

**AGENDA FOR REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF  
INVERNESS, FLORIDA, CITY HALL, 212 WEST MAIN STREET  
September 6, 2016 - 5:30 PM**

---

**NOTICE TO THE PUBLIC**

Any person who decides to appeal any decision of the Governing Body with respect to any matter considered at this meeting will need a record of the proceedings and, for such purpose, may need to provide that a verbatim record of the proceeding is made, which record includes testimony and evidence upon which the appeal is to be based (Section 286.0105, Florida Statutes).

Accommodation for the disabled (hearing or visually impaired, etc.) may be arranged with advance notice of seven (7) days before the scheduled meeting, by dialing (352) 726-2611 weekdays from 8 AM to 4 PM.

---

**ENCLOSURES\***

- 1) INVOCATION, PLEDGE OF ALLEGIANCE AND ROLL CALL**
  
- 2) PLEASE SILENCE ELECTRONIC DEVICES**
  
- 3) ACCEPTANCE OF AGENDA**
  
- 4) PUBLIC HEARINGS**
  - 4 - 10 a) Highland Blvd. Budget Amendment - Resolution\*
  
- 5) OPEN PUBLIC MEETING**

*The public is invited to express opinion on any item for this meeting or pending action at a future meeting of City Council. (Speaking time limit: Individual - 3 minutes; Group/Organization - 5 minutes)*
  
- 6) PRE-SCHEDULED PUBLIC APPEARANCES**
  - a) Insight Credit Union - Diana Fender - Check Presentation
  - b) Crime Stats - Justin Ferrara\*
  - c) Woodard & Curran - Safety Award Announcement

**AGENDA FOR REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF  
INVERNESS, FLORIDA, CITY HALL, 212 WEST MAIN STREET  
September 6, 2016 - 5:30 PM**

**7) MAYOR'S LOCAL ACHIEVEMENT AWARDS**

**8) CITY ATTORNEY REPORT**

**9) CONSENT AGENDA**

11 - 12 a) Bill Listing \*

Recommendation - Approval

13 - 18 b) Council Minutes - 08/16/2016 \*

Recommendation - Approval

**10) CITY MANAGER'S REPORT Correspondence/Reports/Recommendations**

19 - 23 a) Citrus Co. Sheriff's Office - Byrne Grant\*

24 - 34 b) CDBG (Grant Program) - Task Force Members\*

35 - 104 c) Construction Manager at Risk (CMR) Piggyback (Clancy & Theys)\*

105 - 114 d) Highland Blvd. Project - Bid Award\*

115 - 118 e) Grand Prix Event Fee Structure - Resolution\*

119 - 123 f) Substance (Drug) Free Lease Agreement - Renewal\*

124 - 130 g) Whispering Pines Park Bldg. Lease - Sheriff's Office\*

131 - 132 h) AARC Board Appointment\*

133 - 136 i) CCCCCF Appointment - Councilman Hinkle\*

j) Water/Sewer Rate Changes for FY 2017 - Public Utilities Commission  
Inflation Adjustment (*verbal*)

k) Other

**AGENDA FOR REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF  
INVERNESS, FLORIDA, CITY HALL, 212 WEST MAIN STREET  
September 6, 2016 - 5:30 PM**

**11) COUNCIL/MAYOR SUBJECTS**

**12) NON-SCHEDULED PUBLIC COMMENT**

*(Speaking time limit: Individual - 3 minutes; Group/Organization - 5 minutes)*

**13) ADJOURNMENT**

**a) DATES TO REMEMBER**

FY 2016/17 Tentative Budget Public Hearing

Thursday, September 8, 2016 at 5:01pm

Inverness Government Center

9/11 Exhibit and Freedom Walk

Sunday, September 11, 2016

9/11 Exhibition 12 noon - 7:00pm

and Freedom Walk at 5:30pm

Valerie Theatre

Friday Night Thunder

Friday, September 16, 2016 at 5:00pm

Courthouse Square

Inverness City Council Regular Meeting

Tuesday, September 20, 2016 at 5:30pm

Inverness Government Center

# Agenda Memorandum – *City of Inverness*

---

**DATE:** September 2, 2016  
**ISSUE:** Resolution: Highland Blvd Project Funding  
**FROM:** City Manager  
**CC:** City Clerk, Finance Director, Project Director, Project Manager  
**ATTACHED:** Memo by Sheri Chiodo  
Resolution  
Budget List of Projects  
Public Notice

---

For more details, please reference the attachments.

Following this action to align funding, City Council will address bid award for the Highland Boulevard Project. A review of bid submittal and project scope places the construction amount at more than what has been allocated. To the good, available funds exist to supplement the design. This project is supported by F-DOT, local Impact Fees and City resources. The available budget amount is \$1,294,963 and requires additional support of \$550,491, which must be in place before awarding the bid.

The action to align funding will involve a combination of revenue increases (Impact Fees) and moving available funds from the project reserve account for this purpose. These changes have the effect to technically increase the size of the budget, which requires that a Public Hearing is advertised and conducted. An enabling Resolution has been prepared for Council to adopt to enact the necessary budget change and finalize the matter.

### ***Recommended Action –***

1. Motion, second and vote to read the Resolution by title only
  - a. Clerk reads Resolution title
2. Open a Public Hearing for comment on the proposed budget change that supports the project
3. Those for; Those against
4. Close the public hearing to deliberate the matter
5. If the desire is to proceed, motion and second to adopt the Resolution by roll-call

  
Frank DiGiovanni

Administrative Offices  
212 West Main Street, Inverness Florida 34450  
[www.Inverness-FL.gov](http://www.Inverness-FL.gov)

## FINANCE DEPARTMENT



212 W. Main Street  
Inverness, FL 34450  
(352) 726-5016 Phone  
(352) 726-5534 Fax

# Memorandum

**To:** Frank DiGiovanni, City Manager

**From:** Sheri Chiodo, Director of Finance

**CC:** Debbie Davis, City Clerk  
Paula Carnevale, Assistant Finance Director

**Date:** August 31, 2016

**Reference:** Budget Amendment – Highland Blvd Construction Project

### SUMMARY/BACKGROUND

Highland Boulevard construction bids have been reviewed and a recommendation of award has been received by GAI, the project consulting engineer. Pave-Rite was the lowest and best bid at a cost of \$1,845,454. The current project available budget is \$1,294,963 therefore, requiring a budget amendment of \$550,491 in advance of awarding the bid. Funding is proposed to be provided by the General Fund in the amount of \$200,000, Capital Projects Fund in the amount of \$104,250, Impact Fee Fund in the amount of \$50,000 and the Utility Fund in the amount of \$196,241.

### FISCAL IMPACT

Funding is proposed from the following sources:

Source	Amount	Description
General Fund – Unrestricted Reserves	\$ 200,000	Unreserved balance available for appropriation - \$3,676,048
Capital Projects Fund – CIGP Grant Proceeds	\$ 104,250	Total DOT CIGP grant funding for Construction is \$441,750. \$338,000 was recognized in the 2016 budget due to anticipated expenditures on the project were projected but not expended in FY 2015. Funds can now be appropriated in FY 2016.

Impact Fee Revenues	\$ 25,000	The City has exceeded revenue projections in the amount of \$25,000 which can be appropriated to the project as a qualified impact fee project.
Impact Fee unrestricted Reserves	\$ 25,000	Unreserved balance available for appropriation \$377,767.
Utility Fund-Unrestricted Reserves	\$196,241	Unreserved balance available for appropriation \$4,613,937 – Amount funds utility line relocation costs.

Additionally, the \$338,000 designated to the project from Impact Fees is now proposed to be transferred to the project since the bid is being awarded. The City’s standard budgeting practice for the allocation of Impact Fees to specific projects is not moved to the project until such time as the bid/contract is awarded. The transfer is included in the resolution for project designation appropriation.

**RECOMMENDATION**

Recommendation is made for Council to adopt the Resolution by roll call vote.

**RESOLUTION 2016-13**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF INVERNESS, FLORIDA AMENDING THE ADOPTED BUDGET FOR THE FISCAL YEAR COMMENCING OCTOBER 1, 2015 AND ENDING SEPTEMBER 30, 2016, AMENDING THE GENERAL FUND, CAPITAL PROJECTS FUND, IMPACT FEE FUND AND UTILITY FUND REVENUES AND EXPENDITURES AND PROVIDING FOR AN EFFECTIVE DATE.

**WHEREAS**, the City Council of the City of Inverness desires to amend the Fiscal Year 2016 budget to provide for the recognition of additional Impact Fee collections not anticipated in Fiscal Year 2016 in the Impact Fee Fund; and

**WHEREAS**, the City Council of the City of Inverness desires to amend the Fiscal Year 2016 budget to provide for the recognition of additional County Incentive Grant Funds not fully recognized in Fiscal Year 2016 in the Capital Projects Fund; and

**WHEREAS**, the City Council desires to appropriate the revenue as well as reserves in the General Fund, Utility Fund, and Impact Fee Fund for construction costs for the Highlands Boulevard Project; and

**WHEREAS**, Ordinance Number 2015-711, Section 5, authorizes amendments to the final adopted budget by resolution approved by the City Council of the City of Inverness, Florida.

**NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF INVERNESS AS FOLLOWS:**

Section 1. That expenditure accounts in the General Fund shall be amended as follows:

<b>Expenditures</b>	<b><u>Current Budget</u></b>	<b><u>Revised Budget</u></b>	<b><u>Adjustment</u></b>
Transfer to Capital Projects (Road Projects)	\$ 286,000	\$ 486,000	\$ 200,000
General Fund Reserves (Unrestricted)	\$3,876,048	\$3,676,048	\$(200,000)

Section 2. That revenue accounts in the Capital Projects Fund shall be amended as follows:

<b>Revenues</b>	<b><u>Current Budget</u></b>	<b><u>Revised Budget</u></b>	<b><u>Adjustment</u></b>
CIGP Grant Proceeds	\$ 675,000	\$ 779,250	\$ 104,250
Transfer from Impact Fee Fund	\$ -0-	\$ 388,000	\$ 388,000
Impact Fee Revenues	\$ 465,300	\$ 127,300	\$ (338,000)
Transfer from General Fund (Road Projects)	\$ 286,000	\$ 486,000	\$ 200,000

Section 3. That expenditure accounts in the Capital Projects Fund shall be amended as follows:

<b>Expenditures</b>	<b><u>Current Budget</u></b>	<b><u>Revised Budget</u></b>	<b><u>Adjustment</u></b>
Highland Blvd Project	\$1,295,500	\$1,649,750	\$ 354,250

Section 4. That revenue accounts in the Impact Fee Fund shall be amended as follows:

<b>Revenues</b>	<b><u>Current Budget</u></b>	<b><u>Revised Budget</u></b>	<b><u>Adjustment</u></b>
Impact Fee Revenue	\$ 10,000	\$ 35,000	\$ 25,000

Section 5. That expenditure accounts in the Impact Fee Fund shall be amended as follows:

<b>Expenditures</b>	<b><u>Current Budget</u></b>	<b><u>Revised Budget</u></b>	<b><u>Adjustment</u></b>
Transfer to Capital Projects Fund	\$ -0-	\$388,000	\$ 388,000
Impact Fee Reserves	\$ 377,767	\$ 14,767	\$(363,000)

Section 6. That expenditure accounts in the Utility Fund shall be amended as follows:

<b>Expenditures</b>	<b><u>Current Budget</u></b>	<b><u>Revised Budget</u></b>	<b><u>Adjustment</u></b>
Highland Blvd – Utility Lines	\$ -0-	\$196,241	\$ 196,241
Utility Fund Reserves (Unrestricted)	\$4,613,937	\$4,417,696	\$(196,241)

Section 7. That this resolution shall be effective on the \_\_ day of \_\_\_\_\_, 2016.

**PASSED AND ADOPTED** this \_\_ day of \_\_\_\_\_, 2016.

**CITY OF INVERNESS**

By: \_\_\_\_\_  
David Ryan  
President of City Council

**ATTEST:**

\_\_\_\_\_  
Susan Jackson  
Interim City Clerk

BUDGET EXPENDITURES OF THE CITY OF INVERNESS ARE 1.2% MORE THAN LAST YEAR'S TOTAL OPERATING EXPENDITURES

GENERAL FUND 7.0729	ROAD										TOTAL BEFORE COMPONENT UNIT	I.C.R.A. TRUST FUND	TOTAL ALL FUNDS	
	ESTIMATED REVENUES	GENERAL FUND	WHISPERING PINES PARK FUND	IMPROVEMENT FUND	CAPITAL PROJECTS FUND	WATER & SEWER	CEMETERY	IMPACT FEE FUND	PENSION FUNDS	TOTAL BEFORE COMPONENT UNIT				
TAXES:														
AD-VALOREM MILLAGE PER \$1000 -7.0729	2,760,765												2,760,765	
AD-VALOREM Delinquent Taxes	80,000												80,000	80,000
SALES AND USE TAXES	300,000												300,000	300,000
FRANCHISE FEES	747,500												747,500	747,500
UTILITY SERVICE TAXES	747,000												747,000	747,000
COMMUNICATIONS SERVICE TAX	285,000												285,000	285,000
LOCAL BUSINESS TAX	58,000												58,000	58,000
LICENSES AND PERMITS	85,100												85,100	85,100
GRANT/SHARED REVENUE	22,500			7,500		1,080,121		600,000					1,710,121	2,272,891
STATE SHARED REVENUES	728,000												728,000	728,000
CHARGES FOR SERVICES	1,007,360			89,950				3,582,835					4,680,135	4,680,135
FINES AND FORFEITURES	29,000												29,000	29,000
INTEREST EARNINGS	45,100			550		10,000		34,000					120,550	127,150
RENTS & ROYALTIES	314,410			800		250		6,600					314,660	314,660
SPECIAL ASSESSMENTS/IMPACT FEES	600			300				360,290					623,190	623,190
CONTRIBUTIONS/DONATIONS	-												6,300	6,300
SALE OF FKED ASSETS	-							7,600					7,600	7,600
PENSION CONTRIBUTIONS	-												1,500	1,500
MISCELLANEOUS REVENUES	30,400			2,700		101,000		300					134,400	134,400
DEBT PROCEEDS					500,000								500,000	500,000
<b>TOTAL SOURCES</b>	<b>7,246,725</b>		<b>101,250</b>	<b>550</b>	<b>1,717,421</b>	<b>4,678,375</b>	<b>14,500</b>	<b>35,000</b>	<b>25,000</b>	<b>13,818,821</b>	<b>569,370</b>	<b>14,388,191</b>	<b>7,246,725</b>	<b>14,388,191</b>
TRANSFERS IN	886,605		474,014	-	2,283,000	4,120,360	51,978	500,567	408,617	7,795,957	554,770	8,360,727	886,605	8,360,727
FUND BALANCES/RESERVES/NET ASSETS	6,598,089		275,380	13,399	3,390,060	5,819,368	705,206	500,567	408,617	17,710,588	45,114	17,755,700	6,598,089	17,755,700
<b>TOTAL REVENUES, TRANSFERS &amp; BALANCES</b>	<b>14,731,419</b>		<b>850,644</b>	<b>13,949</b>	<b>7,370,481</b>	<b>14,618,103</b>	<b>771,684</b>	<b>535,567</b>	<b>433,517</b>	<b>39,325,364</b>	<b>1,169,254</b>	<b>40,494,618</b>	<b>14,731,419</b>	<b>40,494,618</b>
<b>EXPENDITURES</b>														
GENERAL GOVERNMENTAL	1,943,623			872,087						17,500			2,833,210	2,833,210
PUBLIC SAFETY	1,301,020			256,104						1,557,124			5,902,986	1,557,124
PHYSICAL ENVIRONMENT	1,067,710			-		4,693,298	141,978			5,902,986			3,029,443	5,902,986
TRANSPORTATION	826,398									132,800			461,385	3,029,443
ECONOMIC ENVIRONMENT	265,610									2,739,168			2,255,724	3,200,553
CULTURE & RECREATION	979,323			587,264						861,749			861,749	2,255,724
DEBT SERVICES														861,749
<b>TOTAL EXPENDITURES</b>	<b>6,383,661</b>		<b>587,264</b>	<b>6,361,131</b>	<b>5,555,047</b>	<b>141,978</b>	<b>132,800</b>	<b>17,500</b>	<b>19,179,404</b>	<b>461,385</b>	<b>19,640,789</b>	<b>6,383,661</b>	<b>19,640,789</b>	
TRANSFERS - OUT	2,588,784		-	46,605		4,645,360	55,478	388,000		7,704,227	646,500	8,350,727	2,588,784	8,350,727
FUND BALANCES/RESERVES/NET ASSETS	5,778,961		263,380	13,949	962,745	4,417,696	574,228	14,767	416,017	12,441,733	61,389	12,503,102	5,778,961	12,503,102
<b>TOTAL APPROPRIATED EXPENDITURES, TRANSFERS, RESERVES &amp; BALANCES</b>	<b>14,731,419</b>		<b>850,644</b>	<b>13,949</b>	<b>7,370,481</b>	<b>14,618,103</b>	<b>771,684</b>	<b>535,567</b>	<b>433,517</b>	<b>39,325,364</b>	<b>1,169,254</b>	<b>40,494,618</b>	<b>14,731,419</b>	<b>40,494,618</b>

BUDGETS ARE ON FILE IN THE OFFICE OF THE ABOVE REFERENCED TAXING AUTHORITY AS A PUBLIC RECORD

## **NOTICE OF BUDGET HEARING**

**The City Council of the City of Inverness will hold a public hearing on Tuesday, September 6, 2016 at 5:30 p.m. at the Inverness Government Center, 212 W. Main Street, Inverness, FL to consider and finalize a resolution amending the adopted budget for the General Fund, Capital Projects Fund, Impact Fee Fund and the Utility Fund for the fiscal year commencing October 1, 2015 and ending September 30, 2016.**



09/01/2016 12:42  
siddings

CITY OF INVERNESS  
CASH REQUIREMENTS REPORT

P 1  
apcshreq

VENDOR DOCUMENT	INVOICE	VOUCHER	DESCRIPTION	DUE DATE	DUE 09/30/16
			TOTALS FOR BESTCHOICE BFB		205.00
			TOTALS FOR FLORIDA PUBLIC UTILITIES COMPANY		164.46
			TOTALS FOR CITRUS COUNTY BOARD OF COMMISSIONER		61,989.43
			TOTALS FOR CITRUS COUNTY CHRONICLE		85.40
			TOTALS FOR CITY TIRE OF INVERNESS		91.30
			TOTALS FOR KIMBERLY LEE COMMON		165.00
			TOTALS FOR DANIELS HEATING & AIR CONDITIONING		416.00
			TOTALS FOR DUKE ENERGY		8,550.27
			TOTALS FOR E G P INC		195.41
			TOTALS FOR EVEREADY FIRE & SEC EQUIP INC		225.00
			TOTALS FOR FLORIDA MUNICIPAL INSURANCE TRUST		67,575.25
			TOTALS FOR GAI CONSULTANTS, INC		150.00
			TOTALS FOR GORMAN COMPANY		214.12
			TOTALS FOR HAWKINS, INC.		918.00
			TOTALS FOR HD SUPPLY WATERWORKS, LTD		23,195.00
			TOTALS FOR HILLMAN SUPPLY COMPANY		111.52
			TOTALS FOR LLOYD, EDWARD V.		525.00
			TOTALS FOR MANN-ICURE LAWN SERVICE AND LANDSCAPING		2,130.33
			TOTALS FOR MT CAUSLEY, INC		5,606.25
			TOTALS FOR OFFICE DEPOT INC		141.08
			TOTALS FOR PIGEON-ROBERTS & ASSOCIATES, LLC		1,850.00
			TOTALS FOR RICHARD DEBUSK, INC.		10,300.00
			TOTALS FOR SHERWIN WILLIAMS CO		198.05
			TOTALS FOR SUMTER ELECTRIC COOPERATIVE INC		4,617.58
			TOTALS FOR 2D ENTERPRISES		348.71



09/01/2016 12:42  
siddings

CITY OF INVERNESS  
CASH REQUIREMENTS REPORT

P 2  
apcshreq

VENDOR DOCUMENT	INVOICE	VOUCHER	DESCRIPTION	DUE DATE	DUE 09/30/16
			TOTALS FOR UNIFIRST CORPORATION		101.38
			TOTALS FOR USA SERVICES		1,550.00
			TOTALS FOR VERLANDER LANDSCAPE ARCHITECTURE, LLC.		281.79
			TOTALS FOR WASTE MANAGEMENT OF CENTRAL FL		430.00
			TOTALS FOR WESCO TURF INC		866.52
			TOTALS FOR WHETSTONE OIL COMPANY, INC		1,002.55
			REPORT TOTALS		194,016.10

\*\* END OF REPORT - Generated by Stacey Iddings \*\*

August 16th, 2016  
5:30 PM

The City Council of the City of Inverness met on the above date in Regular Session at 212 W. Main Street with the following members present:

President Ryan  
Vice President McBride  
Councilwoman Hepfer  
Councilwoman Bega  
Councilman Hinkle  
Mayor Plaisted

Also present were City Manager DiGiovanni, City Attorney Haag, Asst. City Manager Williams, Community Development Director Day, Finance Director Chiodo, Aquatic Coordinator Pleacher, and City Clerk Davis.

