WHEREOF, the above parties have executed this instrument this _____ day of _____, 19___, the name of each party being affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

Signed, sealed and delivered
in the presence of:

PRINCIPAL:

_____ _____

_____ By:_____

Witnesses as to Principal Name:_

Its:_____

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this ___ day of _____, 199__, by _____, as _____ of _____, a _____ corporation, on behalf of the corporation. He/she is personally known to me **OR** has produced _____ as identification.

My Commission Expires:

_____
Notary Public (Signature)

(AFFIX NOTARY SEAL)

_____
(Printed Name)

_____
(Title or Rank)

_____
(Serial Number, if any)

ATTEST:

SURETY:

_____
(Printed Name)

_____

_____

_____
(Business Address)

_____

_____
(Authorized Signature)

_____
Witness as to Surety

(Printed Name)

OR

_____

_____
As Attorney in Fact
(Attach Power of Attorney)

_____
Witnesses

_____

_____

_____
(Business Address)

_____
(Printed Name)

_____
(Telephone Number)

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this ___ day of _____, 199__, by _____ of _____, Surety, on behalf of Surety. He/She is personally known to me **OR** has produced _____ as identification.

My Commission Expires:

(AFFIX NOTARY SEAL)

_____
Notary Public (Signature)

_____
(Printed Name)

_____
(Title or Rank)

_____
(Serial Number, if any)

EXHIBIT D

INSURANCE REQUIREMENTS

The amounts and types of insurance shall conform to the following minimum requirements with the use of Insurance Services Office (ISO) forms and endorsements or broader where applicable:

A. Worker's Compensation and Employers Liability Insurance shall be maintained by the Construction Manager during the term of this Agreement for all employees engaged in the Work under this Agreement, in accordance with the laws of the State of Florida. The amount of such insurance shall not be less than:

Workers' Compensation - Florida Statutory Requirements

Employers Liability -	**$100,000**	Limit Each Accident
	$500,000	Limit Disease Aggregate
	$100,000	Limit Disease Each Employee

The insurance company shall waive its Rights of Subrogation against the Owner.

B. Commercial General Liability Insurance, written on an "occurrence" basis, shall be maintained by the Construction Manager. Coverages shall include, but not be limited to, Bodily Injury, Contractual for this Agreement, Independent Contractors, Products and Completed Operations, Personal Injury, Broad Form Property Damage including Completed Operations, Fire Legal Liability and Explosion, Collapse and Underground Coverages. Completed Operations Coverage shall be maintained for this Project for not less than five (5) years following completion and acceptance by the Owner. Limits of coverage shall not be less than the following:

General Aggregate	**$ 1,000,000**
Products - Completed Operations Aggregate	**$ 1,000,000**
Personal and Advertising Injury	**$ 1,000,000**
Each Occurrence	**$ 1,000,000**
Fire Damage (Any One Fire)	**$ 100,000**
Specific Project Aggregate Limits	$ same as above

The aggregate limits shall be separately applicable to this Project through the use of an endorsement approved by Owner. Applicable deductibles or self-insured retention, not to exceed **$1,000.00,** shall be the sole responsibility of the Construction Manager

C. Automobile Liability Insurance shall be maintained by the Construction Manager as to ownership, maintenance, and use, including loading and unloading, of all owned, non-owned, leased or hired vehicles with limits of not less than:

Bodily Injury, including Death & Property Damage Liability	**$ 1,000,000** Combined Single Limit Each Accident

D. Umbrella Liability Insurance or Excess Liability Insurance shall not be less **than $5,000,000** each occurrence and aggregate. Coverage shall be excess of the Employers Liability, Commercial General Liability and Automobile Liability coverages required herein and shall include all coverages on a "following form" basis. Coverage shall drop down as primary on the exhaustion of any aggregate limit. The aggregate limits shall apply separately to this Project, and the specific project aggregate limits shall be evidenced by the use of an endorsement approved by the Owner.