The Invocation was given by Councilwoman Hepfer and the Pledge of Allegiance was led by the City Council.

**ACCEPTANCE OF AGENDA**

**Councilwoman Hepfer motioned to accept the Agenda as presented and changing the order by placing Mayors Achievement Awards prior to Public Hearings. Seconded by Councilman Hinkle. The motioned carried.**

**PUBLIC HEARINGS**

**4)a) Small Scale Comp Amendment- Colonade – Ordinance (Final Reading)** was addressed. City Manager DiGiovanni explained this deals with two Ordinances, one amending the Comp Plan and a second to amend the Zoning Map. The items have been reviewed by the Planning and Zoning Commission, who recommends the matter be brought before City Council.

**Councilwoman Hepfer motioned to have City Clerk Davis read Ordinance 2016 - 719 by title only. Seconded by Councilman McBride. The motion carried.**

ORDINANCE NO. 2016 - 719

AN ORDINANCE OF THE CITY OF INVERNESS, FLORIDA AMENDING THE CITY OF INVERNESS COMPREHENSIVE PLAN UNDER THE SMALL SCALE COMPREHENSIVE PLAN AMENDMENT PROCESS PROVIDED BY CHAPTER 163 AND 166, FLORIDA STATUTES; AMENDING THE FUTURE LAND USE MAP FROM URBAN LOW DENSITY RESIDENTIAL TO MEDIUM DENSITY RESIDENTIAL ON PROPERTY WITHIN THE CITY OF INVERNESS AS FURTHER DESCRIBED HEREIN BELOW; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE COMPREHENSIVE PLAN AND PROVIDING FOR AN EFFECTIVE DATE.

**The Public Hearing was opened.**

**There was no one speaking for or against the Ordinance.**

**The Public Hearing was closed**

**Councilman Hinkle motioned to adopt Ordinance 2016-719 on the final reading, by roll call vote. Seconded by Councilwoman Hepfer. Roll call vote was as follows: Councilwoman Bega, yes; Councilwoman Hepfer, yes; Councilman Hinkle, yes; Councilman McBride, yes; President Ryan, yes. The motion carried.**

**4)b) Small Scale Zoning Change – Colonade – Ordinance 2016-720 (Final Reading) was addressed.**

**Councilwoman Hepfer motioned to have City Clerk Davis read Ordinance 2016 - 720 by title only. Seconded by Councilman Hinkle. The motion carried.**

ORDINANCE NO. 2016 - 720

AN ORDINANCE OF THE CITY OF INVERNESS, FLORIDA AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF INVERNESS, FLORIDA UNDER THE SMALL SCALE AMENDMENT PROCESS PROVIDED BY CHAPTER 166, FLORIDA STATUTES; AMENDING THE OFFICIAL ZONING MAP FROM RESIDENTIAL (R-2) TO RESIDENTIAL (R-4) ON PROPERTY WITHIN THE CITY OF INVERNESS AS FURTHER DESCRIBED HEREIN BELOW; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE LAND DEVELOPMENT CODE AND PROVIDING FOR AN EFFECTIVE DATE.

**The Public Hearing was opened.**

**There was no one speaking for or against Ordinance 2016-720**

**The Public Hearing was closed.**

**Councilman Hinkle motioned to adopt Ordinance 2016-720 on the final reading, by roll call vote. Seconded by Councilman McBride. Roll call vote was as follows: Councilwoman Bega, yes; Councilwoman Hepfer, yes; Councilman Hinkle, yes; Councilman McBride, yes; President Ryan, yes. The motion carried.**

#### **OPEN PUBLIC MEETING**

None

#### **SCHEDULED APPEARANCES**

None

**MAYOR'S LOCAL ACHIEVEMENT AWARDS** Mayor Plaisted recognize **Little League District 15**, Senior League Baseball Team, Junior League Softball Team, and Major League Baseball Team, for all three teams being District Champions this season. Julie Jones, Little League V. President thanked the City Staff, Mayor and City Council, Parents for their support. Mayor Plaisted introduced each teams Coach who introduced each player present this evening.

#### **CITY ATTORNEY REPORT**

None

#### **CONSENT AGENDA**

- a) Bill Listing\*
  - Recommendation – Approval
- b) Council Minutes – 07/26/16WS & 08/02/16\*

- Recommendation – Approval

**Councilwoman Hepfer motioned to accept the Consent Agenda. Seconded by Councilman McBride. The motion carried.**

### **CITY MANAGER'S REPORT**

#### **10)a) Heart of Florida Agreement Renewal**

City Manager DiGiovanni explained that this is about Landfill services and how the City sought competitive proposals three years prior, with Heart of Florida being lowest and best, with an initial term of 3-years and two single year options to renew. Before Council is a renewal of Heart of Florida with no rate change, which Council may renew this evening and move forward. This past Friday, the County submitted a proposal for a tipping fee of \$33.23 a ton, down from the \$45 a ton it offered three years prior. The County Commission however has not approved the proposed rate. City Manager stated that the County presented a competitive proposal that they also view as increasing the City services in what they currently have. The County was able to reduce the tipping fee from three years ago. The County proposal will not involve an annual assessment it places on businesses and households in unincorporated Citrus County, and it would allow City residents to dispose of hazardous waste products at the County Landfill without additional charge.

He advised that the arrangement with Heart to Florida is working well, however you have a secondary offer and you are at liberty to ask questions and make a decision.

Councilman McBride questioned how the County proposal went from \$45 to \$33.23 per ton? He spoke to a recent news article by Attorney for Good Fella's Roll-Off and Waste, Clark Stillwell, which indicated that Citrus County cannot afford to maintain its landfill as it has done, and asked if anyone was present from the County that could address that, with no response.

Councilman Hinkle stated that Commissioner Carnahan called him this morning asking if we could get this to go through and they did their best to come up with the best offer.

Councilwoman Hepfer stated that Commissioner Carnahan also called her and in spirit of working together, she didn't see any harm in looking at going down this avenue, and was not opposed to going with the County.

Mr. Dean clarified that this was actually a 2 year contract that will be honored for the next 2 years.

President Ryan questioned if this has impact on the contract we have with the School System. City Manager noted that the concern with the School System is with the Franchise Agreement and if there would be any penetration into that Franchise Agreement. This particular Agreement doesn't affect that.

Mayor Plaisted that ~~that~~ if it is not broken don't fix it. We have a good relationship currently with Waste Management and Heart of Florida and have never had an issue with them.

Councilman Hinkle questioned how much is spent on hauling off solid waste (bio solids). City Manager DiGiovanni noted that we worked out an agreement with Heart of Florida where they are taking that product very inexpensively. Saving money beyond what we currently spend.

Attorney Haag stated that we are dealing with a renewal of an existing contract that was bid out. If you select the County Contract and cancel the current contract, you will be in situation to rebid next year, which is a risk here. Heart of Florida's current contract has renewals (2 yrs.) and you know what you are getting.

**Councilman McBride motioned to renew contract with Heart of Florida for a one year term at same current rate. Seconded by Councilwoman Bega. Motion carried unanimously.**

**10)b) Sweetwater Pointe Assessment Fees & Construction Cost - Budget Amendment** - City Manager DiGiovanni explained that as we move forward with the Sweetwater Pointe Water Assessment to extend the City Water Utility System, we need to recognize pending assessment payment as unforeseen revenues. The enclosed Resolution is structured to recognize those (payments) funds and appropriate them to support the project. He noted that the anticipated project total of the project is \$360,290 and listed the calculated amounts for Construction, Engineering, Contingency, Administration and City Contribution. Once the Resolution is adopted to align funds with project cost, action will be taken to approve the construction.

**Councilwoman Hepfer motioned to have City Clerk Davis read Resolution 2016-12, by title only. Seconded by Councilman Hinkle. The motion carried.**

RESOLUTION 2016-12

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF INVERNESS, FLORIDA AMENDING THE ADOPTED BUDGET FOR THE FISCAL YEAR COMMENCING OCTOBER 1, 2015 AND ENDING SEPTEMBER 30, 2016, AMENDING THE UTILITY FUND REVENUES AND EXPENDITURES AND PROVIDING FOR AN EFFECTIVE DATE.

**Councilwoman Hepfer motioned to adopt Resolution 2016-12, by roll call vote. Seconded by Councilman Hinkle. Roll call vote was as follows: Councilwoman Bega, yes; Councilwoman Hepfer, yes; Councilman Hinkle, yes; Councilman McBride, yes; President Ryan, yes. The motion carried.**

**10)c) Sweetwater Pointe Contract** was addressed by City Manager DiGiovanni. He noted that we are at a point to engage the contractor to commence the potable water utility extension into the subdivision. He advised that the contract has been reviewed by City Legal Counsel. The contractor is familiar with Inverness and is routinely used to perform water and sewer line projects throughout the City. The project should be complete in approximately 150 days and will issue the notice to proceed this week.

**Councilwoman Hepfer motioned to accept the contractor agreement with Oxford Pipe Incorporated, in the amount of \$289,045.00 and authorize the City Manager to execute the documents and administer any project change orders to achieve a satisfactory conclusion. Seconded by Councilman McBride. The motion carried unanimously.**

**10)d) Budget Adoption Procedure – Ordinance/Resolution** was addressed by City Manager DiGiovanni. He explained that the Budget has been adopted annually by Ordinance, and after research with the TRIM (Truth in Millage) office, Florida State Statutes, and our City Charter, they allow that the budget may be passed with either a

Resolution or an Ordinance. We think it best to adopt the annual budget appropriation by Resolution instead of by both Resolution and Ordinance. This change will maintain all public awareness and participation, and reduce the cost of unnecessary legal advertising. **Councilwoman Hepfer motioned to adopt the annual City Budget by Resolution as prescribed through State Statutes. Seconded by Councilman McBride. The motion carried unanimously.**

**10)e) Grant Administration P/T Position** was addressed. City Manager DiGiovanni advised that the City is targeting grants at a 50/50 funding mechanism, which is ambitious, and part of the process will research to find options for application, which would then need to be performed by expert consultants. The requested action is to move \$4,000 from Promotional/Educational Material, to fund a part time position of Grant Research Manager. Management of a \$16,000,000 effort requires high level administrative organizational skills and familiarity of the projects and related outcomes. **Councilwoman Bega motioned to approve the allocation of \$4,000 existing funding from Promotional/Educational Material to support the part-time position of Grant Research Manager. Seconded by Councilwoman Hepfer. The motion carried unanimously.**

**10)f) Appointment of Interim City Clerk** was addressed. City Manager DiGiovanni advised that the City Clerk Davis is about to retire. In the absence of the current City Clerk, it is recommended to appoint one to service in that capacity. When the current Clerk retires, the Interim City Clerk status will remain until which time City Council comes to terms with a contract for the new City Clerk. We recommend that City Council appoint Susan Jackson to serve in Interim City Clerk during the absence of City Clerk Davis. **Councilwoman Bega motioned to appoint Susan Jackson as Interim City Clerk, in the absence of City Clerk. Seconded by Councilwoman Hepfer. The motion carried unanimously.**

City Manager DiGiovanni additionally reported on the following:

- The County is holding a Ribbon Cutting for Airport Road on Monday, August 22<sup>nd</sup>, @ 10:00am at the Airport.
- We are working on a Ground Breaking for Sweetwater Point & majority of residents are excited. This should be toward the end of next week.

#### **COUNCIL/MAYOR SUBJECTS**

Mayor Plaisted congratulated Jacquie Hepfer & Cabot McBride for being unopposed and re-election to the Council for another 4 years. He recognized Justin Ferrara, Captain from Sheriff Dept. Looking forward to FLC conference in Hollywood tomorrow.

Councilwoman Hepfer stated she has been asked in the past to run for other offices, but she likes where she is, and very proud to serve with this group. This City has been blessed to have an excellent Clerk in Debbie Davis, and blessed to have the depth of

people as when one moves on, we have quality coming up to fill. Councilwoman questioned when the upcoming budget can be adjusted, relating to last meeting's decision to go with the Sheriff contract and what if he says no. City Manager noted there have been no discussions with them yet and spoke to additional costs included on everyone's telephone bill regarding emergency services. Council made the decision that all costs would be inclusive. Councilwoman Hepfer noted that we are not unhappy with the law enforcement. City Manager stated if we are going to change, he needs to know.

Councilwoman Bega added congratulations to Councilman McBride and Councilwoman Hepfer. Looking forward to League of Cities conference and the networking. She noted cities similar to ours use bollards to block off roads for events. City Manager noted that we may look into that with the upcoming streetscaping project.

Councilman Hinkle congratulated Jacquie and Cabot and stated that great things are happening in our Small Town Down Right. Spoke to the accomplishments of the Little League All-Stars present this evening, noting some of the coaches were those kids 25 years ago. Spoke to the Olympics, and we are proud of our Nation. Cooter Festival is coming.

Councilman McBride stated the Parrot Head event was great event. He expressed thanks to Susan Jackson and Debbie Davis on retirement. Attended the Purple Heart Breakfast and spoke of a Vietnam vet at table. Attended I-75 Relief Group regarding Suncoast II not extending North. It is a pleasure to serve on Council additional 4 years.

Council President Ryan added congratulations to newly elected Council, and spoke to the upcoming FLC Conference. Noted the Blessing of Fire Dept. and Pastor of Presbyterian Church did great job, and the Pine Street Jam was great. Cautioning with school starting everyone needs to be alert.

**CITIZENS NOT ON AGENDA**

**None**

Meeting adjourned at 6:50pm

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Council President

## Agenda Memorandum – *City of Inverness*

---

**DATE:** August 24, 2016  
**ISSUE:** Funding Assistance Byrne/Justice Assistance Program  
Sheriff's Department Request for City Support  
**FROM:** City Manager  
**CC:** City Clerk and Finance Director  
**ATTACHED:** Byrne/Justice Assistance Program 51% Letter  
Letter from Kevin McDow, Citrus County Sheriff's Office  
Letter from FDLE

---

The Citrus County Sheriff's Office once again is making application for Assistance Funding through the Byrne/Justice Assistance Grant Program in the amount of \$51,044. If awarded, funds will be used to provide Law Enforcement Virtualization Storage & Training.

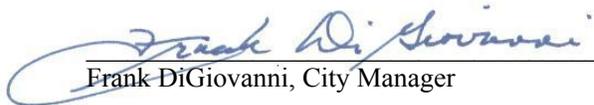
A requirement of the Byrne Grant is that the Sheriff's Office secures support from 51% of the Law Enforcement Agencies of the community to apply for and use funds.

Inverness City Council support is respectfully requested with this effort.

*(Note: Attachments to this memorandum are limited to pertinent pages of the submittal and does not represent the complete application.)*

***Recommended Action:***

Motion, second and vote to authorize the Council President to execute the Byrne (JAG) Grant Fifty-One percent letter in support of the Sheriff Office application to be awarded \$51,044 for local use.

  
Frank DiGiovanni, City Manager



# City of Inverness

*Administration Office*

212 W. Main Street

Inverness, Florida 34450-4149

Administration@Inverness-FL.gov

(352) 726-2611

Fax (352) 726-0607

August 24, 2016

Ms. Petrina Herring, Administrator  
Office of Criminal Justice Grants  
Department of Law Enforcement  
2331 Phillips Road  
Tallahassee, FL 32308

Dear Ms. Herring:

In compliance with State of Florida *Rule 11D-9*, F.A.C., the City of Inverness (city or county) approves the distribution of \$ 51,044 (total allocation available) of Federal Fiscal Year 2016 Edward Byrne Memorial JAG Program funds for the following projects within Citrus (county):

<u>Subgrantee</u>	<u>Title of Project</u>	<u>Dollar Amount</u> <u>(Federal Funds)</u>
<u>City of Inverness</u>		
Citrus County	Citrus County Law Enforcement Virtualization Storage & Training	\$51,044

Sincerely,

\_\_\_\_\_  
David Ryan, President of City Council



## CITRUS COUNTY SHERIFF'S OFFICE

*A Nationally Accredited Law Enforcement Agency*

SHERIFF  
JEFFREY J. DAWSY



Deborah,

We are once again applying for the annual FDLE county-wide law enforcement grant which requires approval of 51% of the units of government within the County.

This year's grant application, titled "***Citrus County Law Enforcement Virtualization Storage and Training***", will propose that the funds, \$51,044, be to provide the network capacity to meet the ever increasing need update, improve, and increase applications to store and retrieve law enforcement data. I am attaching a pdf copy of the application for the Council's review.

Please have the attached "draft 51% letter" reproduced on City of Crystal River letterhead and submitted to City Council for approval at their next meeting. If approved, I will need **two** copies of the 51% letter **with original approval signatures**.

Thank you for your assistance. We look forward to continuing to serve the citizens of Crystal River.

Kevin McDow  
Director of Information Technology  
Citrus County Sheriff's Office  
352-341-7408

1 DR. MARTIN LUTHER KING JR. AVE. - INVERNESS, FLORIDA 34450-4968 PHONE 352 726-4488



Florida Department of  
Law Enforcement

Richard L. Swearingen  
*Commissioner*

**Business Support  
Office of Criminal Justice Grants**  
Post Office Box 1489  
Tallahassee, FL 32302-1489  
(850) 617-1250  
[www.fdle.state.fl.us](http://www.fdle.state.fl.us)

Rick Scott, *Governor*  
Pam Bondi, *Attorney General*  
Jeff Atwater, *Chief Financial Officer*  
Adam Putnam, *Commissioner of Agriculture*

June 22, 2016

Honorable John Kenney  
Chairman  
Citrus County Board of Commissioners  
110 North Apopka Avenue  
Inverness, FL 34460

Re: Federal Fiscal Year (FFY) 2016 Edward Byrne Memorial Justice Assistance Grant (JAG) Program –  
JAG Countywide – State Solicitation

Dear Chairman Kenney:

The Florida Department of Law Enforcement (FDLE) anticipates an award from the United States Department of Justice for FFY 2016 JAG funds. FDLE will distribute these funds in accordance with the JAG Countywide distribution provisions of Chapter 11D-9, Florida Administrative Code.

FDLE has set aside \$51,044 funds for use by all units of government within Citrus County. Enclosed are the following documents to assist your county with the strategic planning and allocation process.

JAG-Countywide Program Announcement & Application Instructions  
JAG-Countywide Project Timeline  
JAG-Countywide Application Checklist  
Certificate of Participation

The enclosed Program Announcement provides an overview of these funds which can be used by local units of government to support a broad range of activities to prevent and control crime and to improve the criminal justice system. Please note the Program Announcement includes information from the U.S. Department of Justice relating to several areas of national focus and its priorities to help maximize the effectiveness of the Byrne/JAG funding.

As a condition of participation in this program, the units of government in each county must reach consensus concerning expenditure of these funds. This consensus must be documented in writing and include the projects to be implemented, the amounts allocated to each project and the agency responsible for such implementation. This process will require an individual to be designated to exercise leadership and assume a coordinating role in the development of applications for these funds. This coordinator will also serve as liaison between the Department's grants office and subrecipient(s) to ensure all reports, documentation, and timelines are adhered to in accordance with the agreement(s).

FDLE recommends the Board of County Commissioners assume this responsibility. In the event the county declines to serve in this capacity, the Department will request the governing body of each municipality in the county, in descending order of population, to serve as the coordinating unit of government.

*Service • Integrity • Respect • Quality*

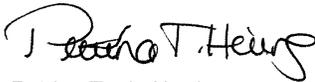
Honorable John Kenney  
June 22, 2016  
Page Two

The enclosed Certificate of Participation form requests the identification of the County Coordinator. Please complete this form and return it to the address below by July 11, 2016. Once confirmed, the Department will forward additional information regarding the application process and FDLE's online grant management system to the coordinator.

Florida Department of Law Enforcement  
Office of Criminal Justice Grants  
2331 Phillips Road  
Tallahassee, Florida 32308

We look forward to working with you. Please contact me or JAG supervisor Randall Smyth at (850) 617-1250 with any questions or for further assistance regarding this program.

Sincerely,



Petrina Tuttle Herring  
Bureau Chief

PTH/ps

Enclosures

cc: Mayors in Citrus County  
Law Enforcement Agencies in Citrus County  
Current JAG Project Directors in Citrus County

## Agenda Memorandum – *City of Inverness*

---

**DATE:** September 2, 2016  
**ISSUE:** Appoint Citizens Advisory Task Force to Review CDBG Grant  
**FROM:** City Manager  
**CC:** City Clerk, Finance Director, Grant Director, Project Director  
**ATTACHED:** Completed City Task Force Applications

---

An emerging opportunity has presented itself that provides the City an ability to seek grant funds to improve the remaining portion of MLK from Hwy 41/44 to Old East Main, and the section of Dampier Street from Apopka to Seminole Avenue. The CDBG program involves federal funds that are funneled to the state and allocated (administered) by the Department of Community Affairs (DCA). This application and pending award will represent Phase IV of downtown revitalization using the CDBG program. The category for application is titled Commercial Revitalization, and if awarded could bring some \$700,000 to the City. (They don't give you the money and make you work for it.) To facilitate we have moved quickly to perform survey, design and engineering work. Importantly, we must have plans ready and commit \$50,000 to the application process.

Fred Fox Enterprises has previously been used by the City and will again be the lead consultant. The project has been part of the Five-Year Capital Improvement Plan for years waiting for this moment. The first action is for City Council is to formally create a Citizens Advisory Task Force (CATF) to receive public comment, which is a critical component for favorable consideration. In addition to the public hearing process, the citizen board is required to review the grant. The CATF is required to consist of City residents that will review the grant application and make a recommendation on moving forward with the application. This is a mandated requisite of the CDBG process.

**CDBG Commercial Revitalization** is suited to support: Streetscape, Building Façade work, sidewalks, landscaping, lighting, etc. to the Downtown Commercial Area. City/Service Area needs to be a minimum of 51% LMI (low/moderate income).

CATF Appointees for consideration and appointment are:

Karen Esty	Planning and Zoning Commission
Brian Gibson	Inverness Fire Department
George Gouldbourn	Code Enforcement Board, Chair
Gary Hamner	Code Enforcement Board
Daniel Sawyer	Planning and Zoning Commission

ISSUE: Appoint Citizens Advisory Task Force to Review CDBG Grant

***Recommended action –***

Motion, second and vote to accept the applicant submittals as satisfactory and move to appointment of Karen Esty, Brian Gibson, George Gouldbourn, Gary Hamner and Daniel Sawyer to serve as the Citizens Advisory Task Force as part of the CDBG program for the upcoming CDBG grant cycle.

Thanking you in advance for your attention to this matter.

  
Frank DiGiovanni

City of Inverness

CATF MEMBER  
Household Income Certification Form

Local Government: City of Inverness  
 CATF Member's Name: KAREN ESTY  
 Street Address: 2429 WILSON ST  
 Date of Completion: 8-12-16  
 Total number of people living in household: 1  
 Race: WHITE

(Circle your total household size and then answer whether total household income is below the dollar amount noted on that line.)

Household Size (Circle your household size, then go to the right and mark yes if your household income is below the amount on that line only, mark no if your household income is over that amount)	Income Range (Moderate - 80%)	Total Household Income Below mark range yes or no for year Yes - My Household income is below that amount No - My Household income is above that amount
1	0 - \$28,450.00	YES NO
2	0 - \$32,500.00	YES NO
3	0 - \$36,550.00	YES NO
4	0 - \$40,600.00	YES NO
5	0 - \$44,650.00	YES NO
6	0 - \$48,700.00	YES NO
7	0 - \$52,750.00	YES NO
8	0 - \$56,800.00	YES NO

1. Do you live in the City of Inverness City Limits? Yes  No
2. Are you an Elected Official of the City of Inverness? Yes  No
3. Are you an employee of the City of Inverness? Yes  No

Certification: I, the undersigned, certify that the information stated in this form is true and accurately reflects my household composition and income data

CATF Member: Jane Esty Date: AUGUST 12, 2016

City of Inverness

CATF MEMBER  
Household Income Certification Form

Local Government: City of Inverness	Street Address: 710 CHAMPLAIN AVE	Date of Completion: 09/01/2016
CATF Member's Name: BRIAN ROGERS	Total number of people living in household: 1	Race: W

(Circle your total household size and then answer whether total household income is below the dollar amount noted on that line.)

Household Size (Circle your Household size, then go to the right and mark yes if your household income is below the amount on that line only, mark no if your household income is over that amount)	Income Range (Moderate - 80%)	Total Household Income Below mark range, yes or no for your household size only Yes - My Household income is below that amount No - My Household income is above that amount
1	0 - \$28,450.00	YES NO
2	0 - \$32,500.00	YES NO
3	0 - \$36,550.00	YES NO
4	0 - \$40,600.00	YES NO
5	0 - \$43,850.00	YES NO
6	0 - \$47,100.00	YES NO
7	0 - \$50,350.00	YES NO
8	0 - \$53,600.00	YES NO

- Do you live in the City of Inverness City Limits? Yes  No
- Are you an Elected Official of the City of Inverness? Yes  No
- Are you an employee of the City of Inverness? Yes  No

Certification: I, the undersigned, certify that the information stated in this form is true and accurately reflects my household composition and income data

CATF Member:  Date: 09/01/2016

# City of Inverness

## CATF MEMBER Household Income Certification Form

Local Government: <i>City of Inverness</i>		Street Address: <i>407 HUNTING LODGE DR</i>	Date of Completion: <i>B-12-16</i>
CATF Member's Name: <i>GEORGE A. GOULD BORN</i>		Total number of people living in household: <i>1</i>	Race: <i>WHITE</i>

(Circle your total household size and then answer whether total household income is below the dollar amount noted on that line.)

Household Size <i>(Circle your Household size, then go to the right and mark yes if your household income is below the amount on that line only, mark no if your household income is over that amount)</i>	Income Range (Moderate - 80%)	Total Household Income Below mark range yes or no for your household size only Yes - My Household income is below that amount No- My Household income is above that amount
1	0 - \$28,450.00	YES NO
2	0 - \$32,500.00	YES NO
3	0 - \$36,550.00	YES NO
4	0 - \$40,600.00	YES NO
5	0 - \$43,850.00	YES NO
6	0 - \$47,100.00	YES NO
7	0 - \$50,350.00	YES NO
8	0 - \$53,600.00	YES NO

1. Do you live in the City of Inverness City Limits?      Yes  No
2. Are you an Elected Official of the City of Inverness?      Yes  No
3. Are you an employee of the City of Inverness?      Yes  No

Certification: I, the undersigned, certify that the information stated in this form is true and accurately reflects my household composition and income data  
 CATF Member: *George A. Gouldborn*      Date: *B-12-16*

City of Inverness

CATF MEMBER  
Household Income Certification Form

Local Government: City of Inverness	Street Address: <u>307 N. Seminole Ave.</u>	Date of Completion: <u>8-18-16</u>
CATF Member's Name: <u>David Sawyer</u>	Total number of people living in household: <u>2</u>	Race: <u>Black</u>

(Circle your total household size and then answer whether total household income is below the dollar amount noted on that line.)

Household Size (Circle your Household size, then go to the right and mark yes if your household income is below the amount on that line only, mark no if your household income is over that amount)	6 Income Range (Moderate - 80%)	Total Household Income Below mark range yes or no for your household size only Yes - My Household income is below that amount No - My Household income is above that amount
1	0 - \$28,450.00	YES NO
(2)	0 - \$32,500.00	(YES) NO
3	0 - \$36,550.00	YES NO
4	0 - \$40,600.00	YES NO
5	0 - \$43,850.00	YES NO
6	0 - \$47,100.00	YES NO
7	0 - \$50,350.00	YES NO
8	0 - \$53,600.00	YES NO

1. Do you live in the City of Inverness City Limits? Yes  No
2. Are you an Elected Official of the City of Inverness? Yes  No
3. Are you an employee of the City of Inverness? Yes  No

Certification: I, the undersigned, certify that the information stated in this form is true and accurately reflects my household composition and income data

CATF Member: David Sawyer Date: 8-18-16

# City of Inverness

## CATF MEMBER Household Income Certification Form

Local Government: <b>City of Inverness</b>	Street Address: <u>518 Poinsett</u>	Date of Completion: <u>8-31-2016</u>
CATF Member's Name: <u>Gary Hammer</u>	Total number of people living in household: <u>4</u>	Race: <u>White</u>

(Circle your total household size and then answer whether total household income is below the dollar amount noted on that line.)

Household Size <small>(Circle your Household size, then go to the right and mark yes if your household income is below the amount on that line only. mark no if your household income is over that amount)</small>	Income Range <small>(Moderate - 80%)</small>	Total Household Income <small>Below mark range yes or no for your household size only Yes - My Household income is below that amount No- My Household income is above that amount</small>
1	0 - \$28,450.00	YES NO
2	0 - \$32,500.00	YES NO
3	0 - \$36,550.00	YES NO
4	0 - \$40,600.00	YES NO
5	0 - \$43,850.00	YES NO
6	0 - \$47,100.00	YES NO
7	0 - \$50,350.00	YES NO
8	0 - \$53,600.00	YES NO

1. Do you live in the **City of Inverness City Limits**?      Yes  No
2. Are you an Elected Official of the **City of Inverness**?      Yes  No
3. Are you an employee of the **City of Inverness**?      Yes  No

Certification: I, the undersigned, certify that the information stated in this form is true and accurately reflects my household composition and income data

CATF Member:       Date: 08-31-2016

**CITY OF INVERNESS**  
**2016 CDBG GRANT APPLICATION CYCLE**  
**PROGRAM SYNOPSIS**



**City of Inverness**  
Community Development Block Grant (CDBG)  
Program Categories

**Maximum CDBG Grant Amount: \$ 700,000.00**



**CDBG Program Categories:**

- 1. Housing Rehabilitation** – Rehab/replacement of owner occupied Low to Moderate Income (LMI) homes.
- 2. Commercial Revitalization** – Streetscape, Building Façade work, etc. to the Downtown Commercial Area. City/Service Area needs to be a minimum of 51% LMI
- 3. Neighborhood Revitalization**- Infrastructure items in residential LMI areas. Examples – water line repair/replacement, sewer line repair/replacement, water system improvements, sewer system improvements, paving, drainage, community center, etc. Beneficiaries in each Service Area must be at minimum 51% LMI to meet Application Threshold requirements
- 4. Economic Development** – Provide infrastructure on City easement/property to a new business or expansion of existing business. Business must be included in the application and create one new full time equivalent long term job for each \$34,999.00 in grant funds being requested. The maximum amount the City can apply for is \$1,500,000.00.

## Additional Points in Application:

- **Leverage Points:**  
Each \$ 2,000.00 of leverage results in 1 extra point in final score of the application. Maximum of 25 points or \$ 50,000.00. Local community can exceed \$50,000.00 towards projects but will not receive additional points for leverage over the 25 point maximum.
- **Neighborhood Revitalization and Commercial Revitalization Projects Only:**  
Engineer stamped construction plans and specifications submitted with the application by the application deadline will receive an additional 100 points for being shovel ready. All permits must be submitted for prior to application submittal to obtain these points.
- Local Government will **not** be reimbursed for shovel ready design cost with CDBG funds, even if application is funded.



## **Steps Required in CDBG Application Process**

- 1.) City Council Appoints A Citizens Advisory Task Force (CATF).
- 2.) Advertise and hold a CATF meeting discuss possible projects.
- 3.) Advertise and hold a 1<sup>st</sup> Public Hearing in front of City Council. Obtain public comment and direction by City Council to move forward on developing a project.
- 4.) Advertised and hold a Fair Housing Workshop in front of City Council
- 5.) Advertised and hold a 2<sup>nd</sup> Public Hearing in front of City Council, finalize application

# Agenda Memorandum – *City of Inverness*

---

**DATE:** September 2, 2016  
**ISSUE:** Construction Management At Risk (CMAR) Bid Agreement  
**FROM:** City Manager  
**CC:** City Clerk, Project Director, Finance Director  
**ATTACHED:** Osceola County CMAR Agreement  
Letter by Osceola County  
Email by Clancy Theys Construction

---

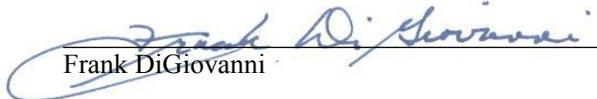
By previous action, City Council engaged the firm of Clancy Theys Construction, for continual services of Construction Manager at Risk (CMAR). In keeping with the scope of the agreement for CMAR, projects determined viable for this approach are presented in an amendment format as “work” to the original contract. Based on numerous past successes, the CMAR approach is proven to be cost effective and best means to successfully accomplish CIP projects under \$2M in cost.

Before Council this evening is an extension or continuation of a current CMAR the City optioned from Osceola County for Clancy Theys Construction. This is a competitive bid document by Osceola County that they have issued approval for us to piggy-back. Likewise, Clancy Theys rendered approval to piggy-back the agreement, and in addition, issued confirmation to move the venue for disputes to the State Court in Citrus County. The GMP represents a ceiling amount, based on CMAR (prospective) diligence of certain pre-construction services. This has been reviewed by City Legal Counsel and is essentially the same structure of what has been previously adopted by Council.

### ***Recommended Action***

To enable and engage the process, City Council is asked to motion, second and vote to authorize that the Council President execute the continuing Osceola County CMAR continuing services Agreement that will be used for qualifying CIP project development.

If you wish to discuss this further, please contact me at your convenience.

  
Frank DiGiovanni

Administrative Offices  
212 West Main Street, Inverness Florida 34450  
www.Inverness-FL.gov

Wednesday, August 31, 2016 at 4:15:32 PM Eastern Daylight Time

---

**Subject:** CMR Piggy Back  
**Date:** Wednesday, August 31, 2016 at 3:20:12 PM Eastern Daylight Time  
**From:** William Zecher  
**To:** Frank DiGiovanni  
**CC:** Marc Black  
**Attachments:** image001.jpg

Frank,

Clancy and Theys approves of the City of Inverness optioning to piggy-back the Construction Manager At Risk Agreement with Osceola County and additionally agrees to the venue for any construction project disputes being the State Court of Citrus County Florida, and not Osceola County. We look forward to working with the City on their future needs.

Please let me know if you need any additional information.

Thanks,

Bill Zecher  
Vice President  
Clancy & Theys Construction Company  
7308 Greenbriar Parkway  
Orlando, FL 32819  
T. 407.578.1449  
C. 407.832.3784  
[www.clancythey.com](http://www.clancythey.com)



Raleigh, NC Wilmington, NC Newport New, VA Orlando, FL Charlotte, NC

Page 1 of 1

**CONTINUING SERVICES AGREEMENT  
BETWEEN OWNER AND CONSTRUCTION MANAGER**

THIS AGREEMENT made the \_\_\_\_ day of \_\_\_\_\_ in the year 20\_\_ by and between Osceola County Board of County Commissioners, a political subdivision and Clancy & Theys Construction Co., 7308 Greenbriar Parkway, Orlando, Florida 32819.

**ARTICLE 1**

**THE CONSTRUCTION TEAM AND EXTENT OF AGREEMENT**

The Construction Manager accepts the relationship of trust and confidence established between him and the Owner by this Agreement. He covenants with the Owner to furnish his best skill and judgment and to cooperate with all Architect-Engineers and others in furthering the interests of the Owner. He agrees to furnish efficient business administration and superintendence and use his best efforts to complete all Work performed under this Agreement in the best and soundest way and in the most expeditious and economical manner consistent with the interest of the Owner.

**1.1 Extent of Agreement:**

This Continuing Agreement for Construction Management Services between the Owner and the Construction Manager supersedes any prior negotiations, representations or agreements. The Owner desires to engage Construction Manager to provide various professional construction management services with respect to construction of Projects to be designated by Owner as hereinafter provided. The specific services and scope of work to be performed by Construction Manager with respect to any particular Project (the "Work"), will be described in one or more Construction Authorizations and attachments thereto ("Construction Authorization"). The purpose of this Agreement is to set forth the obligations, responsibilities, terms and conditions applicable to the parties in the event Construction Manager performs any work for Owner pursuant to a Construction Authorization. This Agreement does not authorize Construction Manager to perform any work for Owner, but the terms and conditions of this Agreement shall be considered a part of any and all Construction Authorizations that may be issued hereafter to Construction Manager, unless otherwise expressly noted in the subject Construction Authorization. All Construction Authorizations are subject to mutual agreement of Owner and Construction Manager, such agreement being evidenced by the joint execution of the Construction Authorization. If Owner and Construction Manager cannot reach agreement on a specific Construction Authorization, Owner shall have the right to have such work performed by Owner's staff or others. Further, Owner has the right, in its sole discretion, to award other contracts for the performance of work and to exclude any services or scope of work, which otherwise may have been identified or anticipated under any particular Project from this Agreement. It is intended that this Agreement shall be a continuing contract for professional construction management services, terminable by either party in accordance with the terms hereinafter stated. Owner has selected Construction Manager, in accordance with the provisions of the Florida Statutes, and Construction Manager has agreed to provide the professional construction management services required of it by Owner, in accordance with the terms of this Agreement, for such Projects as may be authorized from time to time by Owner. With respect to each particular Project, it is anticipated that the Owner shall retain the services of an appropriate licensed design professional to prepare all required plans and specifications for the construction of the subject Project and to assist the Owner in the administration of the construction (hereinafter referred to as "Architect-Engineer"). Architect-Engineer retained by Owner with respect to any particular Project shall be identified in the Construction Authorization(s) associated with that subject Project.

When drawings, specifications and other descriptive documents defining the work to be included in a Construction Authorization are complete, a Construction Authorization shall be signed by the Owner and Construction Manager, acknowledging the Construction Authorization Sum and the drawings, specifications and other descriptive documents upon which the Construction Authorization is based. To expedite the preparation of the Construction Authorization by the Owner, the Construction Manager shall obtain two (2) sets of dated drawings, specifications and other documents upon which the Construction Authorization is based from the

Architect-Engineer via the Owner. The Construction Manager shall acknowledge on the face of each document of each set, that it is the set upon which he based his Construction Authorization Proposal and shall send one set of the documents to the Owner along with his Construction Authorization Proposal, while keeping one set for himself.