E. Builder's Risk Insurance, on an all risk completed value form, shall be provided by Construction Manager on the Project in an amount to be approved by Owner not to exceed the Contract Agreement, with the Owner, Construction Manager and Design Professional as named insureds and including the interests of the subcontractors and sub-subcontractors as their interests may appear. The Owner, at its discretion, may require that the perils of earthquake, sinkhole and flood be added to the Builder's Risk policy. If added, the amounts of coverage may be less than the Contract Agreement. Any deductibles under the Builder's Risk policy, not to exceed $**1,000.00**, shall be the sole responsibility of the Construction Manager. Loss, if any, under this coverage shall be adjusted with the Owner with the cooperation of the Construction Manager with the claim check made payable to the Owner for its own interest and the interests of the Construction Manager and all other insured parties. Subrogation rights of the insurance company against the Owner, Construction Manager, Design Professional and its subconsultants, and all subcontractors and sub-subcontractors, and any other parties that may be insured under the Builder's Risk coverage, shall be waived by the insurance company.

EXHIBIT E

RELEASE AND AFFIDAVIT

STATE OF FLORIDA)
COUNTY OF _____)

Before me, the undersigned authority, personally appeared _____, who after being duly sworn, deposes and says:

(1) In accordance with the Contract Documents and in consideration of $_____ paid, _____ ("Construction Manager") releases and waives for itself and its subcontractors, materialmen, successors and assigns, all claims demands, damages, costs and expenses, whether in contract or in tort, against the City of Naples, a municipal corporation ("Owner"), relating in any way to the performance of the Agreement between Construction Manager and Owner, dated _____, 199__, for the period from _____ to _____.

(2) Construction Manager certifies for itself and its subcontractors, materialmen, successors and assigns, that all charges for labor, materials, supplies, lands, licenses and other expenses for which Owner might be sued or for which a lien or a demand against any payment bond might be filed, have been fully satisfied and paid.

(3) Construction Manager agrees to indemnify, defend and save harmless Owner from all demands or suits, actions, claims of liens or other charges filed or asserted against Owner arising out of the performance by Construction Manager of the Work covered by this Release and Affidavit.

(4) This Release and Affidavit is given in connection with Construction Manager's [monthly/final] Application for Payment No._____.

CONSTRUCTION MANAGER:

_____

_____
Print Name:_____ By:____

Its:_____ President

_____ Date:_____
Print Name:_____

[Corporate Seal]

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this __ day of _____, 199__, by _____, as _____ of _____, a _____ corporation, on behalf of the corporation. He/She is personally known to me or has produced a _____(state) driver's license no. _____ as identification.

My Commission Expires:

(AFFIX NOTARY SEAL)

_____
Notary Public (Signature)

_____
(Printed Name)

_____
(Title or Rank)

_____
(Serial Number, if any)

EXHIBIT F

CONSTRUCTION MANAGER APPLICATION FOR PAYMENT

[INSERT AIA FORM OF PAYMENT APPLICATION AND SCHEDULE OF VALUES]

To be provided with finalization of the GMP

EXHIBIT G

CHANGE ORDER

CHANGE ORDER NO._____ CONTRACT NO. _____

TO:_____
_____
_____
_____

DATE: _____

PROJECT NAME:_____

PROJECT NO.:_____

Under our AGREEMENT dated _____, 19___.

****

You hereby are authorized and directed to make the following change(s) in accordance with terms and conditions of
the Agreement:

For the (Additive) (Deductive) Sum of: _____
_____ ($_____).

Original Agreement Amount $_____

Sum of Previous Changes $_____

This Change Order (Add) (Deduct) $_____

Present Agreement Amount $_____

The time for completion shall be (increased/decreased) by _____ calendar days due to this Change Order. Accordingly, the Contract Time is now _____ (____) calendar days and the Substantial Completion date is _____. Your acceptance of this Change Order shall constitute a modification to our Agreement and will be performed subject to all the same terms and conditions as contained in our Agreement indicated above, as fully as if the same

were repeated in this acceptance. The adjustment, if any, to the Agreement shall constitute a full and final settlement of any and all claims arising out of or related to the change set forth herein, including claims for impact and delay costs.