1.2 The Construction Team:

The Construction Manager, the Owner and the Architect-Engineer, called the "Construction Team", shall work jointly during design and through final construction completion of all Work performed under a Construction Authorization and shall be available thereafter should additional services be required. The Architect-Engineer and the Construction Manager shall communicate through the Owner, except as may otherwise be provided in this Agreement or when direct communications have been specifically authorized by the Owner. The Construction Manager shall copy the Owner on all correspondence sent to or received from the Architect-Engineer or any of its consultants of which the Owner was not copied.

1.3 Definitions:

Project - The Project is the Work specified on any specific Construction Authorization entered into under this Agreement.

Owner - Osceola County Board of County Commissioners, a political subdivision of the State of Florida. Whenever the terms of this Agreement refer to some action, consent, or approval (excluding approvals of Construction Authorizations, Change Orders, or amendments to the Agreement) to be provided by Owner or some notice, report or document is to be provided to Owner, such reference to "Owner" shall mean Owner, Owner's staff, or Owner's designee (to the extent such designee has been expressly authorized by Owner in writing), unless otherwise stated herein.

Construction Manager – Clancy & Theys Construction Co.

Architect-Engineer – To be specified on any specific Construction Authorization

Owner's Representatives - The Owner's Representative is the Director of Construction and Asset Management, or designees, as designated in writing.

Estimate - The Construction Manager's latest estimate of probable project construction cost for any specific Construction Authorization

Contract Documents - This Agreement, the Exhibits described herein, and any duly executed and issued addenda, Construction Authorizations, Change Orders, and amendments relating thereto. Further, the term Contract Documents shall include all plans and specifications for the construction of a Project specified on any specific Construction Authorization ("Construction Documents"), but only after said Construction Documents have been approved in writing by Owner as hereinafter provided. All of the foregoing Contract Documents are sometimes referred to herein as the "Contract" or "Agreement".

Final Completion - The following items have been completed or satisfied:

- A. Construction of the Project that is the subject of the Construction Authorization is totally complete, (all Work of the Contract Documents) and certified as such by the Owner and Architect-Engineer.
- B. The Project is suitable for full use and occupancy as determined by the Owner and Architect-Engineer.
- C. All Punch list items have been completed or otherwise disposed of or accounted for to the Owner's satisfaction and approval.

D. A Final Certificate of Occupancy and all other permits and approvals required have been legally and validly issued.

E. Construction Manager's executed Final Releases of Lien have been delivered to the Owner and Construction Manager has satisfied all other conditions precedent to final payment.

Punch List - List of items of work to be completed and deficiencies to be corrected, which items shall not affect the attainment of Substantial Completion. Such items shall be complete or otherwise disposed of prior to final acceptance/completion.

Schedule of Values - The schedule to be used as a basis for progress payments to be made to the Construction Manager by the Owner during performance of the work, based on the then current percentage of progress of construction of the Project, subject to the review of the Architect-Engineer.

Substantial Completion Date - The date, certified by the Architect-Engineer, that the Project, or designated portion thereof, is sufficiently complete, in accordance with the Construction Documents and a Certificate of Occupancy issued, so that the Owner can reasonably occupy or utilize the Project, or designated portion thereof, for its intended use. Additionally, complete all items referred to as necessary for Substantial Completion, as defined in Article 2.10 (h) and in the Construction Documents.

General Conditions - Those items that are not specific to any trade and are required for the construction of the Project. Examples of General Conditions items include daily cleanup and safety rails.

1.4 Term - The term of this Agreement shall extend from the date of the original Agreement, for a period of three (3) years. The term may be extended upon mutual agreement of the parties.

## **ARTICLE 2**

### **CONSTRUCTION MANAGER'S SERVICES**

The services which the Construction Manager shall provide will be as specified on any specific Construction Authorization, and may include those described or specified herein.

2.1 Project Management Information System (PMIS):

2.1.1 General:

1. Commencing immediately after award of a Construction Authorization, if required by Owner, the Construction Manager shall implement and shall utilize throughout the life of the Construction Authorization all subsystems of the Project Management Information System hereinafter referred to as PMIS.
2. The reports, documents, and data to be provided shall represent an accurate assessment of the current status of the Project and of the work remaining to be accomplished and it shall provide a sound basis for identifying variances and problems and for making management decisions. It shall be prepared and furnished to the Owner and the Architect-Engineer monthly.
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. This workshop and the seminars shall facilitate each participant's and the Owner's representatives' use and understanding of PMIS; shall support, in-part, the function of organizing in concert with the Architect-Engineer for the design and construction of the Project; and shall establish, with the full concurrence of the Owner and the Architect-Engineer, procedures for accomplishing the management control aspect of the Project.

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

- A. Narrative Reporting, on a monthly basis,
- B. Schedule Control, on a monthly basis,
- C. Cost Control, and estimating,
- D. Project Accounting,
- E. Accounting and Payment, and
- F. Action Reports.

2.1.2 Narrative Reporting Subsystem:

1. The Construction Manager shall prepare written reports as described hereunder. No other PMIS narrative reports shall be required. All reports shall be in 8.5" X 11" format, unless directed otherwise by the Owner.

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

- A. A Monthly Executive Summary which provides an overview of current issues and pending decisions, future developments and expected achievements, and any problems or delays, including code violations found by Permitting Authority.
- B. A Monthly Cost Narrative describing the current construction cost estimate status of the Project.
- C. A Monthly Scheduling Narrative summarizing the current status of the overall project schedule. This report shall include an analysis of the various project schedules, a description of the critical path, and other analyses as necessary to compare planned performance with actual performance.
- D. A Monthly Accounting Narrative describing the current cost and payment status of the entire project. This report shall relate current encumbrances and expenditures to the budget allocations.
- E. A Monthly Construction Progress Report during the construction phase summarizing the work of the various subcontractors. This report shall include information from the weekly job site meetings as applicable such as general conditions, long lead supplies, current deliveries, safety and labor relations programs permits, construction problems and recommendations, and plans for the succeeding month.
- F. A Daily Construction Diary during the construction phase describing events and conditions on the site.

3. The reports outlined in subsection (2)(a) through (e) above shall be bound with applicable computer reports and submitted monthly during design and construction phases and shall be current through the end of the preceding month. Copies shall be transmitted to the Owner and the Architect-Engineer and others as designated by the Owner's Representative with the monthly pay requisition.

Additional copies of the report outlined in subsection (2)(a) shall be bound separately and distributed monthly as directed by the Owner's Representative.

4. The report outlined in subsection (2)(f) above shall be maintained at the site available to the Owner and Architect-Engineer. A copy, bound, of the complete diary shall be submitted to the Owner at the conclusion of the project.

2.1.3 Scheduled Control Subsystem:

1. Master Project Schedule - Within 30 days of award of the Construction Authorization, the Construction Manager shall submit to the Owner for approval a master project schedule covering the planning and design approvals, construction and Owner occupancy of the Project. This schedule shall serve as the framework for the subsequent development of all detailed schedules. The master project schedule shall be produced and updated monthly throughout the project. No revisions, activity additions, activity deletions, or logic changes to the Master Project Schedule or any other schedule previously approved by the owner, shall be made without the Owner's approval.
2. Within thirty (30) days after the date of the Owner's issuance of a Notice to Proceed for construction, the Construction Manager shall prepare and submit to the Owner's Representative for approval a construction schedule in quadruplicate in sufficient detail to graphically depict the activities contemplated to occur as a necessary incident to performance of the work required to complete the project, showing the sequence in which the Construction Manager proposes for each such activity to occur and duration (dates of commencement and completion, respectively) of each such activity. The schedule shall be based on a "Network Analysis System" and shall be the latest version of Primavera P3. The Owner shall determine whether the construction schedule developed and submitted by the Construction Manager meets the requirements stated above and such determination shall be binding on the Construction Manager. 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 and certify that sufficient cause exists to terminate the contract or to withhold any payment.

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 subject project, or at such earlier intervals as circumstances may require, update the construction schedule to show the actual progress of the work performed and the occurrence of all events which have affected the progress of performance of the work already performed or will affect the progress of the performance of the work yet to be performed in contrast with the planned progress of performance of such work, as depicted on the original construction schedule and all updates thereto as reflected in the updated construction schedule last submitted prior to submittal of each such monthly update. Each such update to the construction schedule shall be submitted to the Owner in duplicate. 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, and certify that sufficient cause exists to terminate the Contract or to withhold payment to the Construction Manager until a schedule or schedule update acceptable to the Owner is submitted. No revisions, activity additions, activity deletions, or logic changes shall be made without the Owner's approval, which shall not be unreasonably withheld.

3. When required by the Owner, the Construction Manager shall prepare and incorporate into the schedule database, at the required intervals, the following schedules:
  - A. Subcontractor Construction Schedules (Sub-networks) - 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 specifications, taking into account the work schedule of the other subcontractors. The construction schedule shall include as many activities as necessary to make the schedule an effective tool for construction planning and for monitoring the performance of the subcontractor. The construction schedule shall also show pertinent activities for material purchase orders, shop drawing schedules and material delivery schedules.

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

4. All schedules will be provided to the Owner in electronic form and in a format acceptable to the Owner. The Construction Manager will provide the Owner with the appropriate software, if necessary, to read the data. The cost of providing the licenses and software shall be part of the cost of construction and included as part of Article 8, Costs of the Work.

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

1. Estimates – Prior to the start of pre-construction services, the requirement of the following estimates will be determined by the Owner:

- A. Completion of Schematic Documents.
- B. Completion of 100% Design Development Documents.
- C. 100% GMP Estimate – When the Construction Documents are sufficiently complete enough to establish the GMP.

2.1.5 Project Accounting Subsystem - The operation of this subsystem shall enable the Construction Team 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, amounts payable, and to plan effectively. This subsystem will be produced and updated monthly and includes the following reports, which together will serve as a basic accounting tool and an audit trail. This report will also provide for accounting by building and site element.

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

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.

2.2 Project Manual – When directed by the Owner, the Construction Manager shall provide the following:

1. Upon award of a Construction Authorization, the Construction Manager shall develop a draft comprehensive Project Manual describing the services set forth in this Contract for Owner's approval. This shall provide a plan for the control, direction, coordination and evaluation of work performed throughout the project organization including identification of Key personnel, responsibilities of Construction Manager, Owner and Architect-Engineer; work flow diagrams; and strategy for bidding the work. The Project Manual shall be updated as necessary with the Owner's approval throughout the design, construction and Owner occupancy phases. Two copies of the Project Manual and any updates shall be submitted to the Owner and Architect-Engineer. In developing the Project Manual, the Construction Manager shall coordinate with the Owner and the Architect-Engineer.
2. Contents of Project Manual - The Project Manual shall describe in detail the procedures for executing the work and the organizations participating. The Project Manual shall include as a minimum the following sections:
  - A. Project Definition - The known characteristics of the project or sub-projects shall be described in general terms which will provide the participants a basic understanding of the project or sub-projects.
  - B. Project Goals - The schedule, budget, physical, technical and other objectives for the project shall be defined.
  - C. Project Strategy - A narrative description of the project delivery methods shall be utilized to accomplish the project goals.
  - D. Project Work Plan - A matrix display of the program of work to be performed by the Construction Manager, the Architect-Engineer and the Owner during each phase of the project.
  - E. Project Organization - A summary organization chart showing the interrelationships between the Owner, the Construction Manager and the Architect-Engineer, and other supporting organizations and permitting review agencies. Detailed charts, one each for the Construction Manager, the Architect-Engineer, and the Owner showing organizational elements participating in the project shall be included.
  - F. Responsibility Performance Chart - A detailed matrix showing the specific responsibilities and interrelationships of the Owner, the Architect-Engineer, and 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, and also for the personnel of the Owner and the Architect-Engineer from data supplied by each.
  - G. Flow Diagrams - These charts shall display the flow of information and the decision process for the review and approval of shop drawings and submittals, progress and change orders.
  - H. Written Procedures - The Construction Manager will provide written procedures for communications and coordination required between Construction Team members throughout the project. Procedures shall cover such items as correspondence, minutes, reports, inspections, team meetings, technical reviews, design reviews, and other necessary communications.

2.3 Design and Review and Recommendations:

PS15-04249-RJ

Page 7 of 62

If required by Owner, the Construction Manager shall perform the services described in this Article. The services to be provided under Paragraph 2.3 constitute the Pre-construction Phase services. The parties acknowledge the Construction Phase may commence before the Pre-construction Phase is completed, and to a certain extent both phases shall proceed concurrently.

1. Preliminary Evaluation - The Construction Manager shall provide a preliminary evaluation of the Owner's program and Project budget requirements, each in terms of the other.
2. Consultation - The Construction Manager will jointly schedule and attend regular meetings with the Owner and Architect-Engineer. The Construction Manager will consult with the Owner regarding site use and improvements, and the selection of materials, building systems and equipment. The Construction Manager will provide recommendations on construction feasibility; actions designated to minimize adverse effects of labor or material shortages; time requirements for procurement, installation, and construction completion; and factors related to construction cost including estimates of alternative designs or materials, preliminary budgets, and possible economies.
3. Phased Construction - The Construction Manager shall make recommendations to the Owner regarding the phased issuance of Drawings and Specifications to facilitate phased construction of the Work, if such phased construction is appropriate for the Project, taking into consideration such factors as economies, time of performance, availability of labor and materials, and provisions for temporary facilities.
4. Review Reports - Within 30 days after receiving the Construction Documents for each phase of the project, the Construction Manager shall perform a specific review thereof, focused upon factors of a nature encompassed in Paragraph 2.3(1) and 2.3(2) above and on factors set out in Paragraph 2.3(7). Promptly after completion of the review, he shall submit to the Owner, with copies to the Architect-Engineer, a written report covering suggestions or recommendations previously submitted, additional suggestions or recommendations as he may deem appropriate, and all actions taken by the Architect-Engineer with respect to same, any comments he may deem to be appropriate with respect to separating the work into separate contracts, alternative materials, and all comments called for under Article 2.3(7).

THE CONSTRUCTION MANAGER SHALL WARRANT, TO THE BEST OF CONSTRUCTION MANAGER'S KNOWLEDGE, WITHOUT ASSUMING ANY ARCHITECTURAL OR ENGINEERING RESPONSIBILITY, THAT THE PLANS AND SPECIFICATIONS ARE CONSISTENT, PRACTICAL, FEASIBLE AND CONSTRUCTIBLE. 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.

The recommendations and advice of the Construction Manager concerning design alternatives shall be subject to the review and approval of the Owner and Owner's professional consultants. Construction Manager shall not assume in any way the responsibilities of the Architect-Engineer, in particular, the responsibility of assuring that the Drawings and Specifications, which will be identified on the GMP / Part Two Construction Authorization, are in accordance with applicable laws, statutes, ordinances, Building Codes, Rules, and Regulations. However, if the Construction Manager recognizes that portions of the Drawings and Specifications are at variance therewith, the Construction Manager shall promptly notify the Architect-Engineer, via the Owner, in writing.

5. Long Lead Procurements - The Construction Manager shall review the design for the purpose of identifying long lead procurement items (machinery, equipment, materials and supplies). When each item is identified, the Construction Manager shall notify the subcontractors, the Owner and the Architect-Engineer of the required procurement and schedule. Such information shall be included in the bid documents and made a part of all affected subcontracts. 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 Architect-Engineer of any problems or prospective delay in delivery. The Construction Manager may recommend to the Owner a schedule for procurement of the long-lead time items, which will constitute part of the Work as required to meet the Project Schedule. If such long-lead time items are procured by the

Owner, they shall be procured on terms and conditions acceptable to the Construction Manager. Upon the Owner's acceptance of the Construction Manager's Construction Authorization proposal, all contracts for such items shall be assigned by the Owner to the Construction Manager, who shall accept responsibility for such items as if procured by the Construction Manager. The Construction Manager shall assist in expediting the delivery of long-lead time items.

6. Separate Contracts Planning - Without assuming any design responsibilities, the Construction Manager shall review the design with the Architect-Engineer and make recommendations to the Owner with respect to dividing the work in such manner as will permit the Construction Manager to take bids and award separate construction subcontracts on the current schedule while the design is being completed. He shall take into consideration such factors as natural and practical lines of severability, sequencing effectiveness, access and availability constraints, total time for completion, construction market conditions, availability of labor and materials, community relations and any other factors pertinent to saving time and cost by overlapping design and construction that are authorized by the Owner.
7. Interfacing
  - A. The Construction Manager shall take such measures as are appropriate to provide that all construction requirements will be covered in the separate subcontracts for procurement of long lead items, the separate construction subcontracts and the general conditions items performed without duplication or overlap, sequenced to maintain completion of all work on schedule. Particular attention shall be given to provide that each bid package clearly identifies the work included in that particular separate subcontract, its schedule for start and completion and its relationship to other separate contractors.
  - B. Without assuming any Design responsibilities of the Architect-Engineer, the Construction Manager shall include in the reports required under Article 2.3(4) comments on overlap with any other separate subcontracts, omissions, lack of correlation between drawings, and any other deficiencies noted, in order that the Owner and Architect-Engineer may arrange for necessary corrections.
8. Job-Site Facilities - The Construction Manager shall arrange for all job-site facilities necessary to enable the Construction Manager and the Owner's representatives and the Architect-Engineer to perform their respective duties in the management, inspection, and supervision of construction.

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 facilities purchased, which are to become the property of the Owner at the conclusion of the project, the Construction Manager shall maintain care and custody responsibilities of such facilities until the project conclusion. The cost of such equipment shall be a direct cost of the Work. At the conclusion of the Project, the Construction Manager shall provide the Owner with a complete inventory for each unit of equipment that has been purchased for the Owner. The inventory shall describe the equipment and identify the purchase price, serial number, model number, current location, and condition. Where said equipment has a title, said title shall be properly transferred to the Owner or to his 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. In such event, the Construction Manager shall reimburse Owner for such item.

9. Weather Protection - The Construction Manager shall ascertain what temporary enclosures, if any, of building areas should be provided for and may be provided as a practical matter, in order to assure orderly progress of the work in periods when extreme weather conditions are likely to be experienced. He shall submit to the Construction Team his recommendations as to needed requirements of this nature and as to the contract or contracts in which they should be included. The Construction Manager is totally responsible for all weather protection necessary to insure that all new construction and renovation projects are adequately protected from the normal inclement elements.

10. Market Analysis and Stimulation of Bidder Interest

- A. 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; he shall make analysis as necessary to (1) determine and report on availability of labor, material, equipment, potential bidders, and possible impact of any shortages or surpluses of labor or material, and (2) in light of such determinations, make recommendations to the Owner 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 scheduled time.
- B. The Construction Manager shall submit to the Owner 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 the Architect-Engineer 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.
- C. The Construction Manager shall carry out an active program of stimulating interest of qualified contractors in bidding on the work and of familiarizing those bidders with the requirements of this project.

- 2.4 Construction Phase:

1. 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 and he shall provide no less than those personnel during the respective phases of construction that are set forth in the GMP / Part Two Construction Authorization. He shall not change any of those persons named unless mutually agreed to by the Owner and Construction Manager. In such case, the Owner shall have the right of approval of the qualifications of replacement personnel. Such approval will not be unreasonably withheld.
2. Lines of Authority - The Construction Manager shall establish and maintain lines of authority for this personnel, and shall provide this definition to the Owner and all other affected parties such as the code inspectors of the Permitting Authority, the subcontractors, the Architect-Engineer and the Owner's representatives, to provide general direction of the work and progress of the various phases and subcontractors. The Owner and Architect-Engineer may attend meetings between the Construction Manager and his subcontractors, however, such attendance shall not diminish either the authority or responsibility of the Construction Manager to administer the subcontractor.

3. Schedule and Project Manual Provisions - The Construction Manager shall provide subcontractors and the Owner, its representatives and the Architect-Engineer with copies of the Project Manual (total number of copies not to exceed 10) developed and updated as required by Article 2.2 expanded for the Construction Phase employing their respective milestones, beginning and finishing dates, their respective responsibilities for performance and the relationships of their work with respect to subcontractors and suppliers. He shall also continue to provide current scheduling information, direction and coordination regarding milestones, and beginning and finishing dates. He is also responsible 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 development of construction progresses in a smooth and efficient manner in conformance with the overall project schedule. The schedule shall include all phases of the construction work, material supplies, long lease procurement, approval of shop drawings, change orders in progress, schedules for change orders, and performance testing requirements. He shall advise the Owner, its representatives and the Architect-Engineer of their required participation in any meeting or inspection giving each at least one week notice unless such notice is made impossible by conditions beyond his control. He shall hold job-site meetings at least once each month with the Construction Team or more frequently as required by work progress, to review progress, discuss problems and their solutions and coordinate future work with all subcontractors.

4. Solicitation of Bids

- A. Without assuming responsibilities of the Architect-Engineer, the Construction Manager shall prepare invitations for bids, or requests for proposal when applicable, for all procurement of long lead items, materials and services, for Subcontractor contracts and for site utilities. Such invitations for bids shall be prepared in accordance with the following guidelines:
1. Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. The Construction Manager shall obtain bids from subcontractors, vendors, consultants and from suppliers of materials or equipment fabricated to a special design for the Work. The Construction Manager shall strive to receive at least three competitive bids per trade package. Should the nature of the trade package prohibit three competitive bids, the Construction Manager shall notify the Owner in writing as to the reason and offer suggestions, if any, to create trade interest.
- B. The Construction Manager shall be responsible for coordinating with the Architect-Engineer and preparing all information that is the responsibility of the Construction Manager for bidding of the separate bid packages.
- C. As part of such preparation, the Construction Manager shall review the specifications and drawings prepared by the Architect-Engineer. Ambiguities, conflicts or lack of clarity of language, use of illegally restrictive requirements, and any other defects in the specifications or in the drawings noted by the Construction Manager shall be brought to the attention of the Owner and Architect-Engineer in written form.
- D. The Construction Manager and the Owner's Representative shall mutually agree when and if to conduct a pre-bid conference with prospective bidders and the Architect-Engineer. 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 Owner and the Architect-Engineer and upon receiving clarification or correction in writing shall prepare an addendum to the bidding document, and issue same to all of the prospective bidders.
- E. The Construction Manager shall not enter into contracts without the Owner reviewing the proposed successful bidder. The Owner shall promptly, within (3) business days, review all proposals and provide comments so as not to cause delay in the award of a contract. Owner's failure to respond within this time frame shall constitute acceptance of the proposed contract. Owner shall have the right

to reject any award of subcontract providing such rejection is justifiable and with cause. Should the Owner reject a proposal and should the next bondable, qualified bidder that is acceptable to the Construction Manager, be greater than the Construction Authorization proposal for that work item, the Owner shall issue a change order to the Construction Manager, increasing the Construction Authorization Sum, for the amount of the difference between the proposed award and that which the Owner has requested.

5. **Bonds** - In accordance with the provisions of Section 255.05, Florida Statutes, the Construction Manager shall provide to the Owner, on forms furnished by the Owner, a 100% Performance Bond and a 100% Labor and Material Payment Bond each in an amount not less than the total construction cost as defined in the Construction Authorization and inclusive of the Contractor's Fee if applicable.

To be acceptable to the Owner as Surety for Performance Bonds and Labor and Material Payment Bonds, a Surety Company shall comply with the following provisions:

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 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 bond is issued.
- A. The Surety Company shall have at least the following minimum ratings in the latest issue of Best's Key Rating Guide.

	<b>Construction Authorization Sum</b>	<b>Policy Holder's Rating</b>	<b>Required Financial Rating</b>
B.	\$500,000 to \$1,000,000	A	Class IV
	\$1,000,000 to \$2,000,000	B	Class III

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.

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

6. **Quality Control** - The Construction Manager shall develop and maintain a written program, acceptable to the Owner and Architect-Engineer, to assure quality control of the construction. He shall supervise the work of all subcontractors providing instructions to each when their work does not conform to the requirements of the plans and specifications and he shall continue to exert his 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 disagreement occur between the Construction Manager and Architect-Engineer over acceptability of work and conformance with the requirements of the specifications and plans, the Owner shall be the final judge of performance and acceptability, subject to the dispute provisions of the contract.
7. **Subcontractor Interfacing** - The Construction Manager shall be the single point of interface with all subcontractors for the Owner and all of its agents and representatives including the Architect-Engineer. He

shall negotiate all change orders and request for proposals, with all affected subcontractors and shall review the costs of those proposals and advise the Owner and Architect-Engineer of their validity and reasonableness, acting in the Owner's best interest prior to requesting approval of each change order from the Owner. Before any work is begun on any change order, a written authorization from the Owner must be issued. However, when health and safety are threatened, the Construction Manager shall act immediately to remove the threat to health and safety. He shall also carefully review all shop drawings and then forward the same to the Architect-Engineer for review and actions. The Architect-Engineer shall 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. He shall request the Architect-Engineer via the Owner 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. He shall advise the Owner and Architect-Engineer when timely response is not occurring on any of the above.

8. Permits - The Construction Manager shall secure all necessary building permits from the Permitting Authority and all necessary utility connection permits, the cost of which will be considered a direct cost item, but not subject to Construction Manager profit, as described in section 8.1.2.

9. Job Site Requirements

- A. The Construction Manager shall provide for each of the following activities as a part of his Construction Phase Cost:

1. Maintain a log of daily activities, including manpower records, weather, delays, major decisions, etc.
2. Maintain a roster of companies on the project with names and telephone numbers of key personnel.
3. Establish and enforce job rules governing parking, clean-up, use of facilities and worker discipline.
4. Provide labor relations management for a harmonious, productive project.
5. Provide a safety program for the project to meet OSHA requirements. Monitor for subcontractor compliance without relieving them of responsibilities to perform work in accordance with the best acceptable practice.
6. Provide a quality control program as developed under Article 2.4(6) herein above.
7. Miscellaneous office supplies that support the construction efforts, which are consumed by his own forces.
8. Travel to and from his home office to the project site, as the project requires.

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

1. Schedule the services of independent testing laboratories for the necessary testing of materials to ensure conformance to contract requirements.
2. The printing and distribution of all required bidding documents and shop drawings, including the sets required by the Permitting Authority's inspectors.

10. Job Site Administration - The Construction Manager shall provide as part of his job site fee, job site administrative functions during construction to assure proper documentation, including but not limited to such things as the following:

- A. Job Meetings - Hold weekly progress and coordination meetings to provide for an easy flowing project. Implement procedures, assure timely submittals, expedite processing approvals and return of shop drawings, samples, etc.; Coordinate and expedite critical ordering and delivery of materials, work sequences, inspection and testing, labor allocation, etc.; Review and coordinate each subcontractor's work; Review and implement revisions to the Schedule; Monitor and promote safety requirements; In addition, a regular monthly project status meeting will be held between the Architect-Engineer, Owner and Construction Manager.

Use the job site meeting as a tool for planning of work and enforcing schedules and for establishing procedures, responsibilities, and identification of authority for all to clearly understand.

Identify party or parties responsible for follow up on any problems, delay items or questions and record course for solution. Revisit each pending item at each subsequent meeting until resolution is achieved. Require all present to make any problems or delaying event known to those present for appropriate attention and resolution.

- B. Shop Drawing Submittals/Approvals - Provide staff to check shop drawings and to implement procedures to be approved by Owner for submittal and transmittal to the Architect-Engineer and Owner of such drawings for action, and closely monitor their submittal and approval process.
- C. Material and Equipment Expediting - Provide staff to closely monitor material and equipment deliveries, important checking and follow-up procedures on supplier commitments of all subcontractors.
- D. Payments to subcontractors - Develop and implement a procedure for review, processing, and payment of applications by subcontractors for progress and final payments.
- E. Document Interpretation - Refer all questions for interpretation of the documents prepared by the Architect-Engineer to the Architect-Engineer via the Owner.
- F. Reports and Project Site Documents - Record the progress of the project. Submit written progress reports to the Owner and the Architect-Engineer including information on the subcontractor's work, and the percentage of completion. Keep a daily log available to the Owner, the Architect-Engineer and the Permitting Authority inspectors.
- G. Subcontractor's Progress - Prepare periodic punch lists for the subcontractor's work including unsatisfactory or incomplete items and schedules for their completion.
- H. Substantial Completion - Ascertain when the work, or designated portions thereof, are ready for the Owner's and the Architect-Engineer's substantial completion inspection. Prior to the Owner's and Architect-Engineer's pre-substantial completion inspection, the Construction Manager shall issue a list of incomplete items. After the Owner's and the Architect-Engineer's inspection, the Construction Manager shall prepare a schedule for the completion of the list, indicating completion dates for the Owner's review. The Owner and the Architect-Engineer will issue a certificate of substantial completion on the form attached hereto as Exhibit "A" when the work on the Construction Manager's pre-substantial punch list has been accomplished, to the best of the Construction Manager's ability.
- I. Final Completion - Monitor the Subcontractor's performance on the completion of the project and provide notice to the Owner and Architect-Engineer that the work is ready for final inspection. Secure and transmit to the Owner, through the Architect-Engineer, all required guarantees, affidavits, releases,

bonds and waivers, manuals, record drawings, and maintenance books including the Final Completion form shown in Exhibit "B".

- J. Start-Up - With the Owner's personnel, direct the checkout of utilities, operations, systems and equipment for readiness and assist in their initial start-up and testing by the trade contractors.
  - K. Record Drawings - The Construction Manager shall monitor the progress of his own forces or his Subcontractors on marked up field prints, which at project completion, shall be sent in electronic/digital form, to the Architect-Engineer via the Owner who will prepare the final record drawings. Continuously review "As-Built" Drawings and mark up progress prints to provide as much accuracy as possible.
11. Administrative Records - The Construction Manager may be required to maintain at the job site on a current basis, files and records such as, but not limited to the following:

- Contracts, Subcontracts, or Purchase Orders
- Shop Drawing Submittal/Approval Logs
- Equipment Purchase/Delivery Logs
- Contract Drawings and Specifications with Addenda
- Warranties and Guarantees
- Cost Accounting Records:
  - Labor Costs
  - Material Costs
  - Equipment Costs
  - Cost Proposal Requests
  - Payment Request Records
  - Meeting Minutes
  - Cost-Estimates
  - Bulletin Quotations
  - Lab Test Reports
  - Insurance Certificates and Bonds
  - Contract Changes
  - Material Purchase Delivery Logs
  - Technical Standards
  - Design Handbooks
  - "As-Built" Marked Prints
  - Operating & Maintenance Instruction
  - Daily Progress Reports
  - Monthly Progress Reports
  - Correspondence Files
  - Transmittal Records
  - Inspection Reports
  - Bid/Award Information
  - Bid Analysis and Negotiations
  - Punch Lists
  - PMIS Schedule and Updates
  - Suspense (Tickler) Files of Outstanding Requirements
  - Project Manual
  - Job Photographs
  - Subcontractor Licenses and Insurance

The project records shall be available at all times to the Owner and Architect-Engineer for reference or review.

12. Owner Occupancy

PS15-04249-RJ

Page 15 of 62

The Construction Manager shall:

Provide services during the design and construction phases, which will provide a smooth and successful Owner occupancy of the project. He shall provide consultation and project management to facilitate Owner occupancy and provide transitional services to get the work, as completed by the contractors, "on line" in such conditions as will satisfy Owner operational requirements.

Conduct the Construction Manager's preliminary punch list inspection and coordinate the completion of all punch list work to be done with Owner occupancy requirements in mind. He shall take video recording of all major equipment startup procedures and deliver electronic copies thereof to Owner as part of the closeout documents.

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

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.

The Owner may occupy or take control of portions of the project providing the above items discussed in this paragraph have been completed and the "Substantial Completion", "Start-Up", "Record Drawing", and "Warranty" requirements specified in paragraphs 2.4(10)h, 2.4(10)j, 2.4(10)k and 2.4(13) have been completed to the Owner's satisfaction for the portions to be occupied, excluding the requirements for a warranty inspection nine months after Owner Occupancy.

13. Correction of Work and Warranty.

A. Defective Work.

1. Work not conforming to the requirements of the Contract Documents shall be deemed defective Work. If required by Owner or Architect-Engineer, 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 Architect-Engineer, 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 Architect-Engineer harmless for same.
2. If Owner or Architect-Engineer consider it necessary or advisable that covered Work be observed by Architect-Engineer or inspected or tested by others, Construction Manager, at Architect-Engineer's or Owner's request, shall uncover, expose or otherwise make available for observation, inspection or tests as Owner or Architect-Engineer 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 Construction Authorization Sum. If, however, such Work is not found to be defective, Construction Manager shall be allowed an increase in the Construction Authorization Sum and/or an extension to the Construction Authorization Time, directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction.

3. Owner shall have the right to order Construction Manager to stop all or any portion of the Work if at any time Owner reasonably determines that Construction Manager's performance of the Work is not in compliance with the requirements of the Contract Documents. Such noncompliance shall include, but is not limited to, Construction Manager's failure to provide adequate labor, materials or equipment to satisfactorily maintain the various Project schedules (including the Master Project Schedule). This right to stop the Work shall be exercised, if at all, solely for Owner's benefit and nothing herein shall be construed as obligating Owner to exercise this right for the benefit of Construction Manager or any other person.
4. Should Owner determine, in its sole opinion, it to be in Owner's best interest to accept defective Work, 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 Construction Authorization Sum. If Owner accepts such defective Work after final payment, Construction Manager shall promptly pay Owner an appropriate amount determined by Owner to adequately compensate Owner for its acceptance of the defective Work.
5. If Construction Manager fails, within a reasonable time after the written notice from Owner or Architect-Engineer, to correct defective Work or to remove and replace rejected defective Work as required by Owner or Architect-Engineer, 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, Architect-Engineer 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 Construction Authorization Sum. 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 Construction Authorization Time because of any delay in performance of the Work attributable to the exercise by Owner of Owner's rights and remedies hereunder.

B. Warranty

1. The Construction Manager shall warrant that all materials and equipment and Work will be new unless otherwise specified. Further, Construction Manager expressly warrants to Owner that all Work shall be of good quality, free from improper workmanship and defective materials, and in conformance with the Construction 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. Further, any special warranty to be provided will be in such form

as is acceptable to Owner and shall not include any exclusions, exceptions or modifications except to the extent approved by Owner in its sole discretion.

2. The Construction Manager shall obtain and assign to the Owner all express warranties provided by any subcontractors or by any materialmen supplying materials, equipment, or fixtures to be incorporated into the Project. Also, the Construction Manager shall conduct, jointly with the Owner's Representative and the Architect-Engineer, a warranty inspection at six (6) and eleven (11) months after the after the date of the Owner's final payment to the Construction Manager. Construction Manager's assignment of warranties provided by subcontractors or materialmen shall not alter Construction Manager's warranty obligations to the Owner for the Project, for which it shall be fully responsible.
3. In addition to all other rights and remedies available to Owner at law or in equity, including any implied warranties Owner may be entitled to as a matter of law, Construction Manager expressly warrants to Owner that it shall promptly correct, upon receipt of written notice from Owner's Representative, any portion of the Work which is found to be defective or otherwise not in conformance with the requirements of the Contract Documents. In the event that any defective or non-conforming work is deemed by Owner in its sole discretion to present an immediate threat to safety or security, Owner shall be entitled to correct and fix such defective or non-conforming portions of the Work, and Construction Manager shall reimburse Owner for all costs and expenses incurred by Owner in performing such Work, including reimbursement by Construction Manager to Owner of any and all costs paid by the Owner to the Construction Manager for the defective work and, if applicable, percentage of Contractor's Fee proportionate to the value of the corrected work to the GMP. This obligation to correct defective or nonconforming Work shall run for a period of one year (or such longer period of time as may otherwise be specified in the Contract Documents) commencing from the date of the Owner's final payment to the Construction Manager.
4. With respect to the correction of any defective or nonconforming Work, Construction Manager shall be liable for all damage to any part of the Work itself and to any adjacent property which is caused by such corrective work. Construction Manager's warranty excludes remedy for damage or defect caused by Owner's abuse, modifications not performed by Construction Manager, improper or insufficient maintenance by Owner (unless such maintenance was performed in accordance with the directions from Construction Manager), improper operation by Owner (unless such operations were performed in accordance with the directions from Construction Manager), or normal wear and tear under normal usage.

### ARTICLE 3

#### OWNER'S RESPONSIBILITIES

3.1 Owner's Information:

The Owner shall provide full information regarding its requirements for the Project specified in the Construction Authorization.

3.2 Owner's Representative:

The Owner shall designate in writing any additional representatives authorized to act on the Owner's behalf with respect to a Construction Authorization, not previously defined in Article 1.3, together with the scope of his/her respective authority. In no event shall any delegation of authority be contrary to State or County laws or codes. Such designations as of the date hereof are set forth on Exhibit "C" hereto. Exhibit "C" may be amended from time to time by the Owner pursuant to written notice of and acceptance by the Construction Manager of such amendment. The Construction Manager shall be entitled to rely on directions (and it shall be required to follow

directions) from the Owner's Representative designated on Exhibit "C" or an amendment to Exhibit "C" within the authority conferred by the Board of County Commissioners in this Agreement or any Amendment or Change Order to this Agreement. Osceola County Board of County Commissioners hereby authorizes the Owner's Representative to: (1) act as the Board's agent and execute documents associated with this Agreement. Examples of these documents are Construction Authorizations, Construction Manager's Contingency Authorizations, Notices of Commencement, Certificates of Substantial Completion and permits from applicable agencies; (2) administer, coordinate, interpret and otherwise manage the contractual provisions and requirements of this Agreement and/or any Construction Authorization; (3) negotiate a duly authorized Construction Authorization and/or Change Order on behalf of the County; and (4) issue a duly authorized purchase order, memorandum, letter or other instrument covering the services and work to be provided pursuant to this Agreement. Directions and decisions made by Owner's Representatives shall be binding on the Owner. The Owner's Representative has the authority to authorize all work within the scope of the GMP and/or GMP / Part Two Construction Authorization.

3.3 Architect and Engineer's Agreement:

The Owner shall retain an Architect-Engineer for design and to prepare construction documents as required. The Architect-Engineer's services, duties and responsibilities are described in the Agreement between the Owner and the Architect-Engineer, a copy of which may be furnished to the Construction Manager.

3.4 Site Survey and Reports:

The Owner shall provide for the site of the project all surveys describing the physical characteristics, soil reports, and subsurface investigations, legal limitations, utility locations, and a legal description.

3.5 Approvals and Easements:

The Owner shall pay for necessary approvals, easements, assessments and charges required for the construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

3.6 Legal Services:

The Owner shall furnish such legal services as may be necessary for providing the items set forth in Article 3.5 and such auditing services as he may require.

3.7 Drawings and Specifications:

The Construction Manager will be furnished a reproducible set of all copies of Drawings and Specifications reasonably necessary and ready for printing for each Construction Authorization performed hereunder.

3.8 Cost of Surveys & Reports:

The services, information, surveys and reports required by the above paragraphs shall be furnished with reasonable promptness in accordance with the approved schedule at the Owner's expense, and the Construction Manager shall be entitled to rely upon the accuracy and completeness thereof.

3.9 Funding:

The Owner shall furnish in accordance with the established schedule, reasonable evidence satisfactory to the Construction Manager that sufficient funds will be available and committed for the cost of each Construction Authorization. The Construction Manager shall not commence any work, unless authorized in advance in writing by the Owner.

3.10 Lines of Communication:

PS15-04249-RJ

The Owner and the Architect-Engineer, through the Owner, shall communicate with the subcontractors or suppliers only through the Construction Manager while such method of communication is effective in maintaining project schedules and quality.

3.11 Permitting & Code Inspections:

The Owner recognizes and coordinates with the appropriate Permitting Authority and expects the Construction Manager to do the same.