Accepted:_____, 19____

CONSTRUCTION MANAGER:

_____

By:_____
Print Name:_____
Its:_____

OWNER:

CITY OF NAPLES, FLORIDA

By:_____
Print Name:_____
Its:_____

DESIGN PROFESSIONAL:

_____

By:_____
Print Name:_____
Its:_____

EXHIBIT H

MASTER PROJECT SCHEDULE FORM

The master project schedule form shall be provided by the Construction Manager as part of plans and specifications for the project and shall be in the form of a Gantt Chart.

EXHIBIT I

CONSTRUCTION MANAGER'S STAFFING SCHEDULE

Project Manager: Donald Garrett
Jobsite Superintendent: Michael Rancier

EXHIBIT J

CERTIFICATE OF INSURANCE FORM

EXHIBIT K

AMENDMENT NO. 1 TO AGREEMENT BETWEEN OWNER AND CONSTRUCTION MANAGER

Pursuant to Sections 4B and 7A of the Agreement, dated _____ between the City of Naples, Florida, a municipal corporation ("Owner"), and _____ ("Construction Manager"), for management and construction of _____ ("Project"), the Owner and Construction Manager establish a Guaranteed Maximum Price and Contract Time for the Work as set forth below:

ARTICLE 1

GUARANTEED MAXIMUM PRICE

Construction Manager's Guaranteed Maximum Price for the Work, including the estimated Cost of the Work as defined in Section 5 and the Construction Manager's Fee as defined in Section 4, 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 Attachments 1 through 6, as follows:

Attachment Number	Description	Pages	Dated
1	Drawings, Specifications, addenda and General, Supplementary and other Conditions of the Contract on which the Guaranteed Maximum Price is based.	____ through ____	_____
2.	Allowance items	____ through ____	_____
3.	Assumptions and clarifications made in preparing the Guaranteed Maximum Price	____ through ____	_____
4.	Completion schedule	____ through ____	_____
5.	Alternate prices	____ through ____	_____
6.	Unit prices	____ through ____	_____

ARTICLE 2

CONTRACT TIME

The total period of time beginning with the Construction Phase Commencement Date to the date of Substantial Completion of the Work is _____ days ("Contract Time").

OWNER:

CITY OF NAPLES

By:_____
Print Name:_____
Its:_____

Date:_____
_____

Attest:_____

CONSTRUCTION MANAGER:

_____

By:_____
Print Name:__
Its:_____

Date:_____

Attest:_____

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EXHIBIT L

CONSENT OF SURETY

[INSERT AIA FORM OF CONSENT OF SURETY]

EXHIBIT M

TRUTH-IN-NEGOTIATION CERTIFICATE

EXHIBIT N

PUBLIC ENTITY CRIMES

EXHIBIT A

CITY OF NAPLES CONFLICT FORMS

CONSTRUCTION MANAGER agrees not to employ or offer to employ any Elected Officer or City Managerial Employee of OWNER who in any way deals with, coordinates on, or assists with, the professional services provided in this Agreement, for a period of two (2) years after termination of all provisions of this Agreement.

(a) For purposes of this paragraph, the term "Elected Officer" shall mean any member of the City Council.

(b) For purposes of this paragraph, the term "City Managerial Employee" shall mean the City Manager, the Assistant City Manager, the City Clerk, and any City department head or director.

(c) In the event CONSTRUCTION MANAGER violates the provisions of this paragraph, CONSTRUCTION MANAGER shall be required to pay damages to OWNER in an amount equal to any and all compensation which is received by the former Elected Officer or City Managerial Employee of OWNER from or on behalf of the contracting person or entity, or an amount equal to the former Elected Officer's or City Managerial Employee's last two (2) years of gross compensation from OWNER, whichever is greater.

CONSTRUCTION MANAGER agrees not to provide services for compensation to any other party other than OWNER on the same subject matter, same project, or scope of services as set forth in this Agreement without approval from the City Council of OWNER.

Except as otherwise provided herein, CONSTRUCTION MANAGER agrees not to disclose or use any information not available to members of the general public and gained by reason of CONSTRUCTION MANAGER'S contractual relationship with OWNER for the special gain or benefit of CONSTRUCTION MANAGER or for the special gain or benefit of any other person or entity.

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