**ARTICLE 4**

**PERMITS, FEES AND NOTICES**

- 4.1 Unless otherwise provided in the Contract Documents, the Construction Manager shall secure and pay for a Project's building permits, which are customarily secured by a General Contractor. The Owner shall directly pay any required impact fees.
- 4.2 The Construction Manager shall comply with and give notices, as required by laws, ordinances, rules, regulations and lawful orders of public authorities bearing on performance of the Work.
- 4.3 It is not the Construction Manager's responsibility to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, Building Codes and Rules and Regulations. However, if the Construction Manager observes that portions of the Contract Documents are at variance therewith, the Construction Manager shall promptly notify the Architect-Engineer and Owner in writing, and necessary changes shall be accomplished by appropriate modification.
- 4.4 If the Construction Manager performs Work knowing it to be contrary to laws, statutes, ordinances, Building Codes and Rules and Regulations without such notice to the Architect-Engineer and Owner, the Construction Manager shall assume full responsibility for such Work and shall bear the attributable costs.
- 4.5 Cost for all re-inspections of work found defective and subsequently repaired, shall be borne by the Construction Manager, unless such cost is not a result of negligence on the part of the Construction Manager.
- 4.6 All notices required or made pursuant to this Contract by Construction Manager to Owner shall be in writing and may be given either (i) by mailing same by United States mail with proper postage affixed thereto, certified, return receipt requested, or (ii) by sending same by Federal Express, Express Mail, or other expedited mail or package delivery, (iii) by hand delivery to the appropriate address as herein provided, or (iv) by telecopy with confirmation copy to be mailed. Notices required hereunder shall be directed to the following address:

Osceola County Board of County Commissioners  
1 Courthouse Square, Suite 3100  
Kissimmee, Florida 34741  
ATTENTION: R. L. "Pete" Pace  
Fax No.: (407)742-7405

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

**ARTICLE 5**

**SUBCONTRACTS**

5.1 Definition:

PS15-04249-RJ

Page 20 of 62

A subcontractor is a person or organization who has a direct contract with the Construction Manager to perform any of the work under a Construction Authorization. Nothing contained in the Contract Document shall create any contractual relation between the Owner or Architect-Engineer and any subcontractor.

5.2 Proposals:

Subject to Article 5 and, in accordance with Article 2.4(4), the Construction Manager shall request and receive proposals from subcontractors and suppliers and will award those contracts to the qualified low bidder after he and the Owner have reviewed each proposal and are satisfied that the subcontractor/supplier is qualified to perform the work.

5.3 Required Subcontractors' Qualifications and Subcontract Conditions:

5.3.1 Subcontractual Relations - Construction Manager shall be solely responsible for and have control over all subcontractors. Construction Manager shall negotiate all Change Orders and Requests for Proposals, with all affected subcontractors and shall review the costs of those proposals and advise the Owner and Architect-Engineer of their validity and reasonableness, acting in Owner's best interest. The Construction Manager shall award subcontracts to the qualified low responsive and responsible bidder after he and the Owner have reviewed each proposal and are satisfied that the subcontractor/supplier is the lowest responsive and responsible bidder qualified to perform the work. All subcontracts shall be let on a unit price and/or lump sum basis. 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 Agreement 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 its sub-subcontractors. All subcontracts shall: (1) require each subcontractor to be bound to Construction Manager to the same extent Construction Manager is bound to Owner by the terms of the Contract Documents, as those terms may apply to the portion of the Work to be performed by the subcontractor, (2) provide for the assignment of the subcontracts from Construction Manager to Owner at the election of Owner, upon termination of Construction Manager, (3) provide that Owner will be an additional indemnified party of the subcontract, (4) provide that Owner will be an additional insured on all insurance policies required to be provided by the subcontractor, except workman's compensation, and (5) assign all warranties directly to Owner.

5.3.2 All subcontracts shall provide:

1. **LIMITATION OF REMEDY - NO DAMAGES FOR DELAY**

The subcontractor's exclusive remedy for delays in the performance of the contract caused by events beyond its control, including delays claimed to be caused by the Owner or Architect-Engineer or attributable to the Owner or Architect-Engineer and including claims based on breach of contract or negligence, shall be an extension of its contract time and shall in no way involve any monetary claim.

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

The subcontract shall require the subcontractor to 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.

Each subcontract shall require that any claims by the subcontractor for delay or additional cost must be submitted to the 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.

5.4 Responsibilities for Acts and Omissions:

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

5.5 The subcontractor must agree to provide field (on-site) supervision through a named superintendent for each trade included in the subcontract. In addition, the subcontractor shall assign and name a qualified employee for scheduling its work.

**ARTICLE 6**

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

- 6.1 At the time a Construction Authorization Sum is established as provided for in Article 7, a project substantial completion date, a project final completion date and an Owner Occupancy date for completion of the project in accordance with the master project schedule, shall also be established by the Construction Team. The Construction Manager agrees to complete the construction in accordance with the agreed upon substantial completion date, final completion date and Owner Occupancy date. Owner and Construction Manager recognize that, since time is of the essence, Owner will suffer financial loss if the Work associated with the Construction Authorization is not substantially completed within the time specified in the Construction Authorization, as said time may be adjusted as provided for herein. In such event, the total amount of Owner's damages 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 services to the public, in Osceola County, Florida. It is hereby agreed that it is appropriate and fair that Owner receive liquidated damages from Construction Manager, if Construction Manager fails to achieve Substantial Completion of the Work within the required Contract Time. Should Construction Manager fail to substantially complete the Work within the required time period, Owner shall be entitled to assess, as liquidated damages, but not as a penalty, and Construction Manager shall be liable and pay for, a daily amount specified in the specific Construction Authorization for each calendar day until Substantial Completion is achieved. The parties agree that the liquidated damages figures contained in the Construction Authorization shall not be construed as a penalty, but instead, are amounts which the parties agree, at the time of execution of the Construction Authorization, that reasonably reflect the damages which the Owner is likely to incur as the result of Construction Manager's late completion. 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.
- 6.2 The date of Owner Occupancy shall occur as described in Article 2.4(12) herein above. Warranties called for by this Agreement or by the Drawings and Specifications shall commence on the Date of Substantial Completion, unless otherwise agreed to, in writing, between the Owner and Construction Manager.

**ARTICLE 7**

**CONSTRUCTION MANAGER COMPENSATION**

- 7.1 The Owner shall pay the Construction Manager the Construction Authorization Sum in current funds for the Construction Manager's performance of the Construction Authorization. The Construction Authorization Sum shall be one of the following, and shall be specified in the Construction Authorization:

- \_\_\_ Stipulated Sum in accordance with Section 7.2 below
- \_\_\_ Cost of the Work plus Construction Manager's Fee with a Guaranteed Maximum Price (GMP) in accordance with Section 7.3 and Article 8 below

7.2 Stipulated Sum. Any stipulated sum specified in the Construction Authorization shall be subject to additions and deductions and provided in the Contract Documents and shall identify all alternates, unit prices, allowances, and assumptions or qualifications.

7.3 Cost of the Work plus Construction Manager's Fee with a GMP. The provisions of this 7.3 apply only to Construction Authorizations that specify that the Construction Manager is being paid on the basis of the cost of the work plus the Construction Manager's Fee with a GMP.

7.3.1 When the design documents are sufficiently complete to establish the scope of work for the project that is the subject of the Construction Authorization or any portion thereof, or at such time thereafter designated by the Owner, the Construction Manager will establish and submit in writing to the Owner for his approval a Guaranteed Maximum Price, guaranteeing the maximum price to the Owner, for the construction cost of the project or designated part thereof. The Construction Manager acknowledges multiple GMPs may be required for the portions of the project to support the project phasing and schedule. The GMP will be subject to modification for changes in the project as provided in Article 9. However, the actual price paid for the work by the Owner shall be the actual cost of all work subcontracts, supply contracts, direct labor costs, direct supervision costs, and direct job costs as defined under Article 8, plus the Construction Manager's fees, or the GMP, whichever is less when the work is complete.

7.3.2 The GMP will only include those taxes in the cost of the project, which are legally enacted at the time the GMP is established.

7.3.3 At the time of submission of a GMP, the Construction Manager will verify the time schedule for activities and work, which were adopted by the Construction Team and used to determine the Construction Manager's cost of work.

Included in the GMP will be a Construction Contingency, which is included for use as outlined herein, with the Owner's advance written consent. The Construction Contingency is only to be used for costs required to produce the Work which were not reasonably inferable from the Contract Documents at the time the GMP is established. The Construction Contingency shall NOT be utilized for misinterpretation of the plans, specifications, or Contract Documents; missed scope; risks assumed by Construction Manager; Construction Manager's Fee; or any staffing/overhead or other type costs incurred by Construction Manager, except when Construction Manager is self-performing the work. The Construction Manager will be required to furnish documentation evidencing expenditures charged to the Construction Contingency prior to the release of funds by the Owner. Documentation for use of the Construction Contingency shall be determined by the Construction Team, included in the Project Manual and displayed monthly in the PMIS. The Architect-Engineer shall verify the actual costs.

7.3.4 When the Project that is the subject of the Construction Authorization is bid and 100% of the Trade Contracts have been executed, Construction Contingency shall be decreased, upon written request of Owner, in proportion to the percent of the work completed up to a maximum of 50%. In other words, if 10% of the work has been completed and the Owner requests that the Construction Contingency be adjusted, then 10% of the value of the Construction Contingency will be transferred to the Owner's Buyout Contingency up to a maximum of 50% of the initial Construction Contingency value. After Owner's written request for adjustment, the Construction Manager and Owner's Representative will execute an approval of the transfer of the funds from the Construction Contingency to the Owner's Buyout Contingency.

During the buyout period of Trade Contracts, at a point mutually agreed upon between the Owner and Construction Manager, the net amount of the buyout will be reviewed. If the net

amount of the total buyout results in excess funds being required, those funds will be taken from the Contractor's Contingency.

If the net amount of the buyout results in a savings, the savings will be assigned to the Owner's Buyout Contingency within the GMP as defined in Article 7.3.5.

If bids are not received for a portion of the work at or below the applicable line item amount in the GMP, the Construction Manager reserves the right to perform that portion of the work or negotiate for its performance for the specified line item lump sum amount or less.

- 7.3.5 The Owner's Buyout Contingency shall be created by savings generated by Subcontractor buyout (Article 7.3.4) and also by reductions in scope that otherwise could reduce the GMP. The Owner is the sole and only Owner and beneficiary of the Owner's Buyout Contingency, which is to allow funds already within the GMP to remain in the GMP only for the Owner's convenience for the Owner's Representative to re-designate them for work outside the GMP, including without limitation, scope issues and scope adjustments, as specified herein, and not for work within the scope of the GMP. The Owner's Buyout Contingency shall be used solely and only at the discretion by advance written approval of the Owner's Representative for work outside the GMP, namely scope issues and scope adjustments that may become required and/or desired by Owner during the course of the project. The Construction Manager shall have no claim to funds nor any entitlement to any portion of any Owner's Buyout Contingency nor any unused Owner's Buyout Contingency, which will be retained 100% by Owner, even if the amount of the GMP is otherwise exceeded.

## ARTICLE 8

### COSTS OF THE WORK

- 8.0 **The provisions of this Article 8 shall only apply to Construction Authorizations that specify that the Construction Manager is being paid on the basis of the cost of the work plus the Construction Manager's Fee with a GMP.** The provisions of this Article 8 do not apply to Construction Authorizations that specify that the Construction Manager is being paid on the basis of a stipulated sum.
- 8.1 In consideration of the full and faithful performance by the Construction Manager of the covenants in this Agreement, Owner agrees to pay, or cause to be paid, to Construction Manager the following amounts (hereinafter collectively referred to as "Construction Authorization Sum"), in accordance with the terms of this Agreement:
- 8.1.1 Pre-Construction Phase Services – For all Pre-Construction Phase Services, including, but not limited to, providing value engineering services, reviewing Construction Documents for constructability, assisting and meeting with Design Engineer during the various design phases, and preparing cost estimates, Construction Manager shall receive the fixed amount specified in the Pre-Construction / Part One Construction Authorization as the total lump sum compensation for its services. The form for the Pre-Construction / Part One Construction Authorization is attached hereto as Exhibit "F". Monthly installment payment of the total lump sum Pre-Construction compensation shall be based upon the percent completion of the designated portion of the Pre-Construction Services for each particular month and Owner's receipt of Construction Manager's written invoice for such payment, said invoice to be in a form acceptable to Owner. The final invoice shall not be submitted until either (i) the GMP / Part Two Construction Authorization is executed for the entire Work, or (ii) the parties fail to reach agreement on the GMP / Part Two Construction Authorization and/or Owner elects to terminate any Construction Authorization and/or this Agreement as provided herein, whichever occurs first.
- 8.1.2 Construction Phase Services - With respect to any Construction Phase Services to be provided by Construction Manager hereunder on a Cost-Plus basis to a GMP (the "GMP Phase Services"), 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 (its "Fee") to be established at the time the GMP is initially set by the parties and specified in the GMP / Part Two Construction Authorization. Construction Manager agrees to provide Owner with a GMP proposal for the total sum of the its Fee plus the Cost of the Work within a maximum of 45 days after the Construction Documents in Owner's opinion are sufficiently completed by Architect-Engineer, unless agreed in writing by Owner to be a longer time. The GMP proposal shall be based upon the previous cost estimates provided by Construction Manager as required by Owner. Further, the proposal shall be broken down into the categories and level of detail required by Owner. Construction Manager agrees that all of its books, records and files, with respect to its development of the GMP proposal, shall be open to Owner for review and copying. The final GMP shall be established in the GMP / Part Two Construction Authorization. The form for the GMP / Part Two Construction Authorization is attached hereto as Exhibit "G".

- 8.2 Costs to be Reimbursed. The phrase "Cost of the Work" shall mean all costs necessarily and reasonably incurred by Construction Manager in the proper performance of the GMP Phase Services portion of the Work as allowed below. Such costs shall be at rates not higher than the standard paid at the location of the Project except with the prior written consent of Owner and only after Construction Manager has provided sufficient support in writing that exceptional circumstances exist which justify the payment of rates higher than the standard. The Cost of the Work shall include only those items set forth below:

8.2.1 Labor Costs:

8.2.1.1 Actual wages of workers directly employed by Construction Manager that are listed in 1.2 of the GMP / Part Two Construction Authorization. Additional workers may be added as an amendment to the Construction Authorization only if approved in writing by the Owner. Costs to be reimbursed will be the actual wages paid to the individuals identified in 1.2 of the GMP / Part Two Construction Authorization.

8.2.1.2 The Parties will establish in the GMP / Part Two Construction Authorization a fixed markup rate for all labor burden, including all taxes, insurance (except workers compensation and general liability), contributions, bonuses, 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 markup is to apply only upon those wages included in the Cost of the Work under subsection 8.2.1.1 above.

- 8.2.2 Subcontract Costs. Payments made by Construction Manager to subcontractors in accordance with the requirements of the applicable written subcontracts. All Subcontractor costs will be documented by signed Subcontractor invoices and all material costs will be documented by copies of invoices.

8.2.3 Cost of Materials and Equipment Incorporated into the Completed Construction:

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

8.2.3.2 Costs of materials and equipment incorporated or to be incorporated in the completed construction 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 Owner's option, shall be sold by Construction Manager; amounts realized, if any, from such sales, shall be credited to Owner as a deduction from the Costs of the Work.

- 8.2.4 Costs of other materials and equipment, temporary facilities and related items:

- 8.2.4.1 Costs, including transportation, installation, maintenance, dismantling and removal, of materials, supplies, temporary facilities (including project field offices, furniture and fixtures), temporary utilities, 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.
- 8.2.4.2 Rental charges, at standard industry rates for the area, 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 Construction Manager or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of all equipment rented, whether from Construction Manager or others, shall be subject to Owner's prior written approval.
- 8.2.4.3 Cost of removal and proper disposal of debris from the Project site.
- 8.2.4.4 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, which shall be billed at cost with no Construction Manager's Fee added. Petty cash items do not include food and drink expenditures.
- 8.2.4.5 That portion of the reasonable travel and subsistence expenses of Construction Manager's personnel, assigned to the Project site, incurred while traveling outside of Osceola, Orange, Polk, and Seminole Counties in discharge of duties connected with the Work, not including relocation expenses, provided all of such expenses and charges shall be subject to the prior written approval of Owner, which shall be billed at cost with no Construction Manager's Fee added.

8.2.5 Miscellaneous Costs.

- 8.2.5.1 That portion of any separate premiums for (i) bonds directly attributable to a Construction Authorization and (ii) any additional insurance coverages which are purchased by Construction Manager, with Owner's prior written approval, beyond the level of coverage specified herein. These shall be billed at cost with no Construction Manager's Fee added.
- 8.2.5.2 Sales, use or similar taxes imposed by a governmental authority which are related to the Work and for which Construction Manager is liable. These shall be billed at cost with no Construction Manager's Fee added.
- 8.2.5.3 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. These shall be billed at cost with no Construction Manager's Fee added.
- 8.2.5.4 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. These shall be billed at cost with no Construction Manager's Fee added.
- 8.2.5.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents. These shall be billed at cost with no Construction Manager's Fee added.
- 8.2.5.6 Deposits lost for causes other than Construction Manager's fault or negligence. These shall be billed at cost with no Construction Manager's Fee added.

- 8.2.5.7 Costs for such temporary facilities and temporary protection during construction as approved in advance in writing by Owner, including temporary water, heat, power, and sanitary facilities. These shall be billed at cost with no Construction Manager's Fee added.
  - 8.2.5.8 Cost of Public Information Programs or other neighborhood functions hosted by Construction Manager at the direction of Owner's Representative. These shall be billed at cost with no Construction Manager's Fee added.
  - 8.2.5.9 Costs for any items not referenced herein, not normally provided by Subcontractors, which will be provided by the Construction Manager to complete the Work.
- 8.3 Costs Not To Be Reimbursed. The Cost of the Work shall not include the following items except as provided in 8.2:
- 8.3.1 Wages and other compensation of Construction Manager's personnel stationed at Construction Manager's principal office or offices other than the Project site office.
  - 8.3.2 Temporary living and travel expenses of employees who are not relocated, but are assigned to the Project.
  - 8.3.3 Expenses of Construction Manager's principal office and offices other than the Project site office.
  - 8.3.4 Overhead and general expenses, except as may be expressly included in 8.2.
  - 8.3.5 Construction Manager's capital expenses, including interest on Construction Manager's capital employed for the Work.
  - 8.3.6 Rental costs of machinery and equipment, except as specifically provided in 8.2.
  - 8.3.7 Costs reasonably incurred in repairing or correcting damaged, defective, or nonconforming Work executed by Construction Manager, or its subcontractors or suppliers.
  - 8.3.8 Costs due to the negligence or fault 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
  - 8.3.9 Any costs not specifically and expressly described in 8.2 above.
  - 8.3.10 Construction Manager is responsible, without reimbursement from Owner, for re-inspection fees and costs; to the extent such re-inspections are due to the negligence of the Construction Manager.
  - 8.3.11 Any costs which would cause the GMP to be exceeded, which shall all be paid by Construction Manager with no reimbursement from Owner.
- 8.4 Discounts, Rebates and Refunds. 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 Owner, or (ii) Owner has deposited funds with Construction Manager with which to make payments; otherwise, cash discounts shall accrue to 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. Amounts which accrued to Owner in accordance with the provisions of this section shall be credited to Owner as a deduction from the Cost of the Work.

**ARTICLE 9**

### CHANGE IN THE PROJECT

- 9.1 Owner shall have the right, at any time during the progress of the Work after the Construction Authorization Sum is established, to increase or decrease the scope of Work. A Change Order is a modification of the Construction Authorization to allow for changes in the Work that result in increases or decreases in the Construction Authorization Sum or Construction Authorization Time. Promptly after being notified of a scope of work change, but in no event more than 7 days after its receipt of such notification (unless Owner's Representative has agreed in writing to a longer period of time), Construction Manager shall submit an itemized estimate of any cost or time increases or savings it foresees as a result of the change. If Construction Manager fails to submit this information within the required time, then the adjustments if any to the Construction Authorization Sum and Construction Authorization Time shall be determined in accordance with 9.6, which shall be final and binding on the Construction Manager, who shall have knowingly and voluntarily waived all rights to make a claim against the Owner arising therefrom.
- 9.2 Except in an emergency endangering life or property, or for minor changes authorized in writing by the Owner's Representative that do not involve a change in Construction Authorization Time or Construction Authorization Sum, no additional Work or changes to the Work shall be made except upon written order by the Owner's Representative. Owner shall not be liable to Construction Manager for any adjustment to the Construction Authorization Time, increase in the Construction Authorization Sum (for changed Work), or in the case of a GMP, payment of any funds from the Construction Manager's Contingency (for costs incurred in the delivery of the Work that could not be reasonably inferred from the Contract Documents at the time the GMP is established) without a written order from the Owner. No officer, employee, or agent of Owner is authorized to direct any extra or changed work or agree to payment of any funds from the Construction Manager's Contingency orally.
- 9.3 A Change Order, in form attached hereto and incorporated herein as Exhibit "H" to the Agreement, shall be prepared by Owner's Representative, reviewed by Architect-Engineer and Construction Manager, 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 Construction Authorization Sum and Construction Authorization Time shall be adjusted in the Change Order in the manner as Owner and Construction Manager shall mutually agree.
- 9.4 A Change Order shall resolve all issues arising from the Changed Work, including all schedule and time impacts, delay costs, direct and indirect damages, and costs of any kind, and shall be final and binding on Construction Manager. Any disputes between Construction Manager and subcontractors or suppliers relating to the Change Order are the sole risk and responsibility of Construction Manager.
- 9.5 The increase or decrease in the Construction Authorization Sum resulting from a change in the Project shall be determined in one or more of the following ways: 1) by mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation by the Architect-Engineer and Owner's Representative, or 2) by unit prices stated in the Construction Authorization or subsequently agreed upon.
- 9.6 If none of the methods set forth in 9.5 is agreed upon, the Construction Manager, provided it receives a written order signed by the Owner, shall promptly perform the change directed by Owner and keep a detailed record of all costs and expenses of performing the work, including all receipts, invoices, purchase orders, cancelled checks, time records, and similar documentation. In that event, the Construction Authorization Sum and Construction Authorization Time shall be adjusted as directed by Owner based on Owner's review of the documentation submitted by Construction Manager. If Construction Manager disagrees with Owner's adjustment determination, Construction Manager must make a claim pursuant to this Agreement or be deemed to have waived any claim it might otherwise have had on that matter.
- 9.7 Minor Changes in the Project: The Owner will have authority to order minor changes in the Project not involving an adjustment in the Construction Authorization Sum or Construction Authorization Time and not inconsistent with the intent of the Construction Documents. Such changes shall be effected in writing. The

documentation of changes shall be determined by the Construction Team and displayed monthly in the PMIS, if applicable. Changes shall be approved by the Owner and Architect-Engineer.

- 9.8 In the event a requested change is approved by Owner which results in either an increase or decrease in the Construction Authorization Sum, a Change Order shall be issued which increases or decreases the Construction Authorization Sum by the amount of Construction Manager's actual and reasonable direct Cost of the Work (including bond premiums). In the event such change Work is performed by subcontractors or sub-subcontractors, the Construction Manager's maximum markup for all overhead and profit shall be the same percentage as its Fee.
- 9.9 Owner's Representative may direct Construction Manager to make nonmaterial changes to the Work, so long as such changes do not require or result in any adjustment to the Construction Authorization Sum, Construction Authorization Time or Project quality, and are generally within the scope of the Work. All such changes must be evidenced by a written order from Owner's Representative to Construction Manager. Construction Manager shall comply with all such orders.
- 9.10 Notwithstanding anything in the Contract Documents to the contrary, if conditions are encountered at the Project site which are (i) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or (ii) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, and which reasonably should not have been discovered by Construction Manager as part of its scope of site investigative services required pursuant to the terms of the Contract Documents, then Construction Manager shall provide Owner with prompt written notice thereof before conditions are disturbed and in no event later than seven (7) calendar days after first observance of such conditions. Owner and Architect-Engineer shall promptly investigate such conditions and, if they differ materially and cause an increase or decrease in Construction Manager's cost of, or time required for, performance of any part of the Work, Owner will acknowledge and agree to an equitable adjustment to the Construction Authorization Sum or Construction Authorization Time, or both, for such Work. If Owner determines that the conditions at the site are not materially different from those indicated in the Contract Documents or not of an unusual nature or should have been discovered by Construction Manager as part of its investigative services, and that no change in the terms of the Construction Authorization is justified, Owner shall so notify Construction Manager in writing, stating its reasons. Claims by Construction Manager in opposition to such determination by Owner must be made within seven (7) calendar days after Construction Manager's receipt of Owner's written determination notice. If Owner and Construction Manager cannot agree on an adjustment to the Construction Authorization Sum or Construction Authorization Time, the dispute resolution procedure set forth in the Contract Documents shall be complied with by the parties.
- 9.11 In the event the Construction Manager encounters on the site material reasonably believed to be asbestos or polychlorinated biphenyl (PCB) which has not been rendered harmless, petroleum waste, biohazardous substances, radioactive waste or any other substance falling within the category of hazardous or toxic waste under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) or any other state or federal environmental statute or regulation, hereinafter collectively referred to as "hazardous waste," the Construction Manager shall immediately stop work in the area affected and report the condition to the Owner in writing. Owner shall thereafter as soon as reasonably possible conduct a thorough investigation to determine if the suspected material in the affected area is in fact hazardous waste and shall certify to Construction Manager that such material is not hazardous waste or if such material is in fact hazardous waste that such hazardous waste has been abated and that it is safe to return to the affected area and resume work. The Construction Manager may require the Owner to furnish copies of reports of tests conducted by a qualified testing laboratory acceptable to Construction Manager verifying the absence of such hazardous waste before Construction Manager will be required to resume work. The Construction Authorization Time and Construction Authorization Sum shall thereafter be equitably adjusted to account for the time lost due to the encountering of the hazardous waste and the reasonable cost associated therewith. The Construction Manager shall, through an analysis of network schedule, prove such time delays and associated costs.
- 9.12 The Construction Manager shall not be required to perform any work relating to hazardous waste without consent pursuant to the changes clause herein.

## ARTICLE 10

### PAYMENTS TO THE CONSTRUCTION MANAGER

#### 10.1 Construction Manager's Payment Applications:

Construction Manager's monthly Applications for Payment shall be in a form, as shown in Exhibit "D", and shall contain such detail and backup as Owner reasonably may require. As a condition to the application for the monthly partial pay requisition, the Construction Manager agrees that all as-built information will be recorded within 30 days after receipt of information that a change to the Construction Documents has occurred.

10.1.1 With each Application for Payment where the Construction Authorization Sum is based upon the Cost of the Work with a GMP, the Construction Manager shall submit documentation of actual payments made, including payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, checks, and any other evidence required by the Owner to demonstrate that cash disbursements already made by the Construction Manager on account of the Cost of the Work meet or exceed (1) progress payments already received by Construction Manager, less (2) that portion of those payments attributable to the Construction Manager's Fee, plus (3) payrolls for the period covered by the present Application for Payment. The Construction Manager shall submit to the Owner a sworn statement, along with the cost reports required under Article 2.1.5(1) & (2) if required by the Owner, showing in detail all moneys paid out, cost accumulated or costs incurred during the previous period and the amount of the Construction Phase Fees due as provided in Article 8. The Construction Manager's schedule of values for the Work shall allocate the entire Construction Authorization Sum among the various portions of Work, and the Construction Manager's Fee shall be shown separately. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. With each Application for Payment, the Construction Manager shall submit its most recent schedule of values.

10.1.2 With each Application for Payment where the Construction Authorization Sum is based upon a Stipulated Sum, the Construction Manager shall submit its most recent schedule of values in accordance with the Contract Documents. The schedule of values shall allocate the entire Construction Authorization Sum among the various portions of the Work. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner may require.

10.2 At the time it submits its Construction Authorization proposal to Owner, Construction Manager also shall submit to Owner and Architect-Engineer, for their review, a Schedule of Values based upon the Construction Authorization proposal, listing the major elements of the Work and the dollar value for each element. To the extent reasonably practicable, all items in the Schedule of Values shall be given a unit cost to be utilized during the life of the project. That revised Schedule of Values, as further revised to reflect the final negotiated Construction Authorization amount and as approved by Owner, will be attached to the Construction Authorization and shall be used as the basis for Construction Manager's monthly Applications for Payment thereafter, based on the then current actual quantity of completed work, subject to the review and approval of Architect-Engineer and the Owner's Representative. This revised Schedule of Values shall be updated for the current month Change Orders and submitted each month to Architect-Engineer along with a completed and notarized copy of the Application for Payment form attached to the Agreement as Exhibit "D".

10.3 Construction Manager shall submit a notarized original of its monthly Application for Payment to the Architect-Engineer on or before the day of the month specified in the Construction Authorization. The period covered by each Application for Payment shall be one calendar month ending on the day before the date the Application for Payment is submitted. Within seven calendar days after receipt of each Application for Payment, the Architect-Engineer shall submit to Owner's Representative a certification of the Application for Payment in the amount recommended by the Architect-Engineer as being due and owing Construction Manager. Owner shall pay Construction Manager that portion of Architect-Engineer's Certificate for Payment which Owner approves as

being due and owing Construction Manager in accordance with the Florida Prompt Payment Act Statute, Fla. Stat. § 218.735.

- 10.4 Payments will be made for material and equipment not incorporated in the work but delivered and suitably stored at the site or another location that is insured to protect the Owner's assets subject to prior approval and acceptance by the Owner on each occasion.
- 10.5 Owner shall retain ten percent (10%) of that portion of the gross amount (retainage is calculated and held on the gross amount of payment, which means it applies to the reimbursable Costs of the Work and the Contractor's Fee) of each monthly payment request certified by Architect-Engineer and approved by Owner for payment, until fifty percent completion of the Work. Upon fifty percent completion of the Work, the amount of retainage thereafter withheld by Owner from subsequent payments shall be reduced to 5% of that portion of the gross amount of each monthly payment request certified by Architect-Engineer and approved by Owner for payment. Also, after fifty percent (50%) completion of the Work has been achieved, and to the extent required by Section 218.735(8)(d), Fla. Stat., Construction Manager may request in its next monthly Application for Payment release of up to one-half of the retainage theretofore withheld by Owner prior to said fifty percent (50%) of the Work being completed. Owner reserves the right, at its sole discretion, to further reduce or release any portion of such retainage prior to final payment. Provided, however, nothing in this Section shall preclude or limit the Owner's right to withhold payment as otherwise permitted by the terms of the Contract Documents or as permitted by law.
- 10.6 Monthly payments to Construction Manager shall in no way imply approval or acceptance of Construction Manager's work.
- 10.7 Each Application for Payment shall be accompanied by a Release and Affidavit in the form attached hereto and incorporated herein as Exhibit "J" 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 through the previous month's Application for Payment. Owner shall not be required to make payment until and unless these affidavits are furnished by Construction Manager. Further, if Construction Manager is withholding any portion of a payment to any subcontractor for any labor, services, or materials for which Owner has paid Construction Manager, Construction Manager agrees to refund such money to Owner.
- 10.8 Payments Withheld.

Architect-Engineer shall review each Application for Payment submitted by Construction Manager and shall make recommendations to Owner's Representative as to the proper amounts, if any, which may be owed Construction Manager under the Application for Payment. Both Architect-Engineer and Owner's Representative shall have the right to refuse to certify or approve for payment any amounts, or portions thereof, requested by Construction Manager in an Application for Payment, and Owner's Representative may withhold any payments otherwise due Construction Manager under this Agreement and/or any Construction Authorization, to the extent it is reasonably necessary to protect Owner from any expense, cost or loss attributable to: (a) defective or deficient Work not properly remedied in accordance with the terms of the Contract Documents; (b) the filing or reasonable evidence indicating the probable filing of third party claims against Owner attributable to the negligence of Construction Manager; (c) Construction Manager's failure to make timely and proper payments to all subcontractors and suppliers; (d) reasonable evidence that the remaining Work cannot be completed for the unpaid Construction Authorization balance; (e) reasonable evidence indicating that the remaining Work cannot be completed within the remaining Construction Authorization Time; (f) Construction Manager's failure to satisfactorily prosecute the Work in accordance with the requirements of the Contract Documents; or (g) any other material breach of the requirements of the Contract Documents by Construction Manager. Owner shall have the right, but not the obligation, to take any corrective action Owner deems appropriate to cure any of the above noted items, at the Construction Manager's expense, if such items are not cured by Construction Manager to the Owner's reasonable satisfaction, within five (5) working days after Construction Manager's receipt of written notice from Owner.

10.9 Final Payment: Owner shall make final payment for any Construction Authorization to Construction Manager provided the Work is finally accepted by Owner in accordance with this Section 10.9, and provided that Construction Manager first, and as express conditions precedent to the accrual of Construction Manager's right to final payment, shall have furnished Owner with a properly executed and notarized final release for Work that is the subject of the Construction Authorization (conditioned only upon receipt of final payment) in the form of the Release and Affidavit attached hereto as Exhibit "J", as well as a duly executed copy of the Surety's Consent to Final Payment, the Construction Manager has verified by his signature that he has completed all items specified on the attached Exhibit "E" and that the Construction Authorization has been finally performed, and supplied such other documentation that may be required by the Contract Documents or Owner. After receipt of such affidavit, the final Application for Payment and all other documents required for Construction Authorization close-out, Architect-Engineer and Owner's Representative shall promptly inspect the Work to determine if all of the Work has been completed and is ready for Final Acceptance by Owner. If Owner's Representative and Architect-Engineer determine Construction Manager has completed the entire Work, Architect-Engineer shall promptly request Board of County Commissioners approval of Final Completion of the Construction Authorization, stating that, to the best of its knowledge, information and belief, and on the basis of its observations and inspections: (i) all of the Work has been completed in accordance with the requirements of the Contract Documents; (ii) the final balance on the Construction Authorization due Construction Manager, as noted in the final Certificate for Completion, is due and payable; and (iii) all conditions precedent to Construction Manager's entitlement to final payment on the Construction Authorization have been satisfied. Owner reserves the right to inspect the Work and make an independent determination as to the Work's acceptability, even though Architect-Engineer may have issued its recommendations. Unless and until the Owner is completely satisfied, neither the final payment nor the Construction Manager's remaining withheld retainage shall become due and payable. 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 and the Construction Authorization or otherwise relating to the Project, except those identified in writing by Construction Manager as unsettled in the final Application for Payment. Neither the acceptance of the Work nor the 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's Representative or Architect-Engineer at the time of final inspection. The Project will be considered complete when all Work has been completed and accepted by the Board of County Commissioners.

## ARTICLE 11

### INSURANCE, INDEMNITY AND WAIVER OF SUBROGATION

11.1 Indemnity:

Construction Manager shall defend, indemnify and hold harmless Owner, Design Engineer, and their officers and employees from any and all liabilities, claims, damages, penalties, demands, judgments, actions, proceedings, losses or costs, including but not limited to, reasonable attorneys' fees, direct or consequential damages, or economic loss, arising out of or resulting from the performance of the Work, to the extent caused by the fault, negligence, recklessness, or intentional wrongful misconduct of Construction Manager or anyone employed or utilized by the Construction Manager in the performance of this Agreement. The duty to defend under this Article is independent and separate from the duty to indemnify, and the duty to defend exists regardless of any ultimate liability of the Construction Manager, Owner and any indemnified party. The duty to defend arises immediately upon presentation of a claim and written notice of such claim being provided to Construction Manager. Construction Manager's obligation to indemnify and defend under this Article will survive the expiration or earlier termination of this Agreement until it is determined by final judgment that an action against the Owner or an indemnified party for the matter indemnified hereunder is fully and finally barred by the applicable statute(s) of limitation and/or repose.

In any and all claims against the Owner or its employees by any employee of the Construction Manager, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligations under this Paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Construction Manager or any

subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

11.2 Construction Manager's Insurance:

1. The Construction Manager shall not commence any construction work in connection with this Agreement until he has obtained all of the following types of insurance and such insurance has been approved by the Owner, nor shall the Construction Manager allow any subcontractor to commence work on his subcontract until all similar insurance required of the subcontractor has been so obtained and approved. All insurance policies shall be with insurers qualified and doing business in Florida with an A.M. Best & Company financial strength rating of no less than A-. The insurance company must have a current A.M. Best & Company financial size rating of Class VII or higher. The insurance company must be duly licensed and authorized by the Department of Insurance of the State of Florida to transact the appropriate insurance business in the State of Florida. The insurance company must have been in such insurance business continuously for not less than 5 years prior to the date of the execution of this Agreement.
2. Worker's Compensation Insurance - The Construction Manager shall take out and maintain during the life of this Agreement Worker's Compensation Insurance for all his employees connected with the work of this Project and, in case any work is sublet, the Construction Manager shall require the subcontractor similarly to provide Worker's Compensation Insurance for all of the latter's employees unless such employees are covered by the protection afforded by the Construction Manager. Such insurance shall comply with the Florida Worker's Compensation Law. In case any class of employees engaged in hazardous work under this contract at the site of the Project is not protected under the Worker's Compensation statute, the Construction Manager shall provide adequate insurance, satisfactory to the Owner, for the protection of employees not otherwise protected. Employers' liability shall be set at \$1,000,000/1,000,000/1,000,000.
3. Construction Manager's Public Liability and Property Damage Insurance - The Construction Manager shall take out and maintain during the life of this Agreement Comprehensive General Liability and Comprehensive Automobile Liability Insurance as shall protect him from claims for damage for personal injury, including accidental death, as well as claims for property damages which may arise from operating under this Agreement whether such operations are by himself or by anyone directly or indirectly employed by him, and the amount of such insurance shall be minimum limits as follows:
  - A. Construction Manager's Comprehensive General, \$1,000,000 Each (\$2,000,000 aggregate) Liability Coverages, Bodily Injury Occurrence, & Property Damage Combined Single Limit
  - B. Automobile Liability Coverages, \$1,000,000 Each Bodily Injury & Property Damage Occurrence, Combined Single Limit
  - C. Excess Liability, Umbrella Form, with policy limits satisfying this requirement based on the dollar value of each specific Construction Authorization: for Construction Authorizations the value of which is \$750,000 or less, policy limits of \$2,000,000 Each Occurrence, Combined Single Limit; for Construction Authorizations the value of which exceeds \$750,000, policy limits of \$10,000,000 Each Occurrence, Combined Single Limit.

Insurance clause for both BODILY INJURY AND PROPERTY DAMAGE shall be amended to provide coverage on an occurrence basis. The Products and Completed operations portions of the General Liability shall extend for a period of four years after the Final Acceptance of the Project by the Owner.

4. Subcontractor's Public Liability and Property Damage Insurance - The Construction Manager shall require each of his subcontractors to procure and maintain during the life of this subcontract, insurance of the type specified above or insure the activities of his subcontractors in his policy, as specified above.
5. Owner's and Construction Manager's Protective Liability Insurance - The Construction Manager shall procure and furnish an Owner's and Construction Manager's Protective Liability Insurance Policy with the following minimum limits:

- A. Bodily Injury Liability & \$1,000,000 Each (\$2,000,000 aggregate) Property Damage Liability Occurrence Combined Single Limit
6. "XCU" (Explosion, Collapse, Underground Damage) - The Construction Manager's Liability Policy shall provide "XCU" coverage for those classifications in which they are excluded.
7. Broad Form Property Damage Coverage, Products & Completed Operations Coverages - The Construction Manager's Liability Policy shall include Broad Form Property Damage Coverage, Products and Completed Operations Coverages with a minimum \$2,000,000 aggregate limit.
8. Contractual Liability Work Contracts - The Construction Manager's Liability Policy shall include Contractual Liability Coverage designed to protect the Construction Manager for contractual liabilities assumed by the Construction Manager in the performance of this Agreement. Minimum limits are \$1,000,000 per occurrence, \$2,000,000 aggregate.
9. Indemnification Rider
- A. To cover to the fullest extent permitted by law, the Construction Manager shall indemnify and hold harmless the Owner and the Architect-Engineer and their agents and employees from and against all claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from the performance of the Work, provided that any such claim, damage, loss or expense (1) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), and to the extent it (2) is caused in whole or in part by any negligent act or omission of the Construction Manager, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right to obligation of indemnity which would otherwise exist as to any party or person described in this Article.
- B. In any and all claims against the Owner or the Architect-Engineer or any of their agents or employees by any employee of the Construction Manager, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligations under this Paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Construction Manager or any subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.
- C. The obligations of the Construction Manager under this Article 11.2(9) shall not extend to the liability of Architect-Engineer, his agents or employees, arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications, or (2) the giving of or the failure to give directions or instruction by Architect-Engineer, his agents or employees providing such giving or failure to give is the primary cause of the injury or damage.
- D. The Construction Manager hereby acknowledges receipt of ten dollars and other good and valuable consideration from the Owner and acknowledges receipt of ten dollars and other good and valuable consideration from the Architect-Engineer in exchange for giving the Owner and Architect-Engineer, respectively, the indemnification provided above in Article 11.2.9.
10. Builder's Risk Coverage - The Construction Manager shall take out and maintain during the life of this Agreement a "Builder's Risk Policy" completed value form, issued to provide coverages on an "all risk" basis including theft, naming the Owner as named insured. This coverage shall not be lapsed or canceled because of partial occupancy by the Owner prior to final acceptance of the Project. The Owner may elect to take out and maintain this insurance coverage. Should the Owner purchase said insurance, the insurance

policy shall have a deductible for each occurrence of \$5,000.00. The Construction Manager shall be responsible for losses up to the amount of the deductible.

11. Certificate of Insurance - The Owner shall be furnished proof of coverage of Insurance as follows:

Certificate of Insurance form will be furnished to the Owner. These shall be completed and signed by an authorized Resident Agent. This Certificate shall be dated and show:

1. The name of the insured Construction Manager, the specific job by name and job number, the name of the insurer, the number of the policy, its effective date, and its termination date.
2. Statement that the Insurer will mail notice to the Owner and a copy to the Architect-Engineer at least fifteen (15) days prior to any material changes in provisions or cancellation of the policy.
3. Certificate of Insurance shall be in the form as approved by Insurance Standards Office (ISO) and such Certificate shall clearly state all the coverages required.

12. Owner is to be named as an Additional Insured under all policies except for Worker's Comp.

- A. The insurance evidenced by the certificate shall be primary and non-contributory to any other insurance of the certificate holder.

## ARTICLE 12

### TERMINATION OF THE AGREEMENT AND OWNER'S RIGHT TO PERFORM CONSTRUCTION MANAGER'S OBLIGATION

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

1. If the Construction Manager fails to perform any of his obligations under this Agreement and/or any obligations under any Construction Authorization issued hereunder, including any obligation he assumes to perform work with his own forces, the Owner may, after seven (7) days written notice during which period the Construction Manager fails to perform such obligation, make good such deficiencies. The Construction Authorization Sum shall be reduced by the cost to the Owner of making good such deficiencies and, in the event of a Construction Authorization based on a GMP, the Construction Manager's Fee shall be reduced in the same percentage as the reduction in the GMP bears to the total GMP prior to the reduction.
2. The following shall be events of Construction Manager default: if the Construction Manager is adjudged a bankrupt, or if he makes a general assignment for the benefit of his creditors, or if a receiver is appointed on account of his insolvency, or if he persistently or repeatedly refuses or fails to supply enough properly skilled workmen or proper materials and fails to maintain an established schedule (failure to maintain schedule shall be defined as any activity on the critical path that falls 45 days or more behind schedule) which has been adopted by the Construction Team, or if he fails to make prompt payment to subcontractors for materials or labor, or persistently disregards laws, rules, ordinances, regulations, or orders of any public authority having jurisdiction, or otherwise is guilty of a breach of a material provision of the Agreement and/or any Construction Authorization entered hereunder. If Owner determines that Construction Manager is in default, 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 delivery to 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 1) supplement Construction Manager's forces and/or complete the Project that

PS15-04249-RJ

Page 35 of 62

is the subject of the Construction Authorization by whatever method he may deem expedient, with the Construction Manager assuming liability for all costs incurred by Owner in connection with such supplementation, or 2) terminate Construction Manager's right to proceed under this Agreement and/or the Construction Authorization, 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 that Owner may designate, 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. If Owner deems any of the foregoing remedies necessary, Construction Manager shall not be entitled to receive any further payments until after the Work 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 Architect-Engineer and attorneys' fees) or damages incurred by Owner incident to such completion, shall be deducted from the unpaid balance of the Construction Authorization, and if such expenditures exceed the unpaid balance of the Construction Authorization, 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 Construction Authorization 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, except for in the case of a Construction Authorization issued on the basis of cost-plus with a GMP the unpaid portion of the Construction Management Fee earned and the Cost of Work incurred prior to Construction Manager's right to continue performance under this Contract being terminated. Any amounts to be paid to Owner by Construction Manager pursuant to this paragraph shall be certified by Architect-Engineer, upon application, and this obligation for payment shall survive termination of the Contract. 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. Further, in the event Owner has exercised its right to terminate due to Construction Manager's default, Construction Manager shall be prohibited from bidding or otherwise seeking additional work from Owner in accordance with Owner's then current debarment policy. If, after notice of termination of Construction Manager's right to proceed pursuant to this Article, 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 such termination shall be deemed a termination for Owner's convenience and Construction Manager's remedies against Owner shall be the same as and limited to those afforded Construction Manager under Paragraph 12.2 below.

12.2 Termination by Owner For Convenience:

1. The Owner may, at any time, terminate this Agreement and/or any Construction Authorization entered hereunder for the Owner's convenience and without cause.
2. Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall:
  - A. cease operations as directed by the Owner in the notice;
  - B. take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
  - C. terminate, or assign to the Owner, as directed by the Owner in its sole discretion, all existing subcontracts and purchase orders and not enter into further subcontracts and purchase orders, except for Work directed to be performed prior to the effective date of termination stated in the notice.

3. In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with, in the event of a Construction Authorization with a GMP, its Fee on the Work performed, 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. In the event of a partial termination of the Construction Manager's right to perform certain Work for the Owner's convenience, the value of the work removed from the Construction Manager's scope, as determined in the sole discretion of Owner by applying agreed upon unit prices or by the Construction Manager's most recent Schedule of Values, shall be deducted from the Construction Authorization Sum by deductive Change Order.

### ARTICLE 13

#### ASSIGNMENT AND GOVERNING LAW

- 13.1 Neither the Owner nor the Construction Manager shall assign his interest in this Agreement without the written consent of the other except as to the assignment of proceeds. If Construction Manager does, with or without approval, assign this Contract or any part hereof, it shall require that its assignees be bound to Owner and assume to Owner all obligations and responsibilities that Construction Manager has assumed to Owner.
- 13.2 This Agreement shall be governed by the Laws of the State of Florida. Venue shall be Osceola County. The Parties agree that venue shall lie solely and exclusively in the State court of the State of Florida in Osceola County, Florida; and the Owner and the Construction Manager each hereby waive and renounce any and all rights and options which they, or either of them, have or might have to bring or maintain any such litigation or action in the Federal Court system of the United States or in any United States Federal District Court.

### ARTICLE 14

#### NOTICE OF CLAIM: WAIVER OF REMEDIES

- 14.1 The Owner's liability to the Construction Manager for any claims arising out of or related to the subject matter of this contract, whether statutory, in contract or tort, including, but not limited to, claims for extension of construction time, for payment by the Owner of the costs, damages or losses because of changed conditions under which the work is to be performed, or for additional work, shall be governed by the following provisions:
  1. All claims must be submitted as a Request for Change Order in the manner as provided herein;
  2. The Construction Manager must submit a Notice of Claim to Owner within 20 days of the Construction Manager becoming aware of the occurrence, or the event, giving rise to the claim; and
  3. Within 10 days of submitting its Notice of Claim, the Construction Manager shall submit to the Owner its Request for Change Order, which shall include a written statement of all the details of the claim, including a description of the work affected.

The Construction Manager agrees that the Owner shall not be liable for any claim that the Construction Manager fails to submit as a Request for Change Order as provided in this paragraph to the extent that the Owner is prejudiced by the failure of the Construction Manager to give notice.
- 14.2 After receipt of a Request for Change Order, the Owner, in consultation with the Architect-Engineer, shall deliver to the Construction Manager its written determination of the claim.
- 14.3 For work the Construction Manager performs with its own forces, and in addition to the adjustments provided for in Article 9, the Construction Manager's exclusive remedy for delays in performance of the construction caused by events beyond its control, including delays claimed to be caused by or attributable to the Owner or

the Architect-Engineer, including claims based on breach of contract or negligence, shall be a claim submitted in compliance with Article 14.1 above, for an extension of the scheduled construction time. In the event of a change in such work, the Construction Manager's claims for adjustments in the contract sum are limited exclusively to its actual costs for such changes plus 5% for profit. The Construction Manager expressly agrees that the foregoing constitutes its sole and exclusive remedy for delays and changes in such work, and eliminate any other remedies for claim, for increase in the contract price, delays, changes in the work, damages, losses or additional compensation.

## ARTICLE 15

### MISCELLANEOUS

15.1 Harmony:

The Construction Manager is advised and hereby agrees that he will exert every reasonable and diligent effort to assure that all labor employed by the Construction Manager and his Subcontractors for work on the project shall work in harmony with and be compatible with all other labor being used by building and construction contractors now or hereafter on the site of the project.

The Construction Manager further agrees that this provision will be included in all subcontracts of the Subcontractors as well as the Construction Manager's own contract; provided, however, that this provision shall not be interpreted or enforced so as to deny or abridge, on account of membership or non-membership in any labor union or labor organization, the right of any person to work as guaranteed by Article 1, Section 6 of the Florida Constitution.

15.2 Cleanup and Protections. Construction Manager agrees to keep the Project Site clean at all times of debris, rubbish and waste materials arising out of the Work. If Construction Manager fails to keep the Project Site clean, Owner has the right, after providing a 24 hour written notice, to perform any required clean up and to back-charge the Construction Manager for the costs of such clean up. 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. 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 condition at least equal to that existing at the time of Construction Manager's commencement of the Work.

15.3 Dispute Resolution:

1. All claims, disputes and other matters in question between the parties to this Agreement arising out of or relating to this Agreement or the breach thereof shall be initially submitted to mediation if mutually agreeable in accordance with the Construction Mediation Rules of the American Arbitration Association ("AAA") or any other mutually agreeable mediation firm.
2. Should either the Owner or the Construction Manager feel it necessary and appropriate to take any legal action to enforce any of the terms or conditions of the Contract between said parties, then each party shall be responsible for its own attorney's fees and costs associated with such litigation.
3. Construction Manager shall carry on its work and shall maintain the progress during any proceeding relating to this Project that may be initiated between Construction Manager and Owner or others including through any dispute between Construction Manager and Owner. Owner shall continue to make payment of undisputed amounts in accordance with the Contract Documents during the pendency of any claim.

15.4 Construction Manager's Project Records:

The Construction Manager's Project Records shall be maintained as prescribed hereinabove for the minimum period required by State and Federal Law, and shall be made available to the Owner or his authorized representative at mutually convenient times. Construction Manager shall require all of its subcontractors to likewise retain all of their Project records and supporting documentation. Owner, and any duly authorized agents or representatives of Owner, shall be provided access to all such records and supporting documentation at any and all times during normal business hours upon request by Owner.

Further, in the event that the Construction Authorization Sum is on a cost plus basis with a GMP, the balance of this provision shall apply. Owner, and any duly authorized agents or representatives of Owner, shall have the right to audit, inspect, and copy all of Construction Manager's and any subcontractor's Project records and documentation as often as they deem necessary and Construction Manager shall cooperate in any audit, inspection, or copying of the documents. If at any time, beginning with the Owner's Notice to Proceed until five (5) years after the termination of a cost plus with a GMP Construction Authorization or the date the Project that is the subject of that Construction Authorization is completed, whichever is later, or such longer period as may be allowed by law, Owner conducts such an audit of Construction Manager's records and documentation and finds that Construction Manager overcharged Owner, Construction Manager shall pay to Owner the Overcharged Amount which is defined as the total aggregate overcharged amount together with interest thereon (such interest to be established at the rate of 12% annum). If the Overcharged Amount is equal to or greater than \$10,000.00, then the Construction Manager shall also be liable for the Audit Amount, which is defined as the total aggregate of Owner's reasonable audit costs incurred as a result of its audit of Construction Manager, and the Owner may recover the Overcharged Amount and the Audit Amount, as applicable, from any amount due or owing Construction Manager with regard to the Project or under any other agreement between Construction Manager and Owner. If such amounts owed Construction Manager are insufficient to cover the Overcharged Amount and Audit Amount, as applicable, then Construction Manager hereby acknowledges and agrees that it shall pay such remaining amounts to Owner within 30 business days of its receipt of Owner's invoice for such remaining amounts. In no event shall the Overcharged Amount or the Audit Amount be deemed a reimbursable Cost of the Work. This Article, including all access, inspection, copying, auditing, reimbursement, and repayment rights shall survive the termination of this Contract.

- 15.5 Modification. No modification or amendment to the Contract shall be valid or binding upon the parties unless in writing and executed by the party or parties intended to be bound by it.
- 15.6 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 Contract 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. Any waiver of any obligation under this Contract must be in writing signed by the Party to be charged with the waiver.
- 15.7 Extent of Agreement/Entire Agreement. This Agreement, between the Owner and the Construction Manager, supersedes any prior negotiations, representations or agreements. This Agreement shall not be superseded by any provisions/revisions of the Construction Documents and may be amended only by a duly executed writing as authorized herein.

- 15.8 Severability. Should any provision of the Contract 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.
- 15.9 Truth-in-Negotiation Certificate. 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 Contract 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 Contract. At the time this Contract is executed, Construction Manager shall sign and deliver to Owner the Truth-in-Negotiation Certificate attached hereto and made a part hereof as Exhibit "K". 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 or other factual unit costs.
- 15.10 Public Entity Crimes. By its execution of this Agreement, Construction Manager acknowledges that it has been informed by Owner of the terms of Section 287.133(2)(a) of the Florida Statutes which read as follows:
- "A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity in excess of the threshold amount provided in s. 287.017 for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list."
- 15.11 Equal Employment Opportunity/Non-Discrimination/MWBE/LDB. In performing all services to be provided hereunder, Construction Manager shall not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. Construction Manager shall take affirmative action to ensure that applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such actions shall include, but not be limited to, the following: (i) employment, upgrading, demotion or transfer; (ii) recruitment or recruitment advertising; (iii) layoff or termination; (iv) rates of pay or other forms of compensation; and (v) selection for training, including apprenticeship. Construction Manager shall comply with Owner's current MWBE and LDB policies and procedures, and goals, if any, for this Project.
- 15.12 EMPLOYMENT ELIGIBILITY VERIFICATION (E-VERIFY). In accordance with State of Florida, Office of the Governor, Executive Order 11-116 (superseding Executive Order 11-02; Verification of Employment Status), in the event performance of any Construction Authorization is or will be funded using state or federal funds, the Construction Manager must comply with the Employment Eligibility Verification Program ("E-Verify Program") developed by the federal government to verify the eligibility of individuals to work in the United States and 48 CFR 52.222-54 (as amended) is incorporated herein by reference. If applicable, in accordance with Subpart 22.18 of the Federal Acquisition Register, the Construction Manager must (1) enroll in the E-Verify Program, (2) use E-Verify to verify the employment eligibility of all new hires working in the United States, except if the Construction Manager is a state or local government, the Construction Manager may choose to verify only new hires assigned to the Agreement; (3) use E-Verify to verify the employment eligibility of all employees assigned to the Agreement; and (4) include these requirement in certain subcontracts, such as construction. Information on registration for and use of the E-Verify Program can be obtained via the internet at the Department of Homeland Security Web site: <http://www.dhs.gov/E-Verify>.
- 15.13 The Construction Manager, by its execution of this Agreement, swears and affirms that it will disclose to the Owner "a whole or partial ownership or other interest in any entities" that it intends to enter into contracts with for the construction of the Project that is the subject of the Construction Authorization, or that its subcontractors or suppliers intend to enter into contracts with for the construction of the Project, prior to entering such contracts. For purposes of this subsection, "a whole or partial ownership or other interest in any entities" includes any interest in a publicly or non-publicly traded entity except an ownership interest of less than 5% in a publicly-traded entity. Construction Manager agrees and acknowledges that its obligations under this paragraph are material to the Agreement. Construction Manager agrees that in each of its subcontracts, it will require that

all of its subcontractors disclose a whole or partial ownership or other interest in any entities that they intend to enter into contracts with for the construction of the Project prior to entering such contracts, which the Construction Manager shall then disclose to the Owner prior to the entry of the contract with the disclosed entity. Construction Manager and Owner agree that if the Construction Manager makes any disclosures as specified in this subsection, it shall be in the Owner's sole discretion to prohibit or allow the entry of the contract with the disclosed entity.

15.14 Exhibits included. The following exhibits are attached hereto and incorporated herein by reference:

- Exhibit A –Certificate of Substantial Completion
- Exhibit B – Final Completion Forms
- Exhibit C – Owner's Representative(s) and Designee(s)
- Exhibit D – Partial Payment Request Form
- Exhibit E – Final Payment Request Check List
- Exhibit F – Pre-Construction / Part One Construction Authorization
- Exhibit G – GMP / Part Two Construction Authorization
- Exhibit H – Change Order Form
- Exhibit I – Owner Direct Purchase Agreement
- Exhibit J – Release and Affidavit
- Exhibit K – Truth-in-Negotiation Certificate

15.15 No EIFS may be used on any County-owned Project for any reason without advance written permission of the Owner and Architect-Engineer.

#### **ARTICLE 16**

#### **OWNER DIRECT PURCHASE**

16.1 OWNER'S DIRECT PURCHASE TAX SAVINGS PROGRAM. The Construction Manager shall review and coordinate with the Owner the implementation of the Owner's Direct Purchase Tax Savings Program. The terms of the Program are attached hereto and incorporated herein as Exhibit "I".

**The parties waive all rights to trial by jury.**

**SIGNATURE PAGE TO FOLLOW**

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

BOARD OF COUNTY COMMISSIONERS  
OF OSCEOLA COUNTY, FLORIDA

By: *Quiana James*  
Chairman/Vice Chairman

ATTEST:  
OSCEOLA COUNTY CLERK OF THE BOARD

By: *Timmy Rood*  
Clerk/ Deputy Clerk of the Board

As authorized for execution at the Board of  
County Commissioners meeting of:

September 14, 2015



CLANCY & THEYS CONSTRUCTION CO.

By: *Jeff Muck*

VICE PRESIDENT  
Title

(CORPORATE SEAL)

STATE OF Florida

COUNTY OF Orange

The foregoing instrument was acknowledged before me this 25 day of August,  
2015, by Jeff Muck, as VPres., of Clancy & Theys  
Construction Co., a N. Carolina corporation, on behalf of the corporation. He/She is  
personally know to me or has produced a \_\_\_\_\_ (state) driver's license no.  
\_\_\_\_\_ as identification.

*Lisa Snow*

Notary Public

Typed Name:

My Commission Expires